



State of Wisconsin
2019 - 2020 LEGISLATURE

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2019 SENATE BILL 671

January 8, 2020 - Introduced by COMMITTEE ON LABOR AND REGULATORY REFORM, by request of Department of Workforce Development. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to repeal* 16.48 (1) (b) and 16.48 (2); *to renumber and amend* 16.48 (1)
2 (a) (intro.) and 16.48 (1) (a) 1., 2., 3., 4., 5. and 6.; *to amend* 16.48 (3), 71.93 (8)
3 (b) 2., 108.02 (13) (k), 108.05 (3) (a), 108.05 (3) (c) (intro.), 108.065 (1e) (intro.),
4 108.151 (7) (c), 108.151 (7) (f), 108.155 (2) (a), 108.16 (6w) and 108.22 (10); and
5 **to create** 16.48 (4), 108.02 (10e) (c), 108.05 (3) (cm), 108.065 (3m), 108.101 (5),
6 108.151 (7) (i) and 108.16 (6m) (j) of the statutes; **relating to:** various changes
7 to the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. Significant changes include all of the following:

Unemployment insurance financial outlook statement; council report; special committee

Under current law, DWD must submit a statement regarding the unemployment insurance financial outlook to the governor and legislative leadership by April 15 of every odd-numbered year. The report must contain all of the following: 1) financial projections of unemployment insurance operations, including benefit payments, tax collections, borrowing or debt repayments, and any amounts of interest charges and the economic and public policy assumptions upon

SENATE BILL 671

which the projections are based, and the impact upon the projections of variations from those assumptions; 2) proposed changes to the laws relating to unemployment insurance financing, benefits, and administration and financial projections under the proposed changes; 3) if there are significant cash reserves in the unemployment fund, the justifications for maintaining them; and 4) if program debt is projected at the end of the forecast period, the reasons DWD is not proposing to liquidate the debt.

This bill changes the submittal deadline of the statement to May 31 of every even-numbered year. The bill also requires the statement to contain proposed methods for liquidating any debt, instead of the reasons DWD is not proposing to liquidate any debt.

Under current law, DWD must submit a report of the activities of the Council on Unemployment Insurance to the governor and legislative leadership by May 15 of each odd-numbered year. Current law also requires DWD to submit to each member of the legislature by June 15 of each odd-numbered year an updated statement of unemployment insurance financial outlook.

The bill replaces the two aforementioned requirements with a single requirement for DWD to submit, by January 31 of each even-numbered year, a report of the activities of the Council on Unemployment Insurance and the most recent statement regarding the unemployment insurance financial outlook to the governor and legislative leadership, rather than to every member of the legislature.

Finally, under current law, after the report and statement are submitted to the governor and leadership on May 15 of each odd-numbered year, the governor may convene a special committee to review the financial outlook statement and the activities report. This bill repeals that provision. Under current law, the governor may otherwise convene a committee by executive order.

Benefits for certain employees

Under current law, a claimant for UI benefits is ineligible to receive any benefits for a week in which the claimant performs 32 or more hours of work. This bill requires DWD to disregard an employee's hours worked for an employer in a given week and wages payable to the employee for that week when determining the employee's benefit eligibility if certain conditions apply, including that the employer requires the employee to work during the week as a condition of continued employment with the employer and the employer is unable to pay wages because a government unit or the federal government fails to appropriate funds to the employer.

Effect of criminal convictions

Current law provides that no finding of fact or law, determination, decision, or judgment in any action or administrative or judicial proceeding in law or equity not arising under the UI law made with respect to the rights or liabilities of a party to an action or proceeding under the UI law is binding in an action or proceeding under the UI law.

The bill provides that notwithstanding this provision, a final order or judgment of conviction for a crime entered by a court is binding on the convicted person in an action or proceeding under the UI law that relates to the criminal conviction, and that a person convicted of a crime is precluded from denying the essential allegations

SENATE BILL 671

of the criminal offense that is the basis for the conviction in an action or proceeding under the UI law.

Reimbursable employer debt assessment

Under current law, DWD must annually determine the total amount due and uncollectible from nonprofit employers that have elected what is known as reimbursement financing (reimbursable employers), and DWD must then charge that amount to an uncollectible reimbursable benefits account in the unemployment reserve fund. Whenever, as of a given year, that account has a negative balance of \$5,000 or more, DWD must assess all such nonprofit reimbursable employers to reimburse for the uncollectible amount, except that employers that would otherwise be assessed less than \$10 are not assessed, and their portion is instead applied to the amount owed by other employers on a pro rata basis.

Also under current law, pursuant to 2015 Wisconsin Act 334, \$2,000,000 was set aside in the unemployment reserve fund to repay reimbursable employers for erroneous payments charged to them that resulted from a false statement or representation (e.g., identity theft).

The bill does the following:

1. Raises the threshold for charging a reimbursable nonprofit employer the assessment to \$20 instead of \$10.
2. Allows DWD, in lieu of or in addition to assessing nonprofit reimbursable employers as described above, to apply moneys from the \$2,000,000 set aside to the uncollectible reimbursable benefits account described above, subject to certain limitations.

Waiver of overpayments

Current law requires the recovery of benefits that were erroneously paid to an individual to be waived if certain conditions apply, including that the erroneous payment was the result of a departmental error. Current law specifies what does and does not constitute a “departmental error” and also provides that if a determination or decision is amended, modified, or reversed by an appeal tribunal (administrative law judge), the Labor and Industry Review Commission, or any court, that action is not to be treated as establishing a departmental error.

This bill specifically provides that, for the purposes of the waiver of recovery of benefits, a “departmental error” does not include an error made by an administrative law judge.

Collection of debt by Department of Revenue

Subject to certain exceptions, current law requires a state agency and the Department of Revenue to enter into a written agreement to have DOR collect certain amounts owed to the state agency. This bill prohibits DOR from entering into an agreement with DWD for the collection of amounts owed to DWD under the UI law.

Fiscal agent election of employer status

Generally, under current law, an individual who receives long-term support services in his or her home through certain government-funded care programs is considered to be an employer under the UI law of a person who provides those

SENATE BILL 671

services to the individual. Such individuals may use fiscal agents, whose responsibilities include remitting any federal UI taxes or state UI contributions owed by the individual as a result of that employment.

The bill allows a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent to such an individual receiving long-term support services to elect to instead to be the employer of one or more employees providing those services, subject to certain requirements.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.48 (1) (a) (intro.) of the statutes is renumbered 16.48 (1) (intro.)
2 and amended to read:

3 16.48 (1) (intro.) No later than ~~April 15~~ May 31 of each ~~odd-numbered~~
4 even-numbered year, the secretary of workforce development shall prepare and
5 furnish to the governor, the speaker of the assembly, the minority leader of the
6 assembly, ~~and the majority and minority leaders of the senate,~~ and the council on
7 unemployment insurance, a statement of unemployment insurance financial
8 outlook, which shall contain all of the following, together with the secretary's
9 recommendations and an explanation for such recommendations:

10 **SECTION 2.** 16.48 (1) (a) 1., 2., 3., 4., 5. and 6. of the statutes are renumbered
11 16.48 (1) (am), (bm), (c), (d), (e) and (f), and 16.48 (1) (bm), (c) and (f), as renumbered,
12 are amended to read:

13 16.48 (1) (bm) Specific proposed changes, if any, in the laws relating to
14 unemployment insurance financing, benefits, and administration.

15 (c) Projections specified in ~~subd. 1. par. (am)~~ under the proposed laws.

16 (f) If unemployment insurance program debt is projected at the end of the
17 forecast period, the ~~reasons why it is not~~ methods proposed to liquidate the debt.

SENATE BILL 671

1 **SECTION 3.** 16.48 (1) (b) of the statutes is repealed.

2 **SECTION 4.** 16.48 (2) of the statutes is repealed.

3 **SECTION 5.** 16.48 (3) of the statutes is amended to read:

4 16.48 (3) No Biennially, no later than ~~June 15~~ January 31 of each
5 ~~odd-numbered~~ even-numbered year, the secretary of workforce development, ~~under~~
6 ~~the direction of~~ shall submit to the governor, ~~shall submit to each member of the~~
7 ~~legislature an updated~~ speaker of the assembly, the minority leader of the assembly,
8 the majority and minority leaders of the senate, and the council on unemployment
9 insurance the statement of unemployment insurance financial outlook which shall
10 ~~contain the information specified in~~ prepared under sub. (1) (a), together with the
11 ~~governor's recommendations and an explanation for such recommendations, and a~~
12 ~~copy of the~~ a report required that summarizes the deliberations of the council and
13 the position of the council regarding any proposed change to the unemployment
14 insurance laws submitted under sub. (1) (b).

15 **SECTION 6.** 16.48 (4) of the statutes is created to read:

16 16.48 (4) The department shall post the most recent version of the statement
17 prepared under sub. (1) and the most recent version of the report prepared under sub.
18 (3) on the department's Internet site.

19 **SECTION 7.** 71.93 (8) (b) 2. of the statutes is amended to read:

20 71.93 (8) (b) 2. The department may enter into agreements described under
21 subd. 1. with the courts, the legislature, authorities, as defined in s. 16.41 (4), and
22 local units of government. The department may not enter into an agreement
23 described under subd. 1. to collect amounts owed under ch. 108.

24 **SECTION 8.** 108.02 (10e) (c) of the statutes is created to read:

SENATE BILL 671

1 108.02 (10e) (c) “Departmental error” does not include an error made by an
2 appeal tribunal appointed under s. 108.09 (3).

3 **SECTION 9.** 108.02 (13) (k) of the statutes, as affected by 2019 Wisconsin Act 9,
4 is amended to read:

5 108.02 (13) (k) “Employer” Except as provided in s. 108.065 (3m), “employer”
6 does not include a county department, an aging unit, or, under s. 46.2785, a private
7 agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve
8 as a fiscal agent under s. 46.27 (5) (i), 46.272 (7) (e), or 47.035 as to any individual
9 performing services for a person receiving long-term support services under s.
10 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or
11 personal assistance services under s. 47.02 (6) (c).

12 **SECTION 10.** 108.05 (3) (a) of the statutes is amended to read:

13 108.05 (3) (a) Except as provided in pars. (c), (cm), (d) and (dm) and s. 108.062,
14 if an eligible employee earns wages in a given week, the first \$30 of the wages shall
15 be disregarded and the employee’s applicable weekly benefit payment shall be
16 reduced by 67 percent of the remaining amount, except that no such employee is
17 eligible for benefits if the employee’s benefit payment would be less than \$5 for any
18 week. For purposes of this paragraph, “wages” includes any salary reduction
19 amounts earned that are not wages and that are deducted from the salary of a
20 claimant by an employer pursuant to a salary reduction agreement under a cafeteria
21 plan, within the meaning of 26 USC 125, and any amount that a claimant would have
22 earned in available work under s. 108.04 (1) (a) which is treated as wages under s.
23 108.04 (1) (bm), but excludes any amount that a claimant earns for services
24 performed as a volunteer fire fighter, volunteer emergency medical services
25 practitioner, or volunteer emergency medical responder. In applying this paragraph,

SENATE BILL 671

1 the department shall disregard discrepancies of less than \$2 between wages reported
2 by employees and employers.

3 **SECTION 11.** 108.05 (3) (c) (intro.) of the statutes is amended to read:

4 108.05 (3) (c) (intro.) Except as provided in par. (cm) and when otherwise
5 authorized in an approved work-share program under s. 108.062, a claimant is
6 ineligible to receive any benefits for a week in which one or more of the following
7 applies to the claimant for 32 or more hours in that week:

8 **SECTION 12.** 108.05 (3) (cm) of the statutes is created to read:

9 108.05 (3) (cm) The department shall disregard an employee's hours worked
10 for an employer in a week and wages payable to the employee for the week when
11 determining the employee's benefit eligibility if all the following apply:

12 1. The employer requires the employee to work during the week as a condition
13 of continued employment with the employer.

14 2. The employer is unable to pay wages because a government unit or the
15 federal government fails to appropriate funds to the employer.

16 3. The employer is not expected to pay the employee for the services performed
17 or the employer will, until funds are appropriated by a government unit or the federal
18 government, indefinitely delay payment for the services performed.

19 **SECTION 13.** 108.065 (1e) (intro.) of the statutes is amended to read:

20 108.065 (1e) (intro.) Except as provided in subs. (2) ~~and (3)~~ to (3m), if there is
21 more than one employing unit that has a relationship to an employee, the
22 department shall determine which of the employing units is the employer of the
23 employee by doing the following:

24 **SECTION 14.** 108.065 (3m) of the statutes is created to read:

SENATE BILL 671

1 108.065 **(3m)** A private agency that serves as a fiscal agent or contracts with
2 a fiscal intermediary to serve as a fiscal agent to recipients of services under ch. 46,
3 47, or 51 may elect to be the employer of one or more employees providing those
4 services. As a condition of eligibility for election to be the employer of one or more
5 employees providing those services, the private agency shall notify in writing the
6 recipient of any such services of its election, for purposes of the unemployment
7 insurance law, to be the employer of any worker providing such services to the
8 recipient, and must be treated as the employer under 26 USC 3301 to 3311 for
9 purposes of federal unemployment taxes on the worker's services.

10 **SECTION 15.** 108.101 (5) of the statutes is created to read:

11 108.101 **(5)** Notwithstanding sub. (4), a final order or judgment of conviction
12 for a crime entered by a court is binding on the convicted person in an action or
13 proceeding under this chapter that relates to the criminal conviction. A person
14 convicted of a crime is precluded from denying the essential allegations of the
15 criminal offense that is the basis for the conviction in an action or proceeding under
16 this chapter.

17 **SECTION 16.** 108.151 (7) (c) of the statutes is amended to read:

18 108.151 **(7)** (c) The fund's treasurer shall determine the total amount due from
19 employers electing reimbursement financing under this section that is uncollectible
20 as of June 30 of each year, but not including any amount that the department
21 determined to be uncollectible ~~prior to~~ before January 1, 2004. No amount may be
22 treated as uncollectible under this paragraph unless the department has exhausted
23 all reasonable remedies for collection of the amount, including liquidation of the
24 assurance required under sub. (4). The department shall charge the total amounts
25 so determined to the uncollectible reimbursable benefits account under s. 108.16

SENATE BILL 671

1 (6w). Whenever, as of June 30 of any year, ~~this~~ that account has a negative balance
2 of \$5,000 or more, the treasurer shall, except as provided in par. (i), determine the
3 rate of an assessment to be levied under par. (b) for that year, which shall then
4 become payable by all employers that have elected reimbursement financing under
5 this section as of that date.

6 **SECTION 17.** 108.151 (7) (f) of the statutes is amended to read:

7 108.151 (7) (f) If any employer would otherwise be assessed an amount less
8 than \$10 \$20 for a calendar year, the department shall, in lieu of requiring that
9 employer to pay an assessment for that calendar year, apply the amount that the
10 employer would have been required to pay to the other employers on a pro rata basis.

11 **SECTION 18.** 108.151 (7) (i) of the statutes is created to read:

12 108.151 (7) (i) In lieu of or in addition to assessing employers as provided in
13 par. (c), the fund's treasurer may apply amounts set aside in the fund's balancing
14 account under s. 108.155 (2) (a) to amounts determined to be uncollectible under par.
15 (c) by transferring those amounts to the account under s. 108.16 (6w). The fund's
16 treasurer may not act under this paragraph whenever the balance remaining of the
17 amount set aside under s. 108.155 (2) (a) is less than \$1,750,000 and may not act to
18 reduce the amount set aside below that amount.

19 **SECTION 19.** 108.155 (2) (a) of the statutes is amended to read:

20 108.155 (2) (a) On October 2, 2016, the fund's treasurer shall set aside
21 \$2,000,000 in the balancing account for accounting purposes. On an ongoing basis,
22 the fund's treasurer shall tally the amounts allocated to reimbursable employers'
23 accounts under s. 108.04 (13) (d) 4. c. and all amounts transferred to the account
24 under s. 106.16 (6w) as provided in s. 108.151 (7) (i) and shall deduct those amounts
25 from the amount set aside plus any interest calculated thereon.

SENATE BILL 671

1 **SECTION 20.** 108.16 (6m) (j) of the statutes is created to read:

2 108.16 **(6m)** (j) Any amount transferred to the account under sub. (6w) as
3 provided in s. 108.151 (7) (i).

4 **SECTION 21.** 108.16 (6w) of the statutes is amended to read:

5 108.16 **(6w)** The department shall maintain within the fund an uncollectible
6 reimbursable benefits account to which the department shall credit all amounts
7 received from employers under s. 108.151 (7) and all amounts transferred from the
8 fund's balancing account as provided in s. 108.151 (7) (i).

9 **SECTION 22.** 108.22 (10) of the statutes, as affected by 2019 Wisconsin Act 9,
10 is amended to read:

11 108.22 **(10)** A private agency that serves as a fiscal agent under s. 46.2785 or
12 contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.272 (7) (e)
13 or 47.035 as to any individual performing services for a person receiving long-term
14 support services under s. 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286,
15 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c) may be
16 found jointly and severally liable for the amounts owed by the person under this
17 chapter, if, at the time the person's quarterly report is due under this chapter, the
18 private agency served as a fiscal agent for the person. The liability of the agency as
19 provided in this subsection survives dissolution, reorganization, bankruptcy,
20 receivership, assignment for the benefit of creditors, judicially confirmed extension
21 or composition, or any analogous situation of the person and shall be set forth in a
22 determination or decision issued under s. 108.10. An appeal or review of a
23 determination under this subsection shall not include an appeal or review of
24 determinations of amounts owed by the person. This subsection does not apply with
25 respect to a private agency that has made an election under s. 108.065 (3m).

