



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5585/1
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2021 ASSEMBLY BILL 910

January 26, 2022 - Introduced by COMMITTEE ON LABOR AND INTEGRATED
EMPLOYMENT. Referred to Committee on Labor and Integrated Employment.

1 **AN ACT to repeal** 16.48 (1) (b), 16.48 (2), 108.02 (26) (c) 9., 108.02 (26) (c) 14.,
2 108.062 (1) (c), 108.062 (2) (b), 108.062 (2) (e), 108.062 (4) (a) 2., 108.062 (19) (a),
3 108.062 (19) (b), 108.062 (20) and 108.19 (3); **to renumber** 108.04 (7) (h); **to**
4 **renumber and amend** 16.48 (1) (a) (intro.), 16.48 (1) (a) 1., 2., 3., 4., 5. and 6.,
5 108.062 (4) (a) 1. and 108.062 (19) (intro.); **to amend** 16.48 (3), 59.40 (4), 71.93
6 (8) (b) 1., 108.02 (2) (c), 108.02 (13) (c) 2. a., 108.02 (13) (k), 108.02 (14), 108.02
7 (15) (j) 5., 108.02 (15) (k) 5., 108.02 (17m), 108.02 (19), 108.04 (12) (b), 108.04
8 (16) (d) 1., 108.04 (18) (a), 108.04 (18) (b), 108.062 (2) (a), 108.062 (2) (c), 108.062
9 (2) (d), 108.062 (2) (h), 108.062 (2) (m), 108.062 (3), 108.062 (3r), 108.062 (4) (b),
10 108.062 (6) (b), 108.062 (15), 108.065 (1e) (intro.), 108.10 (intro.), 108.13 (4) (a)
11 2., 108.14 (8n) (a), 108.14 (8n) (e), 108.14 (26), 108.141 (1) (h), 108.141 (3g) (a)
12 3. b., 108.141 (7) (a), 108.141 (7) (b), 108.145, 108.15 (3) (d), 108.151 (2) (d),
13 108.151 (7) (c), 108.151 (7) (f), 108.152 (1) (d), 108.155 (2) (a) and (d), 108.16 (6m)
14 (a), 108.16 (6w), 108.16 (6x), 108.16 (9) (a), 108.18 (3) (c), 108.22 (8e), 108.22

ASSEMBLY BILL 910

1 (10), 108.223 (2) (b), 108.23, 108.24 (3) (a) 3. a. and 108.24 (3) (a) 4.; and **to**
2 **create** 16.48 (4), 71.93 (8) (b) 1. d., 108.02 (10e) (c), 108.02 (15) (k) 21., 108.065
3 (3m), 108.101 (5), 108.151 (7) (i) and 108.16 (6m) (j) of the statutes; **relating**
4 **to:** various changes 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 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.

The 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. The bill also requires DWD to post the most recent version of the report and statement on its Internet site.

Finally, under current law, after the report and statement are submitted to the governor and leadership by May 15 of each odd-numbered year, the governor may

ASSEMBLY BILL 910

convene a special committee to review the financial outlook statement and the activities report. The bill repeals that provision. However, the bill does not affect the governor's authority under current law to convene advisory committees by executive order.

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 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.

ASSEMBLY BILL 910

The 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.

Excluded employment

The bill excludes from coverage under the UI law seasonal work performed by a full-time student at an organized camp, other than an organized camp operated by a governmental or nonprofit entity, that operates for not more than seven months per calendar year, consistent with federal law. Under the bill, “full-time student” includes a person who is currently enrolled in school full time or who was enrolled in school full time during the previous academic year if there is a reasonable assurance that the person will be so enrolled for the immediately succeeding academic year. An individual who performs such services is not eligible to claim UI benefits based on the performance of the services, and a person who employs an individual to perform such services is not subject to a state UI contribution requirement (a requirement to pay taxes) based on the performance of the services.

Work-share programs

Current law allows an employer to create a work-share program within a work unit of the employer. Under a work-share program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a layoff of some of the employees and a continuation of full-time employment by the other employees. A claimant for UI benefits who is included in a work-share program may receive UI benefits during his or her continued employment with the work-share employer in an amount equal to the claimant’s benefit for total unemployment reduced by the same percentage as the percentage reduction in the claimant’s normal working hours that the claimant incurs under the program. Former law provided also for the temporary modification of certain requirements that apply to work-share programs with respect to work-share programs submitted on or after April 17, 2020, and before July 4, 2021.

The bill makes a number of the former-law modifications permanent. Among other things, it eliminates a requirement that work-share programs be limited to particular work units, reduces the minimum number of employees who must be covered under a work-share program from 20 to two, and eliminates a requirement that working hours be reduced equitably among employees. In addition, the bill allows a work-share program to remain in effect for 12 months in any five-year period instead of six months in any five-year period.

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. The bill provides that this requirement does not apply to amounts owed to DWD under the UI law or other federal unemployment programs administered by DWD.

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

ASSEMBLY BILL 910

considered to be an employer under the UI law of a person who provides those 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 be the employer of one or more employees providing those services, subject to certain requirements.

Other changes

The bill makes various changes to a) reorganize, clarify, and update provisions relating in the UI law; and b) address numerous out-of-date or erroneous cross-references in the UI law, including all of the following:

1. Changing certain out-of-date cross-references to federal law to reflect current federal law and the current numbering under the U.S. Code.
2. Repealing certain provisions that reference federal laws that have been repealed.
3. Correcting various cross-references that are otherwise incomplete or erroneous.
4. Replacing certain references to provisions in federal acts or to the Internal Revenue Code with references to the U.S. Code in order to facilitate accessibility to federal law.
5. Making other nonsubstantive changes to the UI law to improve organization, modernize language, and provide further clarity, specificity, and consistency in the law.

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

ASSEMBLY BILL 910**SECTION 1**

1 outlook, which shall contain all of the following, together with the secretary's
2 recommendations and an explanation for such recommendations:

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

6 16.48 (1) (bm) Specific proposed changes, if any, in the laws relating to
7 unemployment insurance financing, benefits, and administration.

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

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

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

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

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

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

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

ASSEMBLY BILL 910

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

4 **SECTION 7.** 59.40 (4) of the statutes is amended to read:

5 59.40 (4) CLERK OF CIRCUIT COURT; DEBT COLLECTOR CONTRACT. If authorized by
6 the board under s. 59.52 (28), the clerk of circuit court may contract with a debt
7 collector, as defined in s. 427.103 (3), or enter into an agreement with the department
8 of revenue under s. 71.93 (8) for the collection of debt. Any contract entered into with
9 a debt collector shall provide that the debt collector shall be paid from the proceeds
10 recovered by the debt collector. Any contract entered into with the department shall
11 provide that the department shall charge a collection fee, as provided under s. 71.93
12 (8) (b) ~~1~~ 1m. The net proceeds received by the clerk of circuit court after the payment
13 to the debt collector shall be considered the amount of debt collected for purposes of
14 distribution to the state and county under sub. (2) (m).

15 **SECTION 8.** 71.93 (8) (b) 1. of the statutes is amended to read:

16 71.93 (8) (b) 1. Except as provided in subd. 2., a state agency and the
17 department of revenue shall enter into a written agreement to have the department
18 collect any amount owed to the state agency that is more than 90 days past due,
19 unless ~~negotiations~~ any of the following applies:

20 a. Negotiations between the agency and debtor are actively ongoing, ~~the~~

21 b. The debt is the subject of legal action or administrative proceedings, ~~or the~~

22 c. The agency determines that the debtor is adhering to an acceptable payment
23 arrangement.

24 1m. At least 30 days before the department pursues the collection of any debt
25 referred by a state agency, either the department or the agency shall provide the

ASSEMBLY BILL 910

1 debtor with a written notice that the debt will be referred to the department for
2 collection. The department may collect amounts owed, pursuant to the written
3 agreement, from the debtor in addition to offsetting the amounts as provided under
4 sub. (3). The department shall charge each debtor whose debt is subject to collection
5 under this paragraph a collection fee and that amount shall be credited to the
6 appropriation under s. 20.566 (1) (h).

7 **SECTION 9.** 71.93 (8) (b) 1. d. of the statutes is created to read:

8 71.93 **(8)** (b) 1. d. The debt is an amount owed under ch. 108 or under a federal
9 unemployment benefit program administered by the department of workforce
10 development.

11 **SECTION 10.** 108.02 (2) (c) of the statutes is amended to read:

12 108.02 **(2)** (c) In connection with the production or harvesting of any commodity
13 defined as an agricultural commodity in s. 15 (g) of the federal agricultural marketing
14 act, as amended (46 Stat. 1550, s. 3; under 12 USC 1141j) or (f), in connection with the
15 ginning of cotton, or in connection with the operation or maintenance of ditches, canals,
16 reservoirs, or waterways, not owned or operated for profit, used exclusively for
17 supplying and storing water for farming purposes.

18 **SECTION 11.** 108.02 (10e) (c) of the statutes is created to read:

19 108.02 **(10e)** (c) "Departmental error" does not include an error made by an
20 appeal tribunal appointed under s. 108.09 (3).

21 **SECTION 12.** 108.02 (13) (c) 2. a. of the statutes is amended to read:

22 108.02 **(13)** (c) 2. a. Such crew leader holds a valid certificate of registration
23 under ~~the federal farm labor contractor registration act of 1963~~ 29 USC 1801 to 1872;
24 or substantially all the members of such crew operate or maintain tractors,

ASSEMBLY BILL 910

1 mechanized harvesting or cropdusting equipment, or any other mechanized
2 equipment which is provided by such crew leader; and

3 **SECTION 13.** 108.02 (13) (k) of the statutes is amended to read:

4 108.02 (13) (k) “Employer” Except as provided in s. 108.065 (3m), “employer”
5 does not include a county department, an aging unit, or, under s. 46.2785, a private
6 agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve
7 as a fiscal agent under s. ~~46.27 (5) (i), 46.272 (7) (e),~~ or 47.035 as to any individual
8 performing services for a person receiving long-term support services under s.
9 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or
10 personal assistance services under s. 47.02 (6) (c).

11 **SECTION 14.** 108.02 (14) of the statutes is amended to read:

12 108.02 (14) EMPLOYER'S ACCOUNT. “Employer’s account” means ~~a~~ an employer’s
13 separate account in the fund, ~~reflecting the employer’s experience with respect to~~
14 ~~contribution credits and benefit charges under this chapter~~ maintained as required
15 under s. 108.16 (2) (a).

16 **SECTION 15.** 108.02 (15) (j) 5. of the statutes is amended to read:

17 108.02 (15) (j) 5. In any quarter in the employ of any organization exempt from
18 federal income tax under section 26 USC 501 (a) ~~of the internal revenue code,~~ other
19 than an organization described in section 26 USC 401 (a) or 501 (c) (3) ~~of such code,~~
20 or under section 26 USC 521 ~~of the internal revenue code,~~ if the remuneration for
21 such service is less than \$50;

22 **SECTION 16.** 108.02 (15) (k) 5. of the statutes is amended to read:

23 108.02 (15) (k) 5. With respect to which unemployment insurance is payable
24 under ~~the federal railroad unemployment insurance act (52 Stat. 1094)~~ 45 USC 351
25 to 369;

ASSEMBLY BILL 910

1 **SECTION 17.** 108.02 (15) (k) 21. of the statutes is created to read:

2 108.02 (15) (k) 21. Performed by a full-time student, as defined in 26 USC 3306
3 (q), for less than 13 calendar weeks in a calendar year in the employ of an organized
4 camp, if one of the following applies:

5 a. The camp does not operate for more than 7 months in the calendar year and
6 did not operate for more than 7 months in the preceding calendar year.

7 b. The camp had average gross receipts for any 6 months in the preceding
8 calendar year that were not more than 33 1/3 percent of its average gross receipts for
9 the other 6 months in the preceding calendar year.

10 **SECTION 18.** 108.02 (17m) of the statutes is amended to read:

11 108.02 (17m) INDIAN TRIBE. “Indian tribe” has the meaning given in 25 USC
12 450b 5304 (e), and includes any subdivision, subsidiary, or business enterprise that
13 is wholly owned by such an entity.

14 **SECTION 19.** 108.02 (19) of the statutes is amended to read:

15 108.02 (19) NONPROFIT ORGANIZATIONS. “Nonprofit organization” means an
16 organization described in section 26 USC 501 (c) (3) of the Internal Revenue Code
17 that is exempt from federal income tax under section 26 USC 501 (a) of the Internal
18 Revenue Code.

19 **SECTION 20.** 108.02 (26) (c) 9. of the statutes is repealed.

20 **SECTION 21.** 108.02 (26) (c) 14. of the statutes is repealed.

21 **SECTION 22.** 108.04 (7) (h) of the statutes is renumbered 108.04 (7) (u).

22 **SECTION 23.** 108.04 (12) (b) of the statutes is amended to read:

23 108.04 (12) (b) Any individual who receives, through the department, any other
24 type of unemployment benefit or allowance for a given week is ineligible for benefits

ASSEMBLY BILL 910

1 for that same week under this chapter, except as specifically required for conformity
2 with the federal trade act of 1974 (P.L. 93-618) 19 USC 2101 to 2497b.

3 **SECTION 24.** 108.04 (16) (d) 1. of the statutes is amended to read:

4 108.04 (16) (d) 1. The department shall not deny benefits under sub. (7) as a
5 result of the individual's leaving unsuitable work to enter or continue such training,
6 as a result of the individual's leaving work that the individual engaged in on a
7 temporary basis during a break in the training or a delay in the commencement of
8 the training, or because the individual left on-the-job training not later than 30 days
9 after commencing that training because the individual did not meet the
10 requirements of the federal trade act under 19 USC 2296 (c) (1) (B); and

11 **SECTION 25.** 108.04 (18) (a) of the statutes is amended to read:

12 108.04 (18) (a) The wages paid to an employee who performed services while
13 the employee was an alien shall, if based on such services, be excluded from the
14 employee's base period wages for purposes of sub. (4) (a) and ss. 108.05 (1) and 108.06
15 (1) unless the employee is an alien who was lawfully admitted for permanent
16 residence at the time such services were performed, was lawfully present for the
17 purpose of performing such services, or was permanently residing in the United
18 States under color of law at the time such services were performed, including an alien
19 who was lawfully present in the United States as a result of the application of the
20 provisions of ~~section 212 (d) (5) of the federal immigration and nationality act (8 USC~~
21 1182 (d) (5)). All claimants shall be uniformly required to provide information as to
22 whether they are citizens and, if they are not, any determination denying benefits
23 under this subsection shall not be made except upon a preponderance of the evidence.

24 **SECTION 26.** 108.04 (18) (b) of the statutes is amended to read:

ASSEMBLY BILL 910**SECTION 26**

1 108.04 (18) (b) Any amendment of ~~§. 26 USC~~ 3304 (a) (14) of the federal
2 unemployment tax act specifying conditions other than as stated in par. (a) for denial
3 of benefits based on services performed by aliens, or changing the effective date for
4 required implementation of par. (a) or such other conditions, ~~which~~ that is a condition
5 of approval of this chapter for full tax credit against the tax imposed by the federal
6 unemployment tax act, shall be applicable to this subsection.

7 **SECTION 27.** 108.062 (1) (c) of the statutes is repealed.

8 **SECTION 28.** 108.062 (2) (a) of the statutes is amended to read:

9 108.062 (2) (a) Specify the ~~work unit in which the plan will be implemented,~~
10 the affected positions, and the names of the employees filling those positions on the
11 date of submittal.

12 **SECTION 29.** 108.062 (2) (b) of the statutes is repealed.

13 **SECTION 30.** 108.062 (2) (c) of the statutes is amended to read:

14 108.062 (2) (c) Provide for initial coverage under the plan of at least ~~20~~ 2
15 positions that are filled on the effective date of the work-share program.

16 **SECTION 31.** 108.062 (2) (d) of the statutes is amended to read:

17 108.062 (2) (d) Specify the period or periods when the plan will be in effect,
18 which may not exceed a total of ~~6~~ 12 months in any 5-year period ~~within the same~~
19 ~~work unit.~~

20 **SECTION 32.** 108.062 (2) (e) of the statutes is repealed.

21 **SECTION 33.** 108.062 (2) (h) of the statutes is amended to read:

22 108.062 (2) (h) Specify the normal average hours per week worked by each
23 employee ~~in the work unit~~ and the percentage reduction in the average hours of work
24 per week worked by that employee, exclusive of overtime hours, which shall be

ASSEMBLY BILL 910

1 applied in a uniform manner and which shall be at least 10 percent but not more than
2 50 60 percent of the normal hours per week of that employee.

3 **SECTION 34.** 108.062 (2) (m) of the statutes is amended to read:

4 108.062 (2) (m) Indicate whether the plan includes employer-sponsored
5 training to enhance job skills and acknowledge that the employees in the ~~work unit~~
6 work-share program may participate in training funded under the federal
7 Workforce Innovation and Opportunity Act, 29 USC 3101 to 3361, or another federal
8 law that enhances job skills without affecting availability for work, subject to
9 department approval.

10 **SECTION 35.** 108.062 (3) of the statutes is amended to read:

11 108.062 (3) APPROVAL OF PLANS. The department shall approve a plan if the plan
12 includes all of the elements specified in sub. (2) ~~or (20), whichever is applicable.~~ The
13 approval is effective for the effective period of the plan unless modified under sub.
14 (3m).

15 **SECTION 36.** 108.062 (3r) of the statutes is amended to read:

16 108.062 (3r) APPLICABILITY OF LAWS. A work-share program shall be governed
17 by the law that was in effect when the plan or modification was last approved under
18 sub. (3) or (3m), until the program ends as provided in sub. (4), but an employer with
19 ~~a work-share program governed by sub. (2) may, while sub. (20) is in effect,~~ apply for
20 a modification under sub. (3m), and that modification application shall be governed
21 by ~~sub. (20)~~ the law in effect when the modification is approved.

22 **SECTION 37.** 108.062 (4) (a) 1. of the statutes is renumbered 108.062 (4) (a) and
23 amended to read:

24 108.062 (4) (a) ~~Except as provided in subd. 2., a~~ A work-share program
25 becomes effective on the later of the Sunday of the ~~2nd week beginning~~ or after

ASSEMBLY BILL 910**SECTION 37**

1 approval of a work-share plan under sub. (3) or any Sunday after that day specified
2 in the plan.

3 **SECTION 38.** 108.062 (4) (a) 2. of the statutes is repealed.

4 **SECTION 39.** 108.062 (4) (b) of the statutes is amended to read:

5 108.062 (4) (b) A work-share program ends on the earlier of the last Sunday
6 that precedes the end of the ~~6-month~~ 12-month period beginning on the effective
7 date of the program or any Sunday before that day specified in the plan unless the
8 program terminates on an earlier date under sub. (5), (14), or (15).

9 **SECTION 40.** 108.062 (6) (b) of the statutes is amended to read:

10 108.062 (6) (b) No employee who is included in a work-unit under a work-share
11 program is eligible to receive any benefits for a week in which the plan is in effect in
12 which the employee is engaged in work for the employer that sponsors the plan ~~which~~
13 that, when combined with work performed by the employee for any other employer
14 for the same week, ~~exceed~~ exceeds 90 percent of the employee's average hours of work
15 per week for the employer that creates the plan, as identified in the plan.

16 **SECTION 41.** 108.062 (15) of the statutes is amended to read:

17 108.062 (15) INVOLUNTARY TERMINATION. If in any week there are fewer than 20
18 2 employees who are included in a work-share program of any employer, the program
19 terminates on the 2nd Sunday following the end of that week. ~~This subsection does~~
20 ~~not apply to a work-share program to which sub. (20) applies.~~

21 **SECTION 42.** 108.062 (19) (intro.) of the statutes is renumbered 108.062 (19) and
22 amended to read:

23 108.062 (19) SECRETARY MAY WAIVE COMPLIANCE. The secretary may ~~do any of the~~
24 following waive compliance with any requirement under this section if the secretary
25 determines that doing so is necessary to permit continued certification of this

ASSEMBLY BILL 910

1 chapter for grants to this state under Title III of the federal Social Security Act, for
2 maximum credit allowances to employers under the federal Unemployment Tax Act,
3 or for this state to qualify for full federal financial participation in the cost of
4 administration of this section and financing of benefits to employees participating
5 in work-share programs under this section.

6 **SECTION 43.** 108.062 (19) (a) of the statutes is repealed.

7 **SECTION 44.** 108.062 (19) (b) of the statutes is repealed.

8 **SECTION 45.** 108.062 (20) of the statutes, as affected by 2021 Wisconsin Act 4,
9 is repealed.

10 **SECTION 46.** 108.065 (1e) (intro.) of the statutes is amended to read:

11 108.065 (1e) (intro.) Except as provided in subs. (2) and ~~(3)~~ to (3m), if there is
12 more than one employing unit that has a relationship to an employee, the
13 department shall determine which of the employing units is the employer of the
14 employee by doing the following:

15 **SECTION 47.** 108.065 (3m) of the statutes is created to read:

16 108.065 (3m) A private agency that serves as a fiscal agent or contracts with
17 a fiscal intermediary to serve as a fiscal agent to recipients of services under ch. 46,
18 47, or 51 may elect to be the employer of one or more employees providing those
19 services. As a condition of eligibility for election to be the employer of one or more
20 employees providing those services, the private agency shall notify in writing the
21 recipient of any such services of its election, for purposes of the unemployment
22 insurance law, to be the employer of any worker providing such services to the
23 recipient, and must be treated as the employer under 26 USC 3301 to 3311 for
24 purposes of federal unemployment taxes on the worker's services.

25 **SECTION 48.** 108.10 (intro.) of the statutes is amended to read:

ASSEMBLY BILL 910

1 **108.10 Settlement of issues other than benefit claims.** (intro.) Except as
2 provided in s. 108.245 (3), in connection with any issue arising under this chapter as
3 to the status or liability of an employing unit ~~in this state~~, for which no review is
4 provided under s. 108.09, 108.095, or 108.227 (5) and whether or not a penalty is
5 provided in s. 108.24, the following procedure shall apply:

6 **SECTION 49.** 108.101 (5) of the statutes is created to read:

7 108.101 (5) Notwithstanding sub. (4), a final order or judgment of conviction
8 for a crime entered by a court is binding on the convicted person in an action or
9 proceeding under this chapter that relates to the criminal conviction. A person
10 convicted of a crime is precluded from denying the essential allegations of the
11 criminal offense that is the basis for the conviction in an action or proceeding under
12 this chapter.

13 **SECTION 50.** 108.13 (4) (a) 2. of the statutes is amended to read:

14 108.13 (4) (a) 2. “Legal process” has the meaning given under 42 USC ~~662 (e)~~
15 659 (i) (5).

16 **SECTION 51.** 108.14 (8n) (a) of the statutes is amended to read:

17 108.14 (8n) (a) The department shall enter into a reciprocal arrangement
18 ~~which is approved by the U.S. secretary of labor pursuant to section~~ under 26 USC
19 3304 (a) (9) (B) of the internal revenue code, to provide more equitable benefit
20 coverage for individuals whose recent work has been covered by the unemployment
21 insurance laws of 2 or more jurisdictions.

22 **SECTION 52.** 108.14 (8n) (e) of the statutes is amended to read:

23 108.14 (8n) (e) The department shall charge this state’s share of any benefits
24 paid under this subsection to the account of each employer by which the employee
25 claiming benefits was employed in the applicable base period, in proportion to the

ASSEMBLY BILL 910

1 total amount of wages he or she earned from each employer in the base period, except
2 that if s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)
3 ~~or (b) to (c)~~, 108.07 (3), (3r), or (5) (am) 2., or 108.133 (3) (f) would have applied to
4 employment by such an employer who is subject to the contribution requirements of
5 ss. 108.17 and 108.18, the department shall charge the share of benefits based on
6 employment with that employer to the fund's balancing account, or, if s. 108.04 (1)
7 (f) ~~or (5)~~, or (5g) or 108.07 (3) would have applied to an employer that is not subject
8 to the contribution requirements of ss. 108.17 and 108.18, the department shall
9 charge the share of benefits based on that employment in accordance with s. 108.07
10 (5) (am) 1. and 2. The department shall also charge the fund's balancing account with
11 any other state's share of such benefits pending reimbursement by that state.

12 **SECTION 53.** 108.14 (26) of the statutes is amended to read:

13 108.14 **(26)** The department shall prescribe by rule a standard affidavit form
14 that may be used by parties to appeals under ss. 108.09, 108.095, and 108.10 and
15 shall make the form available to employers and claimants. The form shall be
16 sufficient to qualify as admissible evidence in a hearing under this chapter if the
17 authentication is sufficient and the information set forth by the affiant is admissible,
18 but its use by a party does not eliminate the right of an opposing party to cross
19 examine the affiant concerning the facts asserted in the affidavit.

20 **SECTION 54.** 108.141 (1) (h) of the statutes is amended to read:

21 108.141 **(1)** (h) "State law" means the unemployment insurance law of any
22 state, that has been approved by the U.S. secretary of labor under section 26 USC
23 3304 of the internal revenue code.

24 **SECTION 55.** 108.141 (3g) (a) 3. b. of the statutes is amended to read:

ASSEMBLY BILL 910

1 108.141 **(3g)** (a) 3. b. The gross average weekly remuneration for the work
2 exceeds the claimant's weekly benefit rate plus any supplemental unemployment
3 benefits, as defined in section 26 USC 501 (c) (17) (D) of the internal revenue code,
4 then payable to the claimant;

5 **SECTION 56.** 108.141 (7) (a) of the statutes is amended to read:

6 108.141 **(7)** (a) The department shall charge the state's share of each week of
7 extended benefits to each employer's account in proportion to the employer's share
8 of the total wages of the employee receiving the benefits in the employee's base
9 period, except that if the employer is subject to the contribution requirements of ss.
10 108.17 and 108.18 the department shall charge the share of extended benefits to
11 which s. 108.04 (1) (f), (5), (5g), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a)
12 ~~or (b) to (c)~~, 108.07 (3), (3r), or (5) (am) 2., or 108.133 (3) (f) applies to the fund's
13 balancing account.

14 **SECTION 57.** 108.141 (7) (b) of the statutes is amended to read:

15 108.141 **(7)** (b) The department shall charge the full amount of extended
16 benefits based on employment for a government unit to the account of the
17 government unit, except that if s. 108.04 (5), (5g), or (7) applies and the government
18 unit has elected contribution financing the department shall charge one-half of the
19 government unit's share of the benefits to the fund's balancing account.

20 **SECTION 58.** 108.145 of the statutes is amended to read:

21 **108.145 Disaster unemployment assistance.** The department shall
22 administer under s. 108.14 (9m) the distribution of disaster unemployment
23 assistance to workers in this state who are not eligible for benefits whenever such
24 assistance is made available by the president of the United States under 26 42 USC
25 5177 (a). In determining eligibility for assistance and the amount of assistance

ASSEMBLY BILL 910

1 payable to any worker who was totally self-employed during the first 4 of the last 5
2 most recently completed quarters preceding the date on which the worker claims
3 assistance, the department shall not reduce the assistance otherwise payable to the
4 worker because the worker receives one or more payments under the social security
5 act (~~42 USC 301 et seq.~~) ch. 7, for the same week that the worker qualifies for such
6 assistance.

7 **SECTION 59.** 108.15 (3) (d) of the statutes is amended to read:

8 108.15 (3) (d) If a government unit elects contribution financing for any
9 calendar year after the first calendar year it becomes newly subject to this chapter,
10 it shall be liable to reimburse the fund for any benefits based on prior employment.
11 If a government unit terminates its election of contribution financing, ss. 108.17 and
12 108.18 shall apply to employment in the prior calendar year, but after all benefits
13 based on such prior employment have been charged to its contribution account any
14 balance remaining in such account shall be transferred to the fund's balancing
15 account.

16 **SECTION 60.** 108.151 (2) (d) of the statutes is amended to read:

17 108.151 (2) (d) Sections 108.17 and 108.18 shall apply to all prior employment,
18 but after all benefits based on prior employment have been charged to any account
19 it has had under s. 108.16 (2) any balance remaining therein shall be transferred to
20 the fund's balancing account as if s. 108.16 (6) (c) or (6m) (d) applied.

21 **SECTION 61.** 108.151 (7) (c) of the statutes is amended to read:

22 108.151 (7) (c) The fund's treasurer shall determine the total amount due from
23 employers electing reimbursement financing under this section that is uncollectible
24 as of June 30 of each year, but not including any amount that the department
25 determined to be uncollectible ~~prior to~~ before January 1, 2004. No amount may be

ASSEMBLY BILL 910**SECTION 61**

1 treated as uncollectible under this paragraph unless the department has exhausted
2 all reasonable remedies for collection of the amount, including liquidation of the
3 assurance required under sub. (4). The department shall charge the total amounts
4 so determined to the uncollectible reimbursable benefits account under s. 108.16
5 (6w). Whenever, as of June 30 of any year, ~~this~~ that account has a negative balance
6 of \$5,000 or more, the treasurer shall, except as provided in par. (i), determine the
7 rate of an assessment to be levied under par. (b) for that year, which shall then
8 become payable by all employers that have elected reimbursement financing under
9 this section as of that date.

10 **SECTION 62.** 108.151 (7) (f) of the statutes is amended to read:

11 108.151 (7) (f) If any employer would otherwise be assessed an amount less
12 than \$10 \$20 for a calendar year, the department shall, in lieu of requiring that
13 employer to pay an assessment for that calendar year, apply the amount that the
14 employer would have been required to pay to the other employers on a pro rata basis.

15 **SECTION 63.** 108.151 (7) (i) of the statutes is created to read:

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

23 **SECTION 64.** 108.152 (1) (d) of the statutes is amended to read:

24 108.152 (1) (d) If the Indian tribe or tribal unit is an employer ~~prior to~~ before
25 the effective date of an election, ss. 108.17 and 108.18 shall apply to all employment

ASSEMBLY BILL 910

1 prior to ~~before~~ the effective date of the election, but after all benefits based on prior
2 employment have been charged to any account that it has had under s. 108.16 (2),
3 the department shall transfer any positive balance or charge any negative balance
4 remaining therein to the fund's balancing account as if s. 108.16 (6) (c) and (6m) (d)
5 applied.

6 **SECTION 65.** 108.155 (2) (a) and (d) of the statutes are amended to read:

7 108.155 (2) (a) On October 2, 2016, the fund's treasurer shall set aside
8 \$2,000,000 in the fund's balancing account for accounting purposes. On an ongoing
9 basis, the fund's treasurer shall tally the amounts allocated to reimbursable
10 employers' accounts under s. 108.04 (13) (d) 4. c. and all amounts transferred to the
11 account under s. 108.16 (6w) as provided in s. 108.151 (7) (i) and shall deduct those
12 amounts from the amount set aside plus any interest calculated thereon.

13 (d) If the department assesses reimbursable employers under par. (c), the
14 department shall determine the amount of assessments to be levied as provided in
15 sub. (3), and the fund's treasurer shall notify reimbursable employers that the
16 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall
17 be payable by each reimbursable employer that is subject to this chapter as of the
18 date the assessment is imposed. Assessments imposed under this section shall be
19 credited to the fund's balancing account.

20 **SECTION 66.** 108.16 (6m) (a) of the statutes is amended to read:

21 108.16 (6m) (a) The benefits thus chargeable under sub. (7) (a) or (b) or s.
22 108.04 (1) (f), (5), (5g), (7) (~~h~~) (u), (7m), (8) (a) ~~or (b) to (c)~~, (13) (c) or (d) or (16) (e),
23 108.07 (3), (3r), (5) (am) 2. and (bm) 3. a., (5m), and (6), 108.133 (3) (f), 108.14 (8n)
24 (e), 108.141, 108.15, 108.151, or 108.152 ~~or sub. (6) (e) or (7) (a) and (b)~~.

25 **SECTION 67.** 108.16 (6m) (j) of the statutes is created to read:

ASSEMBLY BILL 910**SECTION 67**

1 108.16 **(6m)** (j) Any amount transferred to the account under sub. (6w) as
2 provided in s. 108.151 (7) (i).

3 **SECTION 68.** 108.16 (6w) of the statutes is amended to read:

4 108.16 **(6w)** The department shall maintain within the fund an uncollectible
5 reimbursable benefits account to which the department shall credit all amounts
6 received from employers under s. 108.151 (7) and all amounts transferred from the
7 fund's balancing account as provided in s. 108.151 (7) (i).

8 **SECTION 69.** 108.16 (6x) of the statutes is amended to read:

9 108.16 **(6x)** The department shall charge to the uncollectible reimbursable
10 benefits account the amount of any benefits paid from the fund's balancing account
11 that are reimbursable under s. 108.151 but for which the department does not receive
12 reimbursement after the department exhausts all reasonable remedies for collection
13 of the amount.

14 **SECTION 70.** 108.16 (9) (a) of the statutes is amended to read:

15 108.16 **(9)** (a) Consistently with section 26 USC 3305 of the internal revenue
16 code, relating to federal instrumentalities ~~which~~ that are neither wholly nor
17 partially owned by the United States nor otherwise specifically exempt from the tax
18 imposed by section under 26 USC 3301 of the internal revenue code:

19 1. Any contributions required and paid under this chapter for ~~1939 or~~ any
20 subsequent year by any such instrumentality, including any national bank, shall be
21 refunded to such that instrumentality in case this chapter is not certified with
22 respect to such year under s. 26 USC 3304 ~~of said code.~~

23 2. No national banking association ~~which is subject to this chapter shall be~~
24 required to comply with any of its provisions or requirements under this chapter, to
25 the extent that such compliance would be contrary to s. 26 USC 3305 ~~of said code.~~

ASSEMBLY BILL 910

1 **SECTION 71.** 108.18 (3) (c) of the statutes is amended to read:

2 108.18 (3) (c) Permitting the employer to pay such lower rate is consistent with
3 the relevant conditions then applicable to additional credit allowance for such year
4 under section 26 USC 3303 (a) of the federal unemployment tax act, any other
5 provision to the contrary notwithstanding.

6 **SECTION 72.** 108.19 (3) of the statutes is repealed.

7 **SECTION 73.** 108.22 (8e) of the statutes is amended to read:

8 108.22 (8e) If the department determines a payment has been made to an
9 unintended recipient erroneously without fault on the part of the intended payee or
10 payee's authorized agent, the department may issue the correct payment to the
11 intended payee if necessary, and may recover the amount of the erroneous payment
12 from the recipient under this section or s. 108.225 or 108.245. Any amount so
13 recovered shall be credited to the fund's balancing account.

14 **SECTION 74.** 108.22 (10) of the statutes is amended to read:

15 108.22 (10) A private agency that serves as a fiscal agent under s. 46.2785 or
16 contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.272 (7) (e)
17 or 47.035 as to any individual performing services for a person receiving long-term
18 support services under s. 46.272 (7) (b), 46.275, 46.277, 46.278, 46.2785, 46.286,
19 46.495, 51.42, or 51.437 or personal assistance services under s. 47.02 (6) (c) may be
20 found jointly and severally liable for the amounts owed by the person under this
21 chapter, if, at the time the person's quarterly report is due under this chapter, the
22 private agency served as a fiscal agent for the person. The liability of the agency as
23 provided in this subsection survives dissolution, reorganization, bankruptcy,
24 receivership, assignment for the benefit of creditors, judicially confirmed extension
25 or composition, or any analogous situation of the person and shall be set forth in a

ASSEMBLY BILL 910**SECTION 74**

1 determination or decision issued under s. 108.10. An appeal or review of a
2 determination under this subsection shall not include an appeal or review of
3 determinations of amounts owed by the person. This subsection does not apply with
4 respect to a private agency that has made an election under s. 108.065 (3m).

5 **SECTION 75.** 108.223 (2) (b) of the statutes is amended to read:

6 108.223 (2) (b) The department shall enter into agreements with financial
7 institutions doing business in this state to operate the financial record matching
8 program under this section. An agreement shall require the financial institution to
9 participate in the financial record matching program by electing either the financial
10 institution matching option under sub. (3) or the state matching option under sub.
11 (4). The financial institution and the department may by mutual agreement ~~make~~
12 ~~changes to~~ amend the agreement. A financial institution that wishes to choose a
13 different matching option shall provide the department with at least 60 days' notice.
14 The department shall furnish the financial institution with a signed copy of the
15 agreement.

16 **SECTION 76.** 108.23 of the statutes is amended to read:

17 **108.23 Preference of required payments.** In the event of an employer's
18 dissolution, reorganization, bankruptcy, receivership, assignment for benefit of
19 creditors, judicially confirmed extension proposal or composition, or any analogous
20 situation including the administration of estates in circuit courts, the payments
21 required of the employer under this chapter shall have preference over all claims of
22 general creditors and shall be paid next after the payment of preferred claims for
23 wages. If the employer is indebted to the federal government for taxes due under the
24 federal unemployment tax act and a claim for the taxes has been duly filed, the
25 amount of contributions which should be paid to allow the employer the maximum

ASSEMBLY BILL 910

1 offset against the taxes shall have preference over preferred claims for wages and
2 shall be on a par with debts due the United States, if by establishing the preference
3 the offset against the federal tax can be secured under s. 26 USC 3302 (a) (3) of the
4 ~~federal unemployment tax act.~~

5 **SECTION 77.** 108.24 (3) (a) 3. a. of the statutes is amended to read:

6 108.24 (3) (a) 3. a. Refrain from claiming or accepting benefits, participating
7 in an audit or investigation by the department, or testifying in a hearing held under
8 s. 108.09, 108.095, or 108.10.

9 **SECTION 78.** 108.24 (3) (a) 4. of the statutes is amended to read:

10 108.24 (3) (a) 4. Discriminates or retaliates against an individual because the
11 individual claims benefits, participates in an audit or investigation by the
12 department under this chapter, testifies in a hearing under s. 108.09, 108.095, or
13 108.10, or exercises any other right under this chapter.

14 **SECTION 79. Initial applicability.**

15 (1) The treatment of s. 108.02 (15) (k) 21. first applies to services performed on
16 the effective date of this subsection.

17 (2) The treatment of s. 108.02 (10e) (c) first applies to determinations issued
18 under s. 108.09 on the effective date of this subsection.

19 **SECTION 80. Effective dates.** This act takes effect on the first Sunday after
20 publication, except as follows:

21 (1) The treatment of s. 16.48 (1) (a) (intro.), 1., 2., 3., 4., 5., and 6. and (b), (2),
22 (3), and (4) takes effect on February 1, 2022.

23 (2) The treatment of ss. 108.02 (13) (k) and 108.065 (1e) (intro.) and (3m) takes
24 effect on January 1, 2023.

ASSEMBLY BILL 910

1 (3) The creation of s. 108.02 (15) (k) 21. and SECTION 79 (1) of this act take effect
2 on the first Sunday of the first year beginning after the date of publication.

3 (END)