



Department of Workforce Development

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Council Members: Please bring your calendars to schedule future meetings.
Council Website: <http://dwd.wisconsin.gov/uibola/uiac/>

MEETING

Date: September 21, 2017

Time: 10:00 a.m. – 4:00 p.m.

Place: Department of Workforce Development
201 E. Washington Avenue
Madison, Wisconsin
GEF-1, Room F305

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the August 9, 2017 Council Meeting
3. Department Update
4. Report on the Unemployment Insurance Reserve Fund
5. Worker Misclassification Quarterly Report – Mike Myszewski
6. Update on Legislation
 - Governor's Budget Bill
 - UIAC Agreed Bill (SB399)
 - HR 2031 (Social Security Disability and UI Benefits)
 - HR 3330 (Ensuring Quality in the UI Program (EQUIP) Act)
7. Update on Court Cases
 - *DWD v. LIRC, Kenton Morse & Riteway Bus Services, Inc.*
 - *DWD v. LIRC, Valarie Beres & Mequon Jewish Campus, Inc.*
8. Program Integrity Assessment
9. Future Meeting Dates

10. Adjourn

Notice:

- ❖ The Council may not address all agenda items or follow the agenda order.
- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may discuss other items, including those on any attached lists.
- ❖ Some or all of the Council members may attend the meeting by telephone.
- ❖ The employee members and/or the employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action and/or items posted in this agenda, pursuant to sec. 19.85(1)(ee), Stats. The employee members and/or the employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- ❖ This location is handicap accessible.
- ❖ Today's meeting materials will be available online at 10:00 a.m. at <http://dwd.wisconsin.gov/uibola/uiac/meetings.htm>
- ❖ If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

August 9, 2017

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members Present: Janell Knutson (Chair), Scott Manley, Earl Gustafson, Terry Hayden, Michael Crivello, Shane Griesbach, and Mark Reihl appeared in person. Mike Gotzler and John Mielke participated via telephone

Department Staff Present: Joe Handrick (UI Division Administrator), Andy Rubsam, Lili Crane, Becky Kikkert, Karl Dahlen, Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Jill Moksouphanh, Amy Banicki, Emily Savard, Karen Schultz, Rob Usarek and Jenny Strickland

Members of the Public Present: Chris Reader (Wisconsin Manufacturers & Commerce), Brian Dake (Wisconsin Independent Businesses, Inc.), Mike Duchek (Legislative Reference Bureau (LRB)), Tracey Schwalbe (Labor & Industry Review Commission (LIRC)), Erika Strebel (Daily Reporter)

1. Call to Order and Introductions

Ms. Knutson called the Unemployment Insurance Advisory Council (Council) meeting to order at 9:33 a.m. under Wisconsin's Open Meeting law. Council members introduced themselves and Ms. Knutson recognized Mike Duchek of LRB and Tracey Schwalbe of LIRC.

2. Approval of Minutes of the June 28, 2017 Council Meeting

Motion by Mr. Reihl, second by Mr. Gotzler to approve the June 28, 2017 meeting minutes without correction. The motion carried unanimously.

3. Review and Discussion of LRB Draft of Agreed Upon Bill

Ms. Knutson presented draft LRB 3233/P5 of the Agreed Upon Bill.

Amendments to Drug Testing Statute

Ms. Knutson reported that additional sections were added by LRB that are technical in nature to provide consistency between the drug testing statute and the administrative rule.

Mr. Rubsam stated the proposed changes will not generate any additional administrative rules. The Council approved a scope statement for occupational drug testing rules, but a federal law change needs to occur before the department can proceed on an administrative rule. An additional scope statement was also approved by the Council relating to various minor and technical rule changes, which addresses some of the issues noted in the bill.

Mr. Handrick reported that he recently attended a national UI conference. At the conference a U.S. Department of Labor (USDOL) representative indicated that as of June 2017, work on new regulations to identify occupations that regularly conduct drug testing had begun; however, no information regarding a completion date was provided. Ms. Knutson added there could potentially be congressional action to change the federal statute itself and until that is known, there is no definitive timeline available.

Ms. Knutson stated the pre-employment drug testing program is currently in effect and the department has had some participation by employers.

Ineligibility for Failure to Provide Information

Mr. Rubsam reported that during the drafting process, LRB recommended, and the department agreed that it would be better to split Wis. Stat. § 108.04(1)(hm) into two separate subsections and create Wis. Stat. § 108.04(1)(hr). Mr. Rubsam stated that the amendment to Wis. Stat. § 108.04(1)(hm) provides that claimants who fail to answer eligibility questions raised by the department are ineligible beginning with the week involving the eligibility issue, not the week in which the claimant fails to answer the department's questions. Section 108.04(1)(hr), Wis. Stat., is intended to capture the department's current practice and reflect the current law by separating this provision to clarify the language in the statute. Further, this may reduce claimant overpayments.

Motion

Moved by Mr. Manley, second by Mr. Reihl to approve draft LRB 3233/P5 of the Agreed Upon Bill. A roll-call vote was conducted and the motion carried unanimously.

4. Timeline of Agreed Bill/Future Meeting Dates

Ms. Knutson stated the department will prepare the bill to be delivered to the Legislature, with the goal of having it proceed through standing committees by the end of August, and introduced during the first floorperiod of the fall legislative session (currently scheduled to commence on September 12, 2017).

Ms. Knutson will contact Mr. Reihl and Mr. Manley when the bill is assigned to a committee. Traditionally, at least one member of Labor and one member of Management testify at the hearing in favor of the bill. All members are encouraged to attend.

Ms. Knutson thanked the members of the Council for their hard work on the Agreed Upon Bill this session.

5. Future meeting dates

The Council is scheduled to meet on September 21, 2017 at 10:00 a.m.

6. Adjourn

Motion by Mr. Manley, second by Mr. Reihl to adjourn at 9:48 a.m. The motion carried unanimously.

UI Reserve Fund Highlights

September 21, 2017

- 2017 benefit payments through August declined \$30.6 million or 9% when compared to benefits paid through August 2016.

Regular UI Benefits Paid	2017 YTD* (\$ Million)	2016 YTD* (\$ Million)	Change (\$ Million)	Percent Change
	\$ 314.2	\$ 344.8	\$ (30.6)	(9%)

- August 2017, year-to-date, tax receipts declined by 19% from last year. This decrease is attributable both to the change in tax schedules from B to C and to the improvement of employer reserve fund balances.

Tax Receipts	2017 YTD* (\$ Million)	2016 YTD* (\$ Million)	Change (\$ Million)	Percent Change
	\$ 581.7	\$ 714.5	\$ (132.8)	(19%)

- The August 2017 Trust Fund ending balance was \$1,446.7 million, an increase of 28% when compared to the same time last year.

UI Trust Fund Balance	August 2017 (\$ Million)	August 2016 (\$ Million)	Change (\$ Million)	Percent Change
	\$ 1,446.7	\$ 1,129.2	\$ 317.5	28%

- Interest earned on the Trust Fund is received quarterly. Interest earned in 2017 for the first two quarters is \$13.5 million compared to \$9.2 million in the first two quarters of 2016. The interest rate for the Trust Fund is 2.25%.

Interest Earned	2017 YTD* (\$ Million)	2016 YTD* (\$ Million)	Change (\$ Million)	Percent Change
	\$ 13.5	\$ 9.2	\$ 4.3	47%

- Employer Tax Rate Notices will be mailed October 9-23. The Notices will be available on the employer portal the second week of October.

* All Year-to-date (YTD) numbers are based on the August 31 Financial Statements

FINANCIAL STATEMENTS

For the Month Ended August 31, 2017



Division of Unemployment Insurance

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCE SHEET
FOR THE MONTH ENDED August 31, 2017

	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<u>ASSETS</u>		
CASH:		
U.I. CONTRIBUTION ACCOUNT	283,622.30	386,631.96
U.I. BENEFIT ACCOUNTS	(16,963.32)	(268,105.68)
U.I. TRUST FUND ACCOUNTS (1) (2)	<u>1,455,864,750.10</u>	<u>1,134,872,014.91</u>
TOTAL CASH	1,456,131,409.08	1,134,990,541.19
ACCOUNTS RECEIVABLE:		
BENEFIT OVERPAYMENT RECEIVABLES	88,123,910.61	101,755,249.46
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	<u>(38,848,856.18)</u>	<u>(41,882,234.14)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	49,275,054.43	59,873,015.32
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (4) (5)	34,159,140.64	39,857,903.65
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (3)	<u>(20,106,810.40)</u>	<u>(24,574,400.71)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	14,052,330.24	15,283,502.94
OTHER EMPLOYER RECEIVABLES	23,609,678.46	25,288,072.60
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(10,228,129.23)</u>	<u>(11,711,015.34)</u>
NET OTHER EMPLOYER RECEIVABLES	13,381,549.23	13,577,057.26
TOTAL ACCOUNTS RECEIVABLE	<u>76,708,933.90</u>	<u>88,733,575.52</u>
TOTAL ASSETS	<u>1,532,840,342.98</u>	<u>1,223,724,116.71</u>
<u>LIABILITIES AND EQUITY</u>		
LIABILITIES:		
CONTINGENT LIABILITIES (6)	32,873,457.27	36,807,951.95
OTHER LIABILITIES	10,553,143.35	7,767,768.93
FEDERAL BENEFIT PROGRAMS	325,814.51	317,487.47
CHILD SUPPORT HOLDING ACCOUNT	7,840.00	12,309.00
FEDERAL WITHHOLDING TAXES DUE	61,634.00	47,954.00
STATE WITHHOLDING TAXES DUE	1,072,585.00	1,041,333.26
DUE TO OTHER GOVERNMENTS (7)	<u>520,026.62</u>	<u>460,343.89</u>
TOTAL LIABILITIES	45,414,500.75	46,455,148.50
EQUITY:		
RESERVE FUND BALANCE	2,130,782,795.79	1,890,475,581.48
BALANCING ACCOUNT	<u>(643,356,953.56)</u>	<u>(713,206,613.27)</u>
TOTAL EQUITY	<u>1,487,425,842.23</u>	<u>1,177,268,968.21</u>
TOTAL LIABILITIES AND EQUITY	<u>1,532,840,342.98</u>	<u>1,223,724,116.71</u>

1. \$2,014,936 of this balance is for administration purposes and is not available to pay benefits.
2. \$2,033,866 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. The allowance for uncollectible benefit overpayments is 46.8%. The allowance for uncollectible delinquent employer taxes is 51.4%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
4. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$1,074,520. Deferrals for the prior year were \$1,674,583.
5. \$11,162,550, or 32.7%, of this balance is estimated.
6. \$20,163,256 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$12,710,201 of this balance is net interest, penalties, SAFI, and other fees assessed to employers and penalties and other fees assessed to claimants which, when collected, will be credited to the state fund.
7. This balance includes SAFI Payable of \$7,401. The 08/31/2017 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$13. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,451,827.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RESERVE FUND ANALYSIS
FOR THE MONTH ENDED August 31, 2017

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,597,332,208.93	2,409,958,025.15	2,118,970,629.39
BALANCING ACCOUNT	<u>(1,090,631,562.85)</u>	<u>(1,205,742,751.81)</u>	<u>(1,324,627,668.90)</u>
TOTAL BALANCE	1,506,700,646.08	1,204,215,273.34	794,342,960.49
<u>INCREASES:</u>			
TAX RECEIPTS/RFB PAID	2,141,003.52	434,862,712.84	506,378,739.26
ACCRUED REVENUES	1,355,502.64	(3,695,559.93)	(4,400,527.66)
SOLVENCY PAID	569,312.11	146,871,356.85	208,136,640.83
REDA PAID	0.00	0.00	30.20
FORFEITURES	20,336.00	364,783.69	765,324.37
BENEFIT CONCEALMENT INCOME	51,723.11	784,587.97	1,162,948.64
INTEREST EARNED ON TRUST FUND	0.00	13,459,505.70	9,182,042.25
FUTA TAX CREDITS	7,168.74	54,492.56	93,696.32
OTHER CHANGES	<u>27,303.31</u>	<u>337,360.46</u>	<u>478,685.77</u>
TOTAL INCREASES	4,172,349.43	593,039,240.14	721,797,579.98
<u>DECREASES:</u>			
TAXABLE EMPLOYER DISBURSEMENTS	19,512,969.71	265,309,271.62	290,769,166.74
QUIT NONCHARGE BENEFITS	2,841,573.07	35,140,609.11	38,363,587.21
OTHER DECREASES	89,779.64	(3,680,407.48)	(5,247,616.16)
OTHER NONCHARGE BENEFITS	<u>1,002,830.86</u>	<u>13,059,198.00</u>	<u>14,986,434.47</u>
TOTAL DECREASES	23,447,153.28	309,828,671.25	338,871,572.26
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,130,782,795.79	2,130,782,795.79	1,890,475,581.48
BALANCING ACCOUNT	<u>(643,356,953.56)</u>	<u>(643,356,953.56)</u>	<u>(713,206,613.27)</u>
TOTAL BALANCE (8) (9) (10)	<u><u>1,487,425,842.23</u></u>	<u><u>1,487,425,842.23</u></u>	<u><u>1,177,268,968.21</u></u>

8. This balance differs from the cash balance related to taxable employers of \$1,446,722,266 because of non-cash accrual items.

9. \$2,014,936 of this balance is set up in the Trust Fund in two subaccounts to be used for administration purposes and is not available to pay benefits.

10. \$2,033,866 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

**DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
RECEIPTS AND DISBURSEMENTS STATEMENT
FOR THE MONTH ENDED 08/31/17**

RECEIPTS	-CURRENT ACTIVITY--	--YEAR TO DATE---	PRIOR YEAR TO DATE
TAX RECEIPTS/RFB	\$2,141,003.52	\$434,862,712.84	\$506,378,739.26
SOLVENCY	569,312.11	146,871,356.85	208,136,640.83
ADMINISTRATIVE FEE	102.36	1,104.61	1,556.67
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	9,874.58	2,497,119.94	0.00
UNUSED CREDITS	415,210.51	5,236,618.43	4,184,319.73
GOVERNMENTAL UNITS	1,081,634.50	8,480,672.16	9,789,028.60
NONPROFITS	1,366,523.31	9,163,092.75	9,077,121.01
REDA PAID	0.00	0.00	30.20
INTERSTATE CLAIMS (CWC)	711,780.57	3,689,118.17	4,313,907.75
ERROR SUSPENSE	(30,744.95)	(13,858.13)	2,391.70
FEDERAL PROGRAMS RECEIPTS	43,447.87	(68,502.88)	729,119.35
OVERPAYMENT COLLECTIONS	1,671,151.65	17,841,096.37	22,891,846.09
FORFEITURES	20,336.00	364,783.69	765,324.37
BENEFIT CONCEALMENT INCOME	51,723.11	784,587.97	1,162,948.64
EMPLOYER REFUNDS	(718,621.06)	(3,651,990.09)	(4,503,473.43)
COURT COSTS	41,041.56	427,948.06	466,581.57
INTEREST & PENALTY	384,026.63	2,856,053.54	2,600,267.88
PENALTY-PROGRAM INTEGRITY	61,376.61	1,038,155.82	486,342.67
SPECIAL ASSESSMENT FOR INTEREST	1,279.32	38,867.45	25,287.91
INTEREST EARNED ON U.I. TRUST FUND BALANCE	0.00	13,459,505.70	9,182,042.25
MISCELLANEOUS	(7,511.28)	89,455.51	190,755.15
TOTAL RECEIPTS	\$7,812,946.92	\$643,967,898.76	\$775,880,778.20

DISBURSEMENTS

CHARGES TO TAXABLE EMPLOYERS	\$20,864,367.41	\$278,377,763.30	\$308,870,697.74
NONPROFIT CLAIMANTS	1,124,880.91	8,632,001.07	8,335,675.03
GOVERNMENTAL CLAIMANTS	950,368.71	7,939,577.60	8,638,252.42
INTERSTATE CLAIMS (CWC)	248,387.28	3,153,907.50	3,935,842.00
QUITS	2,841,573.07	35,140,609.11	38,363,587.21
OTHER NON-CHARGE BENEFITS	1,100,823.98	13,303,255.75	15,082,879.70
CLOSED EMPLOYERS	(22,923.21)	(41,695.85)	(8,801.70)
ERROR CLEARING ACCOUNT	0.00	0.00	0.00
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	78,309.40	1,047,384.23	1,178,567.19
EX-MILITARY (UCX)	51,879.58	551,513.62	971,404.51
TRADE ALLOWANCE (TRA/TRA-NAFTA)	268,071.81	2,371,444.17	3,714,416.95
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	(998.52)
2003 TEMPORARY EMERGENCY UI (TEUC)	(1,893.33)	(16,866.65)	(18,079.90)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(25,610.42)	(359,800.30)	(387,068.24)
FEDERAL EMERGENCY UI (EUC)	(278,794.12)	(3,383,164.33)	(4,362,038.81)
FEDERAL EXTENDED BENEFITS (EB)	(23,494.74)	(237,393.25)	(279,327.03)
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	0.00	(14.11)	(9.28)
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(757.97)	(5,568.24)	(6,293.33)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(367.31)	(1,393.10)	(5,239.42)
INTEREST & PENALTY	333,807.74	2,751,800.65	2,579,882.23
PROGRAM INTEGRITY	779,559.22	3,541,599.60	437,065.27
SPECIAL ASSESSMENT FOR INTEREST	0.00	41,910.82	32,408.86
COURT COSTS	48,791.43	426,845.89	481,829.58
ADMINISTRATIVE FEE TRANSFER	143.54	1,130.41	1,541.81
FEDERAL WITHHOLDING	124,622.00	48,882.78	24,983.00
STATE WITHHOLDING	(500,880.00)	430,217.01	487,065.38
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	0.00	139,226.56
STC IMPLEMENT/IMPROVE & PROMOTE/ENROLL EXP	0.00	4,098.48	37,539.03
FEDERAL LOAN REPAYMENTS	(7,168.74)	(54,492.56)	(93,696.32)
TOTAL DISBURSEMENTS	\$27,953,696.24	\$353,663,553.60	\$388,151,311.92

NET INCREASE(DECREASE) (20,140,749.32) 290,304,345.16 387,729,466.28

BALANCE AT BEGINNING OF MONTH/YEAR \$1,476,272,158.40 \$1,165,827,063.92 \$747,261,074.91

BALANCE AT END OF MONTH/YEAR \$1,456,131,409.08 \$1,456,131,409.08 \$1,134,990,541.19

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
CASH ANALYSIS
FOR THE MONTH ENDED August 31, 2017

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,467,013,649.07	\$1,159,159,974.49	\$742,892,575.90
INCREASES:			
TAX RECEIPTS/RFB PAID	2,141,003.52	434,862,712.84	506,378,739.26
U.I. PAYMENTS CREDITED TO SURPLUS	1,007,598.16	153,388,455.43	215,604,820.02
INTEREST EARNED ON TRUST FUND	0.00	13,459,505.70	9,182,042.25
FUTA TAX CREDITS	<u>7,168.74</u>	<u>54,492.56</u>	<u>93,696.32</u>
TOTAL INCREASE IN CASH	3,155,770.42	601,765,166.53	731,259,297.85
TOTAL CASH AVAILABLE	<u>1,470,169,419.49</u>	<u>1,760,925,141.02</u>	<u>1,474,151,873.75</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	19,512,969.71	265,309,271.62	290,769,166.74
BENEFITS CHARGED TO SURPLUS	<u>3,934,183.57</u>	<u>48,889,504.71</u>	<u>53,994,921.03</u>
TOTAL BENEFITS PAID DURING PERIOD	23,447,153.28	314,198,776.33	344,764,087.77
REED ACT EXPENDITURES	0.00	0.00	139,226.56
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>4,098.48</u>	<u>37,539.03</u>
ENDING U.I. CASH BALANCE (11) (12) (13)	<u><u>1,446,722,266.21</u></u>	<u><u>1,446,722,266.21</u></u>	<u><u>1,129,211,020.39</u></u>

11. \$1,607,328 of this balance was set up in 2009 in the Trust Fund as a subaccount per the ARRA UI Modernization Provisions and is not available to pay benefits.

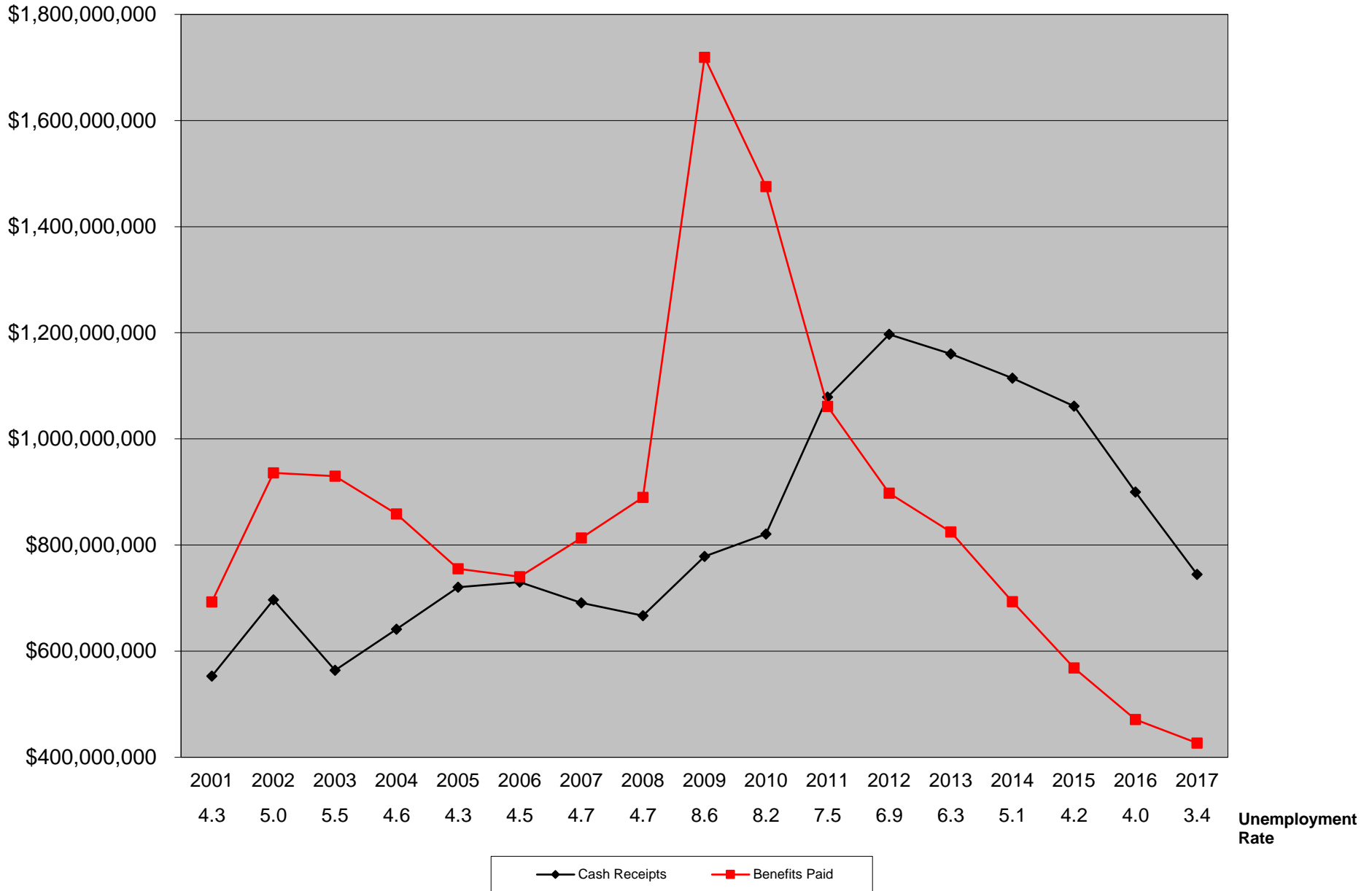
12. \$407,608 of this balance was set up in 2015 in the Trust Fund as a Short-Time Compensation (STC) subaccount to be used for Implementation and Improvement of the STC program and is not available to pay benefits.

13. \$2,033,866 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

DEPARTMENT OF WORKFORCE DEVELOPMENT
U.I. TREASURER'S REPORT
BALANCING ACCT SUMMARY
FOR THE MONTH ENDED August 31, 2017

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$681,216,140.30)	(\$798,303,306.16)	(\$919,824,755.63)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	569,312.11	146,871,356.85	208,136,640.83
FORFEITURES	20,336.00	364,783.69	765,324.37
OTHER INCREASES	<u>417,950.05</u>	<u>6,152,314.89</u>	<u>6,702,854.82</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	1,007,598.16	153,388,455.43	215,604,820.02
TRANSFERS BETWEEN SURPLUS ACCTS	75,027.39	(3,766,073.92)	(12,148,677.43)
INTEREST EARNED ON TRUST FUND	0.00	13,459,505.70	9,182,042.25
FUTA TAX CREDITS	<u>7,168.74</u>	<u>54,492.56</u>	<u>93,696.32</u>
TOTAL INCREASES	1,089,794.29	163,136,379.77	212,731,881.16
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	2,841,573.07	35,140,609.11	38,363,587.21
OTHER NON-CHARGE BENEFITS	1,092,610.50	13,748,895.58	15,631,333.82
MISCELLANEOUS EXPENSE	<u>0.00</u>	<u>0.02</u>	<u>0.00</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	3,934,183.57	48,889,504.71	53,994,921.03
REED ACT EXPENDITURES	0.00	0.00	139,226.56
SHORT-TIME COMPENSATION EXPENDITURES	<u>0.00</u>	<u>4,098.48</u>	<u>37,539.03</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u>(684,060,529.58)</u>	<u>(684,060,529.58)</u>	<u>(761,264,561.09)</u>

Cash Activity Related to Taxable Employers with WI Unemployment Rate (for all years from September to August)





State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4207/1
MED:ahe

2017 SENATE BILL 399

September 6, 2017 - Introduced by Senator NASS, cosponsored by Representative KULP, by request of Department of Workforce Development. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to repeal* 108.22 (8) (b) 1. b. to d., 108.22 (8) (b) 2., 108.22 (8) (b) 3. and
2 108.22 (8) (bh); *to renumber* 108.133 (1) (a); *to renumber and amend* 108.22
3 (3); *to consolidate, renumber and amend* 108.22 (8) (b) 1. (intro.) and a.; *to*
4 **amend** 20.445 (1) (aL), 20.445 (1) (u), 20.445 (1) (v), 108.02 (13) (i), 108.04 (1)
5 (hm), 108.04 (2) (bm), 108.04 (2) (g) 2., 108.04 (7) (e), 108.04 (8) (b), 108.04 (13)
6 (c), 108.04 (13) (e), 108.04 (16) (a) 4., 108.04 (17) (e), 108.05 (3) (d), 108.05 (10)
7 (b), 108.062 (2) (m), 108.062 (6) (a), 108.062 (10), 108.09 (4) (d) 2., 108.09 (4) (e)
8 2., 108.09 (9) (c), 108.095 (8), 108.10 (1), 108.10 (5), 108.133 (2) (intro.), 108.133
9 (2) (a) 1., 108.133 (2) (a) 2., 108.133 (2) (a) 3., 108.133 (2) (a) 4., 108.133 (2) (a)
10 5., 108.133 (2) (b), 108.133 (3) (a) to (e), 108.133 (4) (a), 108.15 (3) (a), 108.15 (5)
11 (b), 108.151 (5) (f), 108.155 (4) (intro.), 108.16 (2) (e), 108.16 (2) (em), 108.19
12 (1m), 108.21 (2), 108.22 (1m), 108.22 (1r), 108.22 (2), 108.22 (4), 108.22 (5),
13 108.22 (9), 108.223 (1) (br), 108.225 (1) (b), 108.225 (4) (b) and 815.29 (1); and
14 **to create** 108.04 (1) (hr), 108.133 (1) (ag), 108.133 (4) (c), 108.16 (6) (p), 108.19

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1 (1s) (a) 5., 108.19 (1s) (a) 6., 108.22 (1t), 108.22 (2) (c), 108.22 (3) (b), 108.22 (8)
2 (d), 108.22 (10) and 108.22 (11) of the statutes; **relating to:** various changes to
3 the unemployment insurance law and making an appropriation.

Analysis by the Legislative Reference Bureau

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

Revisions to collections provisions

Current law provides for a number of methods that DWD may use to collect UI-related debt, such as delinquent contributions and benefit overpayments. The particular methods that are available depend on the type of debt that is owed. The bill makes a number of changes to a number of these provisions regarding the collection of UI-related debt, including all of the following:

1. The bill provides for an unrecorded lien against any person who owes DWD a debt under the UI law. Currently, such liens are only imposed against employers. The bill provides that such a lien is effective upon the earlier of the date on which the amount is first due or the date on which DWD issues a determination of the amount owed. The bill provides that any such lien is recorded when DWD issues a warrant for the debt.

2. Current law allows DWD, in certain circumstances, to hold an individual who is an officer, employee, member, manager, partner, or other responsible person holding at least 20 percent of the ownership interest of a corporation, limited liability company, or other business association personally liable for UI contributions and certain other amounts. This bill deletes the 20 percent ownership requirement.

3. The bill allows DWD to set off any amounts against state tax refund overpayments. Currently, DWD may only set claimants' benefit overpayments off against state tax refund overpayments.

4. The bill allows DWD to assess a third party who fails to surrender property that DWD attempts to collect through levy a penalty in the amount of 50 percent of the debt owed by the debtor. The bill provides for such assessments to be deposited in the unemployment program integrity fund. Current law instead provides that the third party is subject to proceedings to enforce the levy and is liable to the department for up to 25 percent of the debt.

5. Under current law, DWD may issue a warrant directed to an employee or other agent of DWD. In the execution of such a warrant, the employee or agent has all the powers conferred by law upon a sheriff. The bill allows DWD, when executing such a warrant, to conduct an execution sale of property in any county of this state and to sell the property in any manner that will bring the highest net bid or price, including an Internet-based auction or sale.

SENATE BILL 399***Fiscal agents; joint and several liability***

Under current law, a person receiving certain support services may be provided the services of a fiscal agent. The fiscal agent is responsible for complying with the person's duties as an employer under the UI law. This bill provides that a private agency that serves as a fiscal agent or that contracts with a fiscal intermediary to serve as a fiscal agent may be found jointly and severally liable for amounts owed by the person receiving the support services if certain conditions are met.

Requests for information regarding benefit eligibility

Under current law, DWD may require any claimant to answer questions relating to the claimant's eligibility for benefits. A claimant is ineligible to receive benefits for any week in which the claimant fails to comply with a request by DWD to provide the information until the claimant complies with the request. If a claimant later complies with such a request, the claimant is eligible to receive benefits as of the week in which the failure to provide information occurred, if otherwise qualified.

The bill modifies this provision so that a claimant who fails to comply with such a request is ineligible beginning with the week with respect to which the department questions the claimant's eligibility, instead of the week in which the failure occurs. If a claimant later complies with such a request, the claimant is eligible to receive benefits as of the week with respect to which the department questions the claimant's eligibility, if otherwise qualified.

Ineligibility for benefits for concealment of certain payments

Current law provides that a claimant is totally ineligible for benefits, including any partial benefits for which the claimant would otherwise be eligible, for each week the claimant conceals wages or hours worked. This bill similarly provides that a claimant is totally ineligible for benefits for each week the claimant conceals various other types of payments, including holiday pay, vacation pay, termination pay, or sick pay.

Revisions to drug testing statutes

The bill includes a number of changes concerning the testing of UI claimants for the presence of controlled substances, including all of the following:

1. Providing employers who submit information to DWD about individuals who fail or refuse to take drug tests civil immunity for acts or omissions with respect to such submissions.
2. Providing for the transfer, at the end of each fiscal biennium, of any unencumbered moneys appropriated for drug testing and related expenses to the unemployment program integrity fund to be used for DWD UI program integrity activities.
3. Additional changes and clarifications regarding confidentiality of claimants' information related to drug testing.

Minor and technical changes

The bill includes a number of minor and technical changes to the UI law, including all of the following:

1. Correcting cross-references, including updating references to federal law.

SENATE BILL 399

2. Certain changes regarding eligibility for benefits under the work-share benefits statute.

3. Updating references to benefit checks to account for electronic payments and updating references to mailing to account for electronic delivery.

4. Clarifications to the UI appeals process.

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.** 20.445 (1) (aL) of the statutes is amended to read:

2 20.445 (1) (aL) *Unemployment insurance administration; controlled*
3 *substances testing and substance abuse treatment.* Biennially, the amounts in the
4 schedule ~~to conduct~~ for conducting screenings of applicants, testing applicants for
5 controlled substances, ~~for~~ the provision of substance abuse treatment to applicants
6 and claimants, and ~~for~~ related expenses under s. 108.133. Notwithstanding s. 20.001
7 (3) (b), the unencumbered balance on June 30 of each odd-numbered year shall be
8 transferred to the unemployment program integrity fund.

9 **SECTION 2.** 20.445 (1) (u) of the statutes is amended to read:

10 20.445 (1) (u) *Unemployment interest payments and transfers.* From the
11 unemployment interest payment fund, ~~a sum sufficient to make~~ all moneys received
12 from assessments under s. 108.19 (1m) for the purpose of making the payments and
13 transfers authorized under s. 108.19 (1m).

14 **SECTION 3.** 20.445 (1) (v) of the statutes is amended to read:

15 20.445 (1) (v) *Unemployment program integrity.* From the unemployment
16 program integrity fund, ~~a sum sufficient to make~~ all moneys received from sources
17 identified under s. 108.19 (1s) (a) for the purpose of making the payments authorized
18 under s. 108.19 (1s) (b).

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1 **SECTION 4.** 108.02 (13) (i) of the statutes is amended to read:

2 108.02 (13) (i) An “employer” employer shall cease to be subject to this chapter
3 only upon department action terminating coverage of such employer. The
4 department may terminate an “employer’s” employer’s coverage, on its own motion
5 or on application by the “employer” employer, by electronically delivering to the
6 employer, or mailing –a notice of termination to the “employer’s” employer’s
7 last-known address, a notice of termination. An employer’s coverage may be
8 terminated whenever the employer ceased to exist, transferred its entire business,
9 or would not otherwise be subject under any one or more of pars. (b) to (g). If any
10 employer of agricultural labor or domestic service work becomes subject to this
11 chapter under par. (c) or (d), with respect to such employment, and ~~such~~ the employer
12 is otherwise subject to this chapter with respect to other employment, the employer
13 shall continue to be covered with respect to agricultural labor or domestic service, or
14 both, while the employer is otherwise subject to this chapter, without regard to the
15 employment or wage requirements under par. (c) or (d). If a termination of coverage
16 is based on an employer’s application, it shall be effective as of the close of the quarter
17 in which the application was filed. Otherwise, it shall be effective as of the date
18 specified in the notice of termination.

19 **SECTION 5.** 108.04 (1) (hm) of the statutes is amended to read:

20 108.04 (1) (hm) The department may require any claimant to appear before it
21 and to answer truthfully, orally or in writing, any questions relating to the claimant’s
22 eligibility for benefits ~~or to provide such demographic information as may be~~
23 ~~necessary to permit the department to conduct a statistically valid sample audit of~~
24 ~~compliance with this chapter.~~ A claimant is ~~not eligible~~ ineligible to receive benefits
25 for any week ~~in~~ about which the claimant fails to comply with a request by the

SENATE BILL 399**SECTION 5**

1 department to provide the information required under this paragraph, ~~or any~~
2 ~~subsequent week,~~ and remains ineligible until the claimant complies with the
3 request. Except as provided in sub. (2) (e) and (f), if a claimant later complies with
4 a request by the department within the period specified in s. 108.09 (2) (c), the
5 claimant is eligible to receive benefits as of the week ~~in which the failure occurred~~
6 about which the department questions the claimant's eligibility, if otherwise
7 qualified.

8 **SECTION 6.** 108.04 (1) (hr) of the statutes is created to read:

9 108.04 (1) (hr) The department may require any claimant to appear before it
10 and to provide, orally or in writing, demographic information that is necessary to
11 permit the department to conduct a statistically valid sample audit of compliance
12 with this chapter. A claimant is ineligible to receive benefits for any week in which
13 the claimant fails to comply with a request by the department to provide the
14 information required under this paragraph and remains ineligible until the claimant
15 complies with the request. If a claimant later complies with a request by the
16 department within the period specified in s. 108.09 (2) (c), the claimant is eligible to
17 receive benefits as of the week in which the failure occurred, if otherwise qualified.

18 **SECTION 7.** 108.04 (2) (bm) of the statutes is amended to read:

19 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for
20 which there is a determination that the claimant failed to conduct a reasonable
21 search for suitable work and the department has not waived the search requirement
22 under par. (b) or s. 108.062 (10m). If the department has paid benefits to a claimant
23 for any such week, the department may recover the overpayment under s. 108.22 (8).

24 **SECTION 8.** 108.04 (2) (g) 2. of the statutes is amended to read:

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1 108.04 (2) (g) 2. If a claimant's security credentials are used in the filing of an
2 initial or continued claim for benefits or any other transaction, the individual using
3 the security credentials is presumed to have been the claimant or the claimant's
4 authorized agent. This presumption may be rebutted by a preponderance of evidence
5 showing that the claimant who created the security credentials or the claimant's
6 authorized agent was not the person who used the credentials in a given transaction.
7 If a claimant uses an agent to engage in any transaction with the department using
8 the claimant's security credentials, the claimant is responsible for the actions of the
9 agent. If a claimant who created security credentials or the claimant's authorized
10 agent divulges the credentials to another person, or fails to take adequate measures
11 to protect the credentials from being divulged to an unauthorized person, and the
12 department pays benefits to an unauthorized person because of the claimant's action
13 or inaction, the department may recover from the claimant the benefits that were
14 paid to the unauthorized person in the same manner as provided for overpayments
15 to claimants under s. 108.22 (8) or under s. 108.245. If a claimant who created
16 security credentials or the claimant's authorized agent divulges the credentials to
17 another person, or fails to take adequate measures to protect the credentials from
18 being divulged to an unauthorized person, the department is not obligated to pursue
19 recovery of, or to reimburse the claimant for, benefits payable to the claimant that
20 were erroneously paid to another person.

21 **SECTION 9.** 108.04 (7) (e) of the statutes is amended to read:

22 108.04 (7) (e) Paragraph (a) does not apply if the department determines that
23 the employee accepted work ~~which~~ that the employee could have failed to accept
24 under sub. (8) and terminated ~~such~~ the work on the same grounds and within the
25 first 30 calendar days after starting the work, or that the employee accepted work

SENATE BILL 399**SECTION 9**

1 ~~which~~ that the employee could have refused under sub. (9) and terminated ~~such~~ the
2 work within the first 30 calendar days after starting the work. For purposes of this
3 paragraph, an employee has the same grounds for voluntarily terminating work if
4 the employee could have failed to accept the work under sub. (8) (d) ~~to~~ (em) when it
5 was offered, regardless of the reason articulated by the employee for the termination.

6 **SECTION 10.** 108.04 (8) (b) of the statutes is amended to read:

7 108.04 (8) (b) There is a rebuttable presumption that an employee has failed,
8 without good cause, to accept suitable work when offered if the department
9 determines, based on a report submitted by an employing unit in accordance with s.
10 108.133 (4), that the employing unit required, as a condition of an offer of
11 employment, that the employee submit to a test for the ~~presence~~ unlawful use of
12 controlled substances and withdrew the conditional offer after the employee either
13 declined to submit to such a test or tested positive for one or more controlled
14 substances without evidence of a valid prescription for each controlled substance for
15 which the employee tested positive. In the case of the employee declining to submit
16 to such a test, the employee shall be ineligible for benefits until the employee again
17 qualifies for benefits in accordance with the rules promulgated under this
18 paragraph. In the case of the employee testing positive in such a test without
19 evidence of a valid prescription, the employee shall be ineligible for benefits until the
20 employee again qualifies for benefits in accordance with the rules promulgated
21 under this paragraph, except that the employee may maintain his or her eligibility
22 for benefits in the same manner as is provided in s. 108.133 (3) (d). The department
23 shall promulgate rules identifying a period of ineligibility that must elapse or a
24 requalification requirement that must be satisfied, or both, in order for an employee
25 who becomes ineligible for benefits as provided in this paragraph to again qualify for

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1 benefits and specifying how a claimant may overcome the presumption in this
2 paragraph. The department shall charge to the fund's balancing account any
3 benefits otherwise chargeable to the account of an employer that is subject to the
4 contribution requirements under ss. 108.17 and 108.18 whenever an employee of
5 that employer fails, without good cause, to accept suitable work as described in this
6 paragraph.

7 **SECTION 11.** 108.04 (13) (c) of the statutes is amended to read:

8 108.04 (13) (c) If an employer, after notice of a benefit claim, fails to file an
9 objection to the claim under s. 108.09 (1), any benefits allowable under any resulting
10 benefit computation shall, unless the department applies a provision of this chapter
11 to disqualify the claimant, be promptly paid. Except as otherwise provided in this
12 paragraph, any eligibility question in objection to the claim raised by the employer
13 after benefit payments to the claimant are commenced does not affect benefits paid
14 ~~prior to~~ before the end of the week in which a determination is issued as to the
15 eligibility question unless the benefits are erroneously paid without fault on the part
16 of the employer. Except as otherwise provided in this paragraph, if an employer fails
17 to provide correct and complete information requested by the department during a
18 fact-finding investigation, but later provides the requested information, benefits
19 paid ~~prior to~~ before the end of the week in which a redetermination is issued
20 regarding the matter or, if no redetermination is issued, ~~prior to~~ before the end of the
21 week in which an appeal tribunal decision is issued regarding the matter, are not
22 affected by the redetermination or decision, unless the benefits are erroneously paid
23 without fault on the part of the employer as provided in par. (f). If benefits are
24 erroneously paid because the employer and the employee are at fault, the
25 department shall charge the employer for the benefits and proceed to create an

SENATE BILL 399**SECTION 11**

1 overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault
2 on the part of the employer, regardless of whether the employee is at fault, the
3 department shall charge the benefits as provided in par. (d), unless par. (e) applies,
4 and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are
5 erroneously paid because an employer is at fault and the department recovers the
6 benefits erroneously paid under s. 108.22 (8), the recovery does not affect benefit
7 charges made under this paragraph.

8 **SECTION 12.** 108.04 (13) (e) of the statutes is amended to read:

9 108.04 (13) (e) If the department erroneously pays benefits from one
10 employer's account and a 2nd employer is at fault, the department shall credit the
11 benefits paid to the first employer's account and charge the benefits paid to the 2nd
12 employer's account. Filing of a tardy or corrected report or objection does not affect
13 the 2nd employer's liability for benefits paid ~~prior to~~ before the end of the week in
14 which the department makes a recomputation of the benefits allowable or ~~prior to~~
15 before the end of the week in which the department issues a determination
16 concerning any eligibility question raised by the report or by the 2nd employer. If
17 the 2nd employer fails to provide correct and complete information requested by the
18 department during a fact-finding investigation, but later provides the requested
19 information, the department shall charge to the account of the 2nd employer the cost
20 of benefits paid ~~prior to~~ before the end of the week in which a redetermination is issued
21 regarding the matter or, if no redetermination is issued, ~~prior to~~ before the end of the
22 week in which an appeal tribunal decision is issued regarding the matter, unless the
23 benefits erroneously are paid without fault on the part of the employer as provided
24 in par. (f). If the department recovers the benefits erroneously paid under s. 108.22
25 (8), the recovery does not affect benefit charges made under this paragraph.

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1 **SECTION 13.** 108.04 (16) (a) 4. of the statutes is amended to read:

2 108.04 **(16)** (a) 4. A plan for training approved under the federal workforce
3 ~~investment act~~ Workforce Innovation and Opportunity Act, 29 USC 2822 3101 to
4 3361, or another federal law that enhances job skills.

5 **SECTION 14.** 108.04 (17) (e) of the statutes is amended to read:

6 108.04 **(17)** (e) A school year employee of a government unit, Indian tribe, or
7 nonprofit organization ~~which~~ that provides services to or on behalf of any educational
8 institution who performs services other than in an instructional, research, or
9 principal administrative capacity is ineligible for benefits based on such services for
10 any week of unemployment which occurs during a period between 2 successive
11 academic years or terms if the school year employee performed such services for any
12 such government unit, Indian tribe, or nonprofit organization in the first such year
13 or term and there is reasonable assurance that he or she will perform such services
14 for any such government unit, Indian tribe, or nonprofit organization in the 2nd such
15 year or term.

16 **SECTION 15.** 108.05 (3) (d) of the statutes is amended to read:

17 108.05 **(3)** (d) A claimant is ineligible to receive benefits for any week in which
18 the claimant conceals holiday pay, vacation pay, termination pay, or sick pay as
19 provided in s. 108.04 (11) (a) or wages or hours worked as provided in s. 108.04 (11)
20 (b).

21 **SECTION 16.** 108.05 (10) (b) of the statutes is amended to read:

22 108.05 **(10)** (b) Second, to recover overpayments under s. 108.22 (8) (b) 1.

23 **SECTION 17.** 108.062 (2) (m) of the statutes is amended to read:

24 108.062 **(2)** (m) Indicate whether the plan ~~will include~~ includes
25 employer-sponsored training to enhance job skills ~~sponsored by the employer and~~

SENATE BILL 399**SECTION 17**

1 acknowledge that, ~~pursuant to federal law,~~ the employees in the work unit may
2 participate in training funded under the federal Workforce Investment Act of 1998
3 Innovation and Opportunity Act, 29 USC 3101 to 3361, or another federal law that
4 enhances job skills without affecting availability for work, subject to the department
5 approval of the department.

6 **SECTION 18.** 108.062 (6) (a) of the statutes is amended to read:

7 108.062 (6) (a) Except as provided in par. (b), an employee who is included
8 under a work-share program and who qualifies to receive regular benefits for any
9 week during the effective period of the program shall receive a benefit payment for
10 each week that the employee is included under the program in an amount equal to
11 the employee's regular benefit amount under s. 108.05 (1) multiplied by the
12 employee's proportionate reduction in hours worked for that week as a result of the
13 work-share program. Such an employee shall receive benefits as calculated under
14 this paragraph and not as provided under s. 108.05 (3). For purposes of this
15 paragraph, the department shall treat holiday pay, vacation pay, termination pay,
16 and sick pay paid by the employer that sponsors the plan as hours worked. In
17 applying this paragraph, the department shall disregard discrepancies of less than
18 15 minutes between hours reported by employees and employers.

19 **SECTION 19.** 108.062 (10) of the statutes is amended to read:

20 108.062 (10) AVAILABILITY FOR WORK. An employee who is ~~receiving~~ receives
21 benefits under sub. (6) (a) for any week need not be available for work in that week
22 other than for the normal hours of work that the employee worked for the employer
23 that creates the work-share program immediately before the week in which the
24 work-share program began and any additional hours in which the employee is
25 engaged in training to enhance job skills sponsored by the employer that creates the

SENATE BILL 399**SECTION 19**

1 plan or department-approved training funded under the federal Workforce
2 Investment Act of 1998 that is approved by the department Innovation and
3 Opportunity Act, 29 USC 3101 to 3361, or another federal law that enhances job
4 skills. Unless an employee receives holiday pay, vacation pay, termination pay, or
5 sick pay for missed work available under a work-share program, the department
6 shall treat the missed work that an employee would have worked in a given week as
7 hours actually worked by the employee for the purpose of calculating benefits under
8 sub. (6).

9 **SECTION 20.** 108.09 (4) (d) 2. of the statutes is amended to read:

10 108.09 (4) (d) 2. If the appellant submits to the appeal tribunal a written
11 explanation for failing to appear at the hearing that is received before a decision is
12 electronically delivered or mailed under subd. 1., an appeal tribunal shall review the
13 appellant's explanation. The appeal tribunal shall electronically deliver or mail to
14 the respondent a copy of the appellant's explanation. The respondent may, within
15 7 days after the appeal tribunal electronically delivers or mails the appellant's
16 explanation to the respondent, submit to the appeal tribunal a written response to
17 the appellant's explanation. If the appeal tribunal finds that the appellant's
18 explanation does not establish good cause for failing to appear, the appeal tribunal
19 shall issue a decision containing this finding and such dismissing the appeal. Such
20 a decision may be issued without a hearing. If the appeal tribunal finds that the
21 appellant's explanation establishes good cause for failing to appear, the appeal
22 tribunal shall issue a decision containing this finding, and such a decision may be
23 issued without a hearing. The same or another appeal tribunal established by the
24 department for this purpose shall then issue a decision under sub. (3) (b) after
25 conducting a hearing concerning any matter in the determination. If such a hearing

SENATE BILL 399**SECTION 20**

1 is held concerning any matter in the determination, the appeal tribunal shall only
2 consider testimony and other evidence admitted at that hearing in making a
3 decision.

4 **SECTION 21.** 108.09 (4) (e) 2. of the statutes is amended to read:

5 108.09 (4) (e) 2. If the respondent submits to the appeal tribunal a written
6 explanation for failing to appear at the hearing that is received before a decision
7 favorable to the respondent is electronically delivered or mailed under subd. 1., the
8 appeal tribunal shall acknowledge receipt of the explanation in its decision but shall
9 take no further action concerning the explanation at that time. If the respondent
10 submits to the appeal tribunal a written explanation for failing to appear that is
11 received before a decision unfavorable to the respondent is electronically delivered
12 or mailed under subd. 1., an appeal tribunal shall review the respondent's
13 explanation. The appeal tribunal shall electronically deliver or mail to the appellant
14 a copy of the respondent's explanation. The appellant may, within 7 days after the
15 appeal tribunal electronically delivers or mails the respondent's explanation to the
16 appellant, submit to the appeal tribunal a written response to the respondent's
17 explanation. If the appeal tribunal finds that the respondent's explanation does not
18 establish good cause for failing to appear, the appeal tribunal shall issue a decision
19 containing this finding, and such a decision may be issued without a hearing. The
20 same or another appeal tribunal established by the department for this purpose shall
21 also issue a decision based on the testimony and other evidence presented at the
22 hearing at which the respondent failed to appear. If the appeal tribunal finds that
23 the respondent's explanation establishes good cause for failing to appear, the appeal
24 tribunal shall issue a decision containing this finding, and such a decision may be
25 issued without a hearing. The same or another appeal tribunal established by the

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1 department for this purpose shall then issue a decision under sub. (3) (b) after
2 conducting a hearing concerning any matter in the determination. If such a hearing
3 is held concerning any matter in the determination, the appeal tribunal shall only
4 consider testimony and other evidence admitted at that hearing in making a
5 decision.

6 **SECTION 22.** 108.09 (9) (c) of the statutes is amended to read:

7 108.09 (9) (c) If any determination or decision awarding benefits is finally
8 amended, modified, or reversed, any benefits paid to the claimant ~~which~~ that would
9 not have been paid under ~~such~~ the final determination or decision shall be deemed
10 an erroneous payment. Sections 108.04 (13) (c) and (d), 108.16 (3), and 108.22 (8)
11 shall apply to the charging and recovery of ~~such~~ the erroneous payment.

12 **SECTION 23.** 108.095 (8) of the statutes is amended to read:

13 108.095 (8) The ~~mailing~~ issuance of determinations and decisions under this
14 section shall be ~~first~~ by electronic delivery or 1st class mail and may include the use
15 of services performed by the U.S. postal service requiring the payment of extra fees.

16 **SECTION 24.** 108.10 (1) of the statutes is amended to read:

17 108.10 (1) The department shall investigate the status, and the existence and
18 extent of liability of an employing unit, and may issue an initial determination
19 accordingly. The department may set aside or amend the determination at any time
20 ~~prior to~~ before a hearing on the determination on the basis of subsequent information
21 or to correct a mistake, including an error of law. The department shall electronically
22 deliver a copy of each determination to, or mail a copy of each determination to the
23 last-known address of, the employing unit affected thereby. The employing unit may
24 request a hearing as to any matter in that determination if the request is received
25 by the department or postmarked within 21 days after the ~~mailing~~ department

SENATE BILL 399**SECTION 24**

1 ~~issues the initial determination and in accordance with such procedure as~~
2 ~~procedures prescribed by the department prescribes by rule.~~

3 **SECTION 25.** 108.10 (5) of the statutes is amended to read:

4 108.10 (5) The mailing issuance of determinations and decisions provided in
5 subs. (1) to (4) shall be first by electronic delivery or 1st class, mail and may include
6 the use of services performed by the U.S. postal department service requiring the
7 payment of extra fees.

8 **SECTION 26.** 108.133 (1) (a) of the statutes is renumbered 108.133 (1) (ar).

9 **SECTION 27.** 108.133 (1) (ag) of the statutes is created to read:

10 108.133 (1) (ag) "Applicant" means an individual who files an initial claim in
11 order to establish a benefit year under this chapter.

12 **SECTION 28.** 108.133 (2) (intro.) of the statutes is amended to read:

13 108.133 (2) DRUG TESTING PROGRAM. (intro.) The department shall establish a
14 program to test ~~claimants who apply for regular benefits under this chapter~~
15 applicants for the ~~presence~~ unlawful use of controlled substances in accordance with
16 this section and shall, under the program, do all of the following:

17 **SECTION 29.** 108.133 (2) (a) 1. of the statutes is amended to read:

18 108.133 (2) (a) 1. Identify a process for testing ~~claimants~~ applicants for the
19 ~~presence~~ unlawful use of controlled substances. The department shall ensure that
20 the process adheres to any applicable federal requirements regarding drug testing.
21 The department shall pay the reasonable costs of controlled substances testing.

22 **SECTION 30.** 108.133 (2) (a) 2. of the statutes is amended to read:

23 108.133 (2) (a) 2. Identify the parameters for a substance abuse treatment
24 program for ~~claimants~~ applicants who engage in the unlawful use of controlled
25 substances and specify criteria that ~~a claimant~~ an applicant must satisfy in order

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1 to be considered in full compliance with requirements of the substance abuse
2 treatment program. If the rules require that ~~a claimant~~ an applicant enrolled in the
3 substance abuse treatment program submit to additional tests for the ~~presence~~
4 unlawful use of controlled substances following the initial test conducted under sub.
5 (3) (c), the rules shall allow the ~~claimant~~ applicant to have at least one more positive
6 test result following the initial test without, on that basis, being considered not to be
7 in full compliance with the requirements of the substance abuse treatment program.

8 **SECTION 31.** 108.133 (2) (a) 3. of the statutes is amended to read:

9 108.133 (2) (a) 3. Create a screening process for determining whether there is
10 a reasonable suspicion that ~~a claimant~~ an applicant has engaged in the unlawful use
11 of controlled substances.

12 **SECTION 32.** 108.133 (2) (a) 4. of the statutes is amended to read:

13 108.133 (2) (a) 4. Identify the parameters for a job skills assessment for
14 ~~claimants~~ applicants who engage in the unlawful use of controlled substances and
15 specify criteria that ~~a claimant~~ an applicant must satisfy in order to be considered
16 in full compliance with the requirements of the job skills assessment.

17 **SECTION 33.** 108.133 (2) (a) 5. of the statutes is amended to read:

18 108.133 (2) (a) 5. Identify a period of ineligibility that must elapse or a
19 requalification requirement that must be satisfied, or both, in order for ~~a claimant~~
20 an applicant to again qualify for benefits after becoming ineligible for benefits under
21 sub. (3) (a) or (c).

22 **SECTION 34.** 108.133 (2) (b) of the statutes is amended to read:

23 108.133 (2) (b) When ~~a claimant~~ an applicant applies for regular benefits under
24 this chapter, do all of the following:

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1 1. Determine whether the claimant applicant is an individual for whom
2 suitable work is only available in an occupation that regularly conducts drug testing.

3 2. Determine whether the claimant applicant is an individual for whom
4 suitable work is only available in an occupation identified in the rules promulgated
5 under par. (am), unless the department has already determined that the applicant
6 is an individual for whom suitable work is only available in an occupation that
7 regularly conducts drug testing under subd. 1.

8 3. If the ~~claimant is determined by the department~~ determines under subd. 1.
9 ~~to be that the applicant is an individual for whom suitable work is only available in~~
10 an occupation that regularly conducts drug testing, conduct a screening on the
11 claimant applicant.

12 4. If the ~~claimant is determined by the department~~ determines under subd. 2.
13 ~~to be that the applicant is an individual for whom suitable work is only available in~~
14 an occupation identified in the rules promulgated under par. (am), conduct a
15 screening on the ~~claimant if a screening is not already required under subd. 3.~~
16 applicant.

17 5. If a screening conducted as required under subd. 3. or 4. indicates a
18 reasonable suspicion that the claimant applicant has engaged in the unlawful use
19 of controlled substances, require that the claimant applicant submit to a test for the
20 presence unlawful use of controlled substances.

21 **SECTION 35.** 108.133 (3) (a) to (e) of the statutes are amended to read:

22 108.133 (3) (a) If ~~a claimant~~ an applicant is required under sub. (2) (b) 5. to
23 submit to a test for the ~~presence~~ unlawful use of controlled substances and the
24 ~~claimant~~ applicant declines to submit to such a test, the ~~claimant~~ applicant is

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1 ineligible for benefits under this chapter until the ~~claimant~~ applicant is again eligible
2 for benefits as provided in the rules promulgated under sub. (2) (a) 5.

3 (b) If ~~a claimant~~ an applicant who is required under sub. (2) (b) 5. to submit
4 to a test for the ~~presence~~ unlawful use of controlled substances submits to the test
5 and does not test positive for any controlled substance or the ~~claimant~~ applicant
6 presents evidence satisfactory to the department that the ~~claimant~~ applicant
7 possesses a valid prescription for each controlled substance for which the ~~claimant~~
8 applicant tests positive, the ~~claimant~~ applicant may receive benefits under this
9 chapter if otherwise eligible and may not be required to submit to any further test
10 for the ~~presence~~ unlawful use of controlled substances until a subsequent benefit
11 year.

12 (c) If ~~a claimant~~ an applicant who is required under sub. (2) (b) 5. to submit
13 to a test for the ~~presence~~ unlawful use of controlled substances submits to the test
14 and tests positive for one or more controlled substances without presenting evidence
15 satisfactory to the department that the ~~claimant~~ applicant possesses a valid
16 prescription for each controlled substance for which the ~~claimant~~ applicant tested
17 positive, the ~~claimant~~ applicant is ineligible for benefits under this chapter until the
18 ~~claimant~~ applicant is again eligible for benefits as provided in the rules promulgated
19 under sub. (2) (a) 5., except as provided in par. (d).

20 (d) ~~A claimant~~ An applicant who tests positive for one or more controlled
21 substances without presenting evidence of a valid prescription as described in par.
22 (c) may maintain his or her eligibility for benefits under this chapter by enrolling in
23 the substance abuse treatment program and undergoing a job skills assessment.
24 Such ~~a claimant~~ an applicant remains eligible for benefits under this chapter, if
25 otherwise eligible, for each week the ~~claimant is in full compliance~~ applicant fully

SENATE BILL 399**SECTION 35**

1 complies with any requirements of the substance abuse treatment program and job
2 skills assessment, as determined by the department in accordance with the rules
3 promulgated under sub. (2) (a) 2. and 4.

4 (e) All information relating to ~~a claimant's~~ an individual's declining to take a
5 test for the unlawful use of controlled substances, testing positive for the unlawful
6 use of controlled substances, prescription medications, medical records, and
7 enrollment and participation in the substance abuse treatment program under this
8 chapter shall, subject to and in accordance with any rules promulgated by the
9 department, be confidential and not subject to the right of inspection or copying
10 under s. 19.35 (1).

11 **SECTION 36.** 108.133 (4) (a) of the statutes is amended to read:

12 108.133 (4) (a) An employing unit may, in accordance with the rules
13 promulgated by the department under par. (b), voluntarily submit to the department
14 the results of a test for the ~~presence~~ unlawful use of controlled substances that was
15 conducted on an individual as a condition of an offer of employment or notify the
16 department that an individual declined to submit to such a test, along with
17 information necessary to identify the individual. Upon receipt of any such results
18 of a test conducted and certified in a manner approved by the department or
19 notification that an individual declined to submit to such a test, the department shall
20 determine whether the individual is a claimant receiving benefits. If the individual
21 is a claimant receiving benefits, the department shall, in accordance with rules
22 promulgated by the department under par. (b), use that information for purposes of
23 determining eligibility for benefits under s. 108.04 (8) (b).

24 **SECTION 37.** 108.133 (4) (c) of the statutes is created to read:

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1 108.133 (4) (c) Any employing unit that, in good faith, submits the results of
2 a positive test or notifies the department that an individual declined to submit to a
3 test under par. (a) is immune from civil liability for its acts or omissions with respect
4 to the submission of the positive test results or the notification that the individual
5 declined to submit to the test.

6 **SECTION 38.** 108.15 (3) (a) of the statutes is amended to read:

7 108.15 (3) (a) ~~It~~ The government unit shall file a written notice ~~to that effect~~
8 of election with the department before the beginning of such ~~that~~ year ~~except that~~
9 ~~if the government unit became newly subject to this chapter as of the beginning of~~
10 ~~such year, it shall file the notice or~~ within 30 days after the ~~date of mailing to it a~~
11 ~~written notification by the department that it~~ issues a determination that the
12 government unit is subject to this chapter.—Such, whichever is later. An election
13 under this subsection shall remain in effect for not less than 3 calendar years.

14 **SECTION 39.** 108.15 (5) (b) of the statutes is amended to read:

15 108.15 (5) (b) The department shall monthly bill each government unit for any
16 reimbursements required under this section, ~~and any reimbursement thus billed~~
17 ~~shall be due and shall be paid by such government unit within 20 days after the date~~
18 ~~such bill is mailed to it by the department, which shall be due within 20 days after~~
19 the date the department issues the bill.

20 **SECTION 40.** 108.151 (5) (f) of the statutes is amended to read:

21 108.151 (5) (f) Whenever an employer's reimbursement account has a negative
22 balance as of the close of any calendar month, the fund's treasurer shall promptly ~~bill~~
23 ~~such~~ electronically deliver to the employer, ~~at its~~ or mail to the employer's
24 last-known address, a bill for that portion of its negative balance which has resulted
25 from the net benefits charged to ~~such~~ the account within ~~such~~ that month.

SENATE BILL 399**SECTION 40**

1 Reimbursement payment shall be due within 20 days ~~thereafter~~ after the date the
2 department issues the bill. Any required payment ~~which~~ that remains unpaid after
3 its applicable due date is a delinquent payment. Section 108.22 shall apply for
4 collecting delinquent payments.

5 **SECTION 41.** 108.155 (4) (intro.) of the statutes is amended to read:

6 108.155 (4) (intro.) The department shall bill assessments an assessment
7 under this section to a reimbursable employer at its, by electronically delivering the
8 assessment to the employer or mailing the assessment to the employer's last known
9 address, in the month of September of each year, and the assessment shall be due to
10 the department within 20 days after the date such bill is mailed by the date the
11 department issues the assessment. Any assessment that remains unpaid after its
12 applicable due date is a delinquent payment. If a reimbursable employer is
13 delinquent in paying an assessment under this section, in addition to pursuing
14 action under the provisions of ss. 108.22 and 108.225, the department may do any
15 of the following:

16 **SECTION 42.** 108.16 (2) (e) of the statutes is amended to read:

17 108.16 (2) (e) Except as provided in par. (em), benefits ~~to~~ shall be charged
18 against a given employer's account ~~shall be so charged as of the date shown by the~~
19 ~~check that the department issues the payment~~ covering such benefits. Each ~~such~~
20 ~~check benefit payment~~ shall be promptly ~~mailed~~ issued and shall, in determining the
21 experience or status of ~~such~~ the account for contribution purposes, be deemed paid
22 on the date ~~shown on the check~~ the payment is issued.

23 **SECTION 43.** 108.16 (2) (em) of the statutes is amended to read:

24 108.16 (2) (em) Benefits improperly charged or credited to an employer's
25 account for any reason other than adjustment of payroll amounts between 2 or more

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1 employers' accounts shall, when so identified, be credited to or debited from that
2 employer's account and, where appropriate, recharged to the correct employer's
3 account as of the date of correction. Benefits improperly charged or credited to an
4 employer's account as a result of adjustment of payroll amounts between 2 or more
5 employers' accounts shall be so charged or credited and, where appropriate,
6 recharged as of the date ~~shown by the check covering such benefits on which the~~
7 department issues the benefit payment. This paragraph shall be used solely in
8 determining the experience or status of accounts for contribution purposes.

9 **SECTION 44.** 108.16 (6) (p) of the statutes is created to read:

10 108.16 **(6)** (p) Any amount transferred from the federal employment security
11 administration account under 42 USC 1101 (d) (1) (B).

12 **SECTION 45.** 108.19 (1m) of the statutes is amended to read:

13 108.19 **(1m)** Each employer subject to this chapter as of the date a rate is
14 established under this subsection shall pay an assessment to the unemployment
15 interest payment fund at a rate established by the department sufficient to pay
16 interest due on advances from the federal unemployment account under Title XII of
17 the federal social security act (~~42~~ 42 USC 1321 to 1324). The rate established by the
18 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or
19 108.152 (1) shall be 75 percent of the rate established for other employers. The
20 amount of any employer's assessment shall be the product of the rate established for
21 that employer multiplied by the employer's payroll of the previous calendar year as
22 taken from quarterly employment and wage reports filed by the employer under s.
23 108.205 (1) or, in the absence of the filing of such reports, estimates made by the
24 department. Each assessment made under this subsection is due ~~on the 30th day~~
25 commencing within 30 days after the date ~~on which notice of the assessment is~~

SENATE BILL 399**SECTION 45**

1 ~~mailed~~ by the department issues the assessment. If the amounts collected from
2 employers under this subsection ~~are in excess of~~ exceed the amounts needed to pay
3 interest due, the department shall use any excess to pay interest owed in subsequent
4 years on advances from the federal unemployment account. If the department
5 determines that additional interest obligations are unlikely, the department shall
6 transfer the excess to the balancing account of the fund, the unemployment program
7 integrity fund, or both in amounts determined by the department.

8 **SECTION 46.** 108.19 (1s) (a) 5. of the statutes is created to read:

9 108.19 **(1s)** (a) 5. Amounts transferred from the appropriation account under
10 s. 20.445 (1) (aL).

11 **SECTION 47.** 108.19 (1s) (a) 6. of the statutes is created to read:

12 108.19 **(1s)** (a) 6. Assessments under s. 108.225 (4) (b).

13 **SECTION 48.** 108.21 (2) of the statutes is amended to read:

14 108.21 **(2)** The findings of ~~any such~~ an authorized representative of the
15 department, based on examination of the records of any such employing unit under
16 sub. (1) and embodied in an audit report ~~mailed~~ issued to the employing unit, ~~shall~~
17 constitute are a determination ~~within the meaning of~~ under s. 108.10.

18 **SECTION 49.** 108.22 (1m) of the statutes is amended to read:

19 108.22 **(1m)** If ~~an employer~~ any person owes any contributions,
20 reimbursements, or assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m),
21 benefit overpayments, interest, fees, ~~or~~ payments for forfeitures ~~or~~, other penalties,
22 or any other amount to the department under this chapter and fails to pay the
23 amount owed, the department has a perfected lien upon the employer's right, title,
24 and interest in all of its the person's real and personal property located in this state
25 in the amount finally determined to be owed, plus costs. Except where creation of

SENATE BILL 399**SECTION 49**

1 a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective
2 ~~when upon the earlier of the date on which the amount is first due or the date on~~
3 ~~which~~ the department issues a determination of the amount owed under s. ~~108.10~~
4 ~~(1) this chapter~~ and shall continue until the amount owed, plus costs and interest to
5 the date of payment, is paid, ~~except as provided in sub. (8) (d)~~. If a lien is initially
6 barred or stayed by bankruptcy or other insolvency law, it shall become effective
7 immediately upon expiration or removal of such bar or stay. The perfected lien does
8 not give the department priority over lienholders, mortgagees, purchasers for value,
9 judgment creditors, and pledges whose interests have been recorded before the
10 department's lien is recorded.

11 **SECTION 50.** 108.22 (1r) of the statutes is amended to read:

12 108.22 (1r) If any ~~employing unit or any individual who is found personally~~
13 ~~liable under sub. (9) person~~ fails to pay to the department ~~any amount found to be~~
14 ~~due it in proceedings pursuant to s. 108.10~~ a covered unemployment compensation
15 debt, as defined in 26 USC 6402 (f) (4), provided that no appeal or review permitted
16 under s. ~~108.10~~ this chapter is pending and that the time for taking an appeal or
17 review has expired, the department or any authorized representative of the
18 department may offset ~~set off~~ the amount against a federal tax refund ~~as provided~~
19 ~~in overpayment under~~ 26 USC 6402 (f).

20 **SECTION 51.** 108.22 (1t) of the statutes is created to read:

21 108.22 (1t) If any person fails to pay to the department any amount under this
22 chapter, provided that no appeal or review permitted under this chapter is pending
23 and that the time for taking an appeal or review has expired, the department or any
24 authorized representative of the department may set off the amount against a
25 refund, overpayment, or disbursement under s. 71.93.

SENATE BILL 399**SECTION 52**

1 **SECTION 52.** 108.22 (2) of the statutes is amended to read:

2 108.22 (2) (a) 1. If any ~~employing unit or any individual who is found personally~~
3 ~~liable under sub. (9) person~~ fails to pay to the department any amount found to be
4 due it in proceedings pursuant to s. 108.10, provided that no appeal or review
5 permitted under s. 108.10 is pending and that the time for taking an appeal or review
6 has expired or determined to be owed under this chapter, the department or any
7 authorized representative of the department may issue record the lien created under
8 sub. (1m) by issuing a warrant directed to the clerk of circuit court for any county of
9 the state.

10 2. The clerk of circuit court shall enter in the judgment and lien docket the
11 name of the ~~employing unit or individual~~ person mentioned in the warrant and, the
12 amount of the contributions, interest, costs and other fees for which the warrant is
13 issued owed, and the date when such copy on which the warrant is entered.

14 3. A warrant entered under subd. 2. shall be considered in all respects as a final
15 judgment ~~constituting a perfected lien upon the employing unit's or individual's~~
16 ~~right, title and interest in all real and personal property located in the county where~~
17 ~~the warrant is entered.~~

18 4. The department or any authorized representative of the department may
19 thereafter file an execution with the clerk of circuit court for filing by the clerk of
20 circuit court with the sheriff of any county where real or personal property of the
21 ~~employing unit or individual is found~~ person is located, commanding the sheriff to
22 levy upon and sell sufficient real and personal property of the ~~employing unit or~~
23 ~~individual~~ person located in that county to pay the amount stated in the warrant in
24 the same manner as upon an execution against property issued upon the judgment

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1 of a court of record, and to return the warrant to the department and pay to it the
2 money collected by virtue thereof within 60 days after receipt of the warrant.

3 (b) The clerk of circuit court shall accept, file, and enter each warrant under
4 par. (a) and each satisfaction, release, or withdrawal under subs. (5), (6), and (8m)
5 in the judgment and lien docket without prepayment of any fee, but the clerk of
6 circuit court shall submit a statement of the proper fee semiannually to the
7 department covering the periods from January 1 to June 30 and July 1 to December
8 31 unless a different billing period is agreed to between the clerk of circuit court and
9 the department. The fees shall then be paid by the department, but the fees provided
10 by s. 814.61 (5) for entering the warrants shall be added to the amount of the warrant
11 and collected from the ~~employing unit or individual~~ person when satisfaction or
12 release is presented for entry.

13 **SECTION 53.** 108.22 (2) (c) of the statutes is created to read:

14 108.22 (2) (c) At least 15 days before issuing any warrant to a person under par.
15 (a), the department shall issue a demand to the person for payment of the amounts
16 owed and give written or electronic notice that the department may issue a warrant.
17 The refusal or failure of the person to receive the notice does not prevent the
18 department from issuing the warrant. The department is only required to give the
19 notice required under this paragraph to a person the first time the department issues
20 a warrant to the person, and not for any subsequent warrant issued to that person.

21 **SECTION 54.** 108.22 (3) of the statutes is renumbered 108.22 (3) (a) and
22 amended to read:

23 108.22 (3) (a) The department may issue a warrant of like terms, force, and effect
24 to any employee or other agent of the department, who may file a copy of such warrant
25 with the clerk of circuit court of any county in the state, and thereupon ~~such~~ the clerk

SENATE BILL 399**SECTION 54**

1 shall enter the warrant in the judgment and lien docket and the warrant shall become
2 a lien in the same manner, and with have the same force and effect, as is provided in
3 sub. (2). In the execution of the warrant, the employee or other agent shall have all
4 the powers conferred by law upon a sheriff, but shall not be entitled to collect from the
5 employer person any fee or charge for the execution of the warrant in excess of the
6 actual expenses paid in the performance of his or her duty.

7 **SECTION 55.** 108.22 (3) (b) of the statutes is created to read:

8 108.22 (3) (b) In executing a warrant under par. (a), the employee or agent may
9 conduct, or may engage a 3rd party to conduct, an execution sale of property in any
10 county of this state and may sell, or may engage a 3rd party to sell, the property in
11 any manner that, in the discretion of the department, will bring the highest net bid
12 or price, including an Internet-based auction or sale. The cost of conducting each
13 auction or sale shall be reimbursed to the department out of the proceeds of the
14 auction or sale.

15 **SECTION 56.** 108.22 (4) of the statutes is amended to read:

16 108.22 (4) If a warrant ~~be~~ is returned not satisfied in full, the department shall
17 have the same remedies to enforce the amount due ~~for contributions, interest, and~~
18 ~~costs and other fees~~ as if the department had recovered judgment against the
19 ~~employing unit~~ person for the same and an execution is returned wholly or partially
20 not satisfied.

21 **SECTION 57.** 108.22 (5) of the statutes is amended to read:

22 108.22 (5) When the ~~contributions~~ amounts set forth in a warrant together
23 with interest and other fees to the date of payment and all costs due the department
24 have been paid ~~to it~~, the department shall issue a satisfaction of the warrant and file
25 it with the clerk of circuit court. The clerk of circuit court shall immediately enter

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1 a satisfaction of the judgment on the judgment and lien docket. The department
2 shall send a copy of the satisfaction to the employer person.

3 **SECTION 58.** 108.22 (8) (b) 1. (intro.) and a. of the statutes are consolidated,
4 renumbered 108.22 (8) (b) and amended to read:

5 108.22 (8) (b) To recover any overpayment to an individual ~~which~~ that is not
6 otherwise repaid or recovery of which has not been waived, the department may
7 recoup the amount of the overpayment by: ~~a. Deducting, in addition to its other~~
8 ~~remedies in this chapter, deducting~~ the amount of the overpayment from benefits the
9 individual would otherwise be eligible to receive;.

10 **SECTION 59.** 108.22 (8) (b) 1. b. to d. of the statutes are repealed.

11 **SECTION 60.** 108.22 (8) (b) 2. of the statutes is repealed.

12 **SECTION 61.** 108.22 (8) (b) 3. of the statutes is repealed.

13 **SECTION 62.** 108.22 (8) (bh) of the statutes is repealed.

14 **SECTION 63.** 108.22 (8) (d) of the statutes is created to read:

15 108.22 (8) (d) The department may not collect any interest on any benefit
16 overpayment.

17 **SECTION 64.** 108.22 (9) of the statutes is amended to read:

18 108.22 (9) ~~An individual~~ Any person who is an officer, employee, member,
19 manager, partner, or other responsible person ~~holding at least 20 percent of the~~
20 ~~ownership interest of a corporation, limited liability company, or other business~~
21 ~~association subject to this chapter~~ of an employer, and who has control or supervision
22 of or responsibility for filing any required contribution reports or making payment
23 of ~~contributions~~ amounts due under this chapter, and who willfully fails to file such
24 reports or to make such payments to the department, or to ensure that such reports
25 are filed or that such payments are made, may be found personally liable for such

SENATE BILL 399**SECTION 64**

1 ~~those amounts, including interest, tardy payment or filing fees, costs and other fees,~~
2 ~~in the event that after proper proceedings for the collection of such those amounts,~~
3 ~~as provided in this chapter, the corporation, limited liability company, or other~~
4 ~~business association employer is unable to pay such those amounts to the~~
5 ~~department. Ownership interest of a corporation, limited liability company, or other~~
6 ~~business association includes ownership or control, directly or indirectly, by legally~~
7 ~~enforceable means or otherwise, by the individual, by the individual's spouse or~~
8 ~~child, by the individual's parent if the individual is under age 18, or by a combination~~
9 ~~of 2 or more of them, and such ownership interest of a parent corporation, limited~~
10 ~~liability company, or other business association of which the corporation, limited~~
11 ~~liability company, or other business association unable to pay such amounts is a~~
12 ~~wholly owned subsidiary. The personal Personal liability of such officer, employee,~~
13 ~~member, manager, partner, or other responsible person as provided in this~~
14 ~~subsection survives dissolution, reorganization, bankruptcy, receivership,~~
15 ~~assignment for the benefit of creditors, judicially confirmed extension or~~
16 ~~composition, or any analogous situation of the corporation, limited liability company,~~
17 ~~or other business association employer and shall be set forth in a determination or~~
18 ~~decision issued under s. 108.10. An appeal or review of a determination under this~~
19 ~~subsection shall not include an appeal or review of determinations of amounts owed~~
20 ~~by the employer.~~

21 **SECTION 65.** 108.22 (10) of the statutes is created to read:

22 108.22 (10) A private agency that serves as a fiscal agent under s. 46.2785 or
23 contracts with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i),
24 46.272 (7) (e), or 47.035 as to any individual performing services for a person
25 receiving long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275,

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1 46.277, 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance
2 services under s. 47.02 (6) (c) may be found jointly and severally liable for the
3 amounts owed by the person under this chapter, if, at the time the person's quarterly
4 report is due under this chapter, the private agency served as a fiscal agent for the
5 person. The liability of the agency as provided in this subsection survives
6 dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of
7 creditors, judicially confirmed extension or composition, or any analogous situation
8 of the person and shall be set forth in a determination or decision issued under s.
9 108.10. An appeal or review of a determination under this subsection shall not
10 include an appeal or review of determinations of amounts owed by the person.

11 **SECTION 66.** 108.22 (11) of the statutes is created to read:

12 108.22 (11) (a) The department may recover its actual costs, disbursements,
13 expenses, and fees incurred in recovering any amount due under this chapter.

14 (b) The department may charge and recover the costs related to payments made
15 to the department by debit card, credit card, or another payment method.

16 **SECTION 67.** 108.223 (1) (br) of the statutes is amended to read:

17 108.223 (1) (br) "Debtor" means a debtor, as defined in s. 108.225 (1) (c), whose
18 debt has been finally determined under this chapter and is not subject to further
19 appeal and for whom, with respect to a debt, a warrant has been issued under s.
20 108.22 (2), or (3) or (8).

21 **SECTION 68.** 108.225 (1) (b) of the statutes is amended to read:

22 108.225 (1) (b) "Debt" means ~~a delinquent contribution or repayment of a~~
23 ~~benefit overpayment, a delinquent assessment under s. 108.04 (11) (cm) or 108.19~~
24 ~~(1m), a liability incurred under s. 108.04 (11) (bh), an erroneous payment from the~~
25 ~~fund recovered under s. 108.245, or any liability of a 3rd party for failure to surrender~~

SENATE BILL 399**SECTION 68**

1 ~~to the department property or rights to property subject to levy after proceedings~~
2 ~~under sub. (4) (b) and s. 108.10 to determine that liability any amount due under this~~
3 ~~chapter.~~

4 **SECTION 69.** 108.225 (4) (b) of the statutes is amended to read:

5 108.225 (4) (b) ~~Any 3rd party~~ The department may assess a person who fails
6 ~~to surrender any property or rights to property subject to levy, upon demand of the~~
7 ~~department, is subject to proceedings to enforce the levy. The 3rd party is not liable~~
8 ~~to the department under this paragraph for more than 25 percent~~ comply with sub.
9 (3) a penalty in the amount of 50 percent of the debt. The department shall serve a
10 final demand as provided under sub. (13) on any ~~3rd party~~ person who fails to
11 ~~surrender property. Proceedings shall not be initiated by the department until 5~~
12 ~~days after service of the final demand~~ comply with sub. (3). The department shall
13 issue a determination under s. 108.10 to the ~~3rd party~~ person for the amount of the
14 ~~liability~~ assessment under this subsection no sooner than 7 days after service of the
15 final demand. Assessments under this subsection shall be deposited in the
16 unemployment program integrity fund.

17 **SECTION 70.** 815.29 (1) of the statutes is amended to read:

18 815.29 (1) No execution sale of personal property shall be made unless 20 days
19 previous notice of such sale has been given by posting a notice thereof in one public
20 place of the town or municipality where such sale is to be had and, if the county where
21 such sale is to be had maintains a Web site, by posting a notice on the Web site. If
22 the town or municipality where such sale is to be had maintains a Web site, the town
23 or municipality may also post a notice on its Web site. The notice shall specify the
24 time and place of sale but when any property seized is likely to perish or depreciate
25 in value before the expiration of the 20 days the court or a judge may order the same

SENATE BILL 399

1 to be sold in such manner and upon such terms as the best interests of the parties
2 demand. Every such sale shall be made at auction between the hours of 9 a.m. and
3 5 p.m. and no property shall be sold unless it is in view of those attending the sale,
4 except as provided in ~~s. ss.~~ ss. 71.91 (5) (c) 2. and 108.22 (3) (b) and in the case of the sale
5 of the interest of the judgment debtor in property in the possession of a secured party.
6 It shall be offered for sale in such lots and parcels as is calculated to bring the highest
7 price.

8 **SECTION 71. Nonstatutory provisions.**

9 (1) The authorized FTE positions for the department of workforce development,
10 funded from the appropriation under section 20.445 (1) (v) of the statutes, are
11 increased by 5.0 SEG positions for the purpose of conducting program integrity
12 activities.

13 (2) Notwithstanding SECTION 72 (4) of this act and section 108.22 (1m) of the
14 statutes, as affected by this act, if any person owes any contributions,
15 reimbursements or assessments under section 108.15, 108.151, 108.155, or 108.19
16 (1m) of the statutes, benefit overpayments, interest, fees, payments for forfeitures,
17 other penalties, or any other amount to the department of workforce development
18 under chapter 108 of the statutes and has failed to pay the amount owed, the
19 department has a perfected lien upon the right, title, and interest in all of the
20 person's real and personal property located in this state in the amount finally
21 determined to be owed, plus costs. Except where creation of a lien is barred or stayed
22 by bankruptcy or other insolvency law, the lien is effective on the effective date of this
23 subsection and shall continue until the amount owed, plus costs and interest to the
24 date of payment, is paid, except as provided in section 108.22 (8) (d) of the statutes,
25 as created by this act. If a lien is initially barred or stayed by bankruptcy or other

SENATE BILL 399**SECTION 71**

1 insolvency law, it shall become effective immediately upon expiration or removal of
2 such bar or stay. The perfected lien does not give the department priority over
3 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
4 whose interests have been recorded before the department's lien is recorded. This
5 subsection applies only to amounts that first became due or were determined to be
6 owed prior to the effective date of this subsection and that remain unpaid as of the
7 effective date of this subsection, except that this subsection does not affect a lien that
8 was created, before the effective date of this subsection, under section 108.22 (1m),
9 2015 stats., or any predecessor statute. A lien created under this subsection shall
10 otherwise be considered a lien under section 108.22 (1m) of the statutes, as affected
11 by this act.

12 (3) A warrant issued under section 108.22 (2), 2015 stats., or any predecessor
13 statute that has not been satisfied or released as of the effective date of this
14 subsection shall remain effective and shall otherwise be considered to be a warrant
15 issued under section 108.22 (2), as affected by this act.

16 (4) The department of workforce development shall send a notice to the
17 legislative reference bureau when a rule promulgated by the department of
18 workforce development that is based on scope statement 046-17 is filed with the
19 legislative reference bureau under section 227.20 of the statutes, if filed before the
20 first day of the 36th month beginning after publication.

SECTION 72. Initial applicability.

21 (1) The treatment of section 108.04 (1) (hm) and (hr) of the statutes first applies
22 to determinations issued under section 108.09 or 108.10 of the statutes on the
23 effective date of this subsection.
24

SENATE BILL 399**SECTION 72**

1 (2) The treatment of section 108.05 (3) (d) of the statutes first applies to
2 determinations issued under section 108.09 of the statutes on the effective date of
3 this subsection.

4 (3) The treatment of section 108.133 (4) (c) of the statutes first applies with
5 respect to submissions made by employing units under section 108.133 (4) (a) of the
6 statutes on the effective date of this subsection.

7 (4) The treatment of section 108.22 (1m) of the statutes first applies to amounts
8 that first become due or that are determined to be owed on the effective date of this
9 subsection.

10 (5) The treatment of section 108.22 (9) of the statutes first applies to
11 determinations of personal liability under section 108.22 (9) of the statutes issued
12 under section 108.10 of the statutes on the effective date of this subsection.

13 **SECTION 73. Effective dates.** This act takes effect on the first Sunday after
14 publication, except as follows:

15 (1) The treatment of sections 108.05 (3) (d) and 108.133 (4) (c) of the statutes
16 and SECTION 72 (2) and (3) of this act take effect on January 7, 2018, or on the first
17 Sunday after publication, whichever occurs later.

18 (2) The treatment of sections 108.04 (8) (b) and 108.133 (1) (a) and (ag), (2)
19 (intro.), (a) 1., 2., 3., 4., and 5. and (b), (3) (a), (b), (c), and (d), and (4) (a) of the statutes
20 takes effect on the date that a rule promulgated by the department of workforce
21 development that is based on scope statement 046-17 takes effect, or on the first day
22 of the 36th month beginning after publication, whichever occurs first.

23

(END)

115TH CONGRESS
1ST SESSION

H. R. 2031

To amend title II of the Social Security Act to prevent concurrent receipt of unemployment benefits and Social Security disability insurance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2017

Mr. SAM JOHNSON of Texas (for himself, Mr. TIBERI, Mr. SMITH of Nebraska, Mr. KELLY of Pennsylvania, Mr. RENACCI, and Mr. REED) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend title II of the Social Security Act to prevent concurrent receipt of unemployment benefits and Social Security disability insurance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Social Security Dis-
5 ability Insurance and Unemployment Benefits Double Dip
6 Elimination Act”.

1 **SEC. 2. DISQUALIFICATION ON RECEIPT OF DISABILITY IN-**
2 **SURANCE BENEFITS IN A MONTH FOR WHICH**
3 **UNEMPLOYMENT COMPENSATION IS RE-**
4 **CEIVED.**

5 (a) IN GENERAL.—Section 223(d)(4) of the Social
6 Security Act (42 U.S.C. 423(d)(4)) is amended by adding
7 at the end the following:

8 “(D)(i) If for any week ending within a month an
9 individual is paid unemployment compensation, such indi-
10 vidual shall be deemed to have engaged in substantial
11 gainful activity for such month.

12 “(ii) For purposes of clause (i), the term ‘unemploy-
13 ment compensation’ means—

14 “(I) ‘regular compensation’, ‘extended com-
15 pensation’, and ‘additional compensation’ (as such
16 terms are defined by section 205 of the Federal-
17 State Extended Unemployment Compensation Act
18 (26 U.S.C. 3304 note)); and

19 “(II) trade readjustment allowance under title
20 II of the Trade Act of 1974 (19 U.S.C. 2251 et
21 seq.).”.

22 (b) TRIAL WORK PERIOD.—Section 222(c) of the So-
23 cial Security Act (42 U.S.C. 422(c)) is amended by adding
24 at the end the following:

25 “(6)(A) For purposes of this subsection, an individual
26 shall be deemed to have rendered services in a month if

1 the individual is paid unemployment compensation for any
2 week ending within such month.

3 “(B) For purposes of subparagraph (A), the term
4 ‘unemployment compensation’ means—

5 “(i) ‘regular compensation’, ‘extended com-
6 pensation’, and ‘additional compensation’ (as such
7 terms are defined by section 205 of the Federal-
8 State Extended Unemployment Compensation Act
9 (26 U.S.C. 3304 note)); and

10 “(ii) trade readjustment allowance under title II
11 of the Trade Act of 1974 (19 U.S.C. 2251 et
12 seq.).”.

13 (c) DATA MATCHING.—The Commissioner of Social
14 Security shall implement the amendments made by this
15 section using appropriate electronic data.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to individuals who ini-
18 tially apply for disability insurance benefits on or after
19 January 1, 2019 and are paid unemployment compensa-
20 tion for any week ending on or after January 1, 2019.

○

115TH CONGRESS
1ST SESSION

H. R. 3330

To amend title III of the Social Security Act to permit States to conduct substance abuse risk assessments and targeted drug testing as a condition for the receipt of unemployment benefits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2017

Mr. CARTER of Georgia (for himself, Mr. ALLEN, Mr. CHABOT, Mr. COLE, Mr. ROUZER, Mr. AUSTIN SCOTT of Georgia, Mr. JODY B. HICE of Georgia, Mr. BABIN, and Mr. BLUM) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title III of the Social Security Act to permit States to conduct substance abuse risk assessments and targeted drug testing as a condition for the receipt of unemployment benefits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Quality in
5 the Unemployment Insurance Program (EQUIP) Act”.

1 **SEC. 2. DRUG SCREENING MADE A CONDITION OF BENEFIT**
2 **RECEIPT.**

3 (a) IN GENERAL.—Section 303(l) of the Social Secu-
4 rity Act (42 U.S.C. 503(l)) is amended to read as follows:

5 “(l)(1) Nothing in this Act or any other provision of
6 Federal law shall be considered to prevent a State from
7 enacting legislation to provide for testing an applicant for
8 unemployment compensation for the unlawful use of con-
9 trolled substances as a condition for receiving such com-
10 pensation, including legislation that provides for the fol-
11 lowing procedures:

12 “(A) No regular compensation may be paid to
13 an applicant for such compensation with respect to
14 a benefit year unless, before the receipt of any such
15 compensation—

16 “(i) the applicant has completed a sub-
17 stance abuse risk assessment for such benefit
18 year; and

19 “(ii) subject to subparagraph (B), if the
20 State determines based on the results of such
21 assessment that the applicant is a high-risk ap-
22 plicant, not later than 1 week after the results
23 of the assessment are determined, the applicant
24 tests negative for controlled substances.

25 “(B) If a high-risk applicant tests positive for
26 any controlled substance—

1 “(i) if such test result is the first positive
2 test result for such applicant in the benefit
3 year—

4 “(I) no regular compensation may be
5 paid to such applicant for a period of 30
6 days beginning on the date that such test
7 result is determined; and

8 “(II) no regular compensation may be
9 paid to such applicant during the remain-
10 der of such benefit year unless the appli-
11 cant tests negative for controlled sub-
12 stances at the end of such period; and

13 “(ii) if such test result is not the first posi-
14 tive test result for such applicant in the benefit
15 year, no regular compensation may be paid to
16 such applicant during the remainder of such
17 benefit year.

18 “(C) A high-risk applicant receiving benefits
19 with respect to a benefit year shall be subject to
20 testing for controlled substances by the State at any
21 time during the benefit year, with limited notice pro-
22 vided to the applicant of such testing.

23 “(D) A high-risk applicant who is tested for
24 controlled substances under—

1 “(i) subparagraph (A) or (C) shall be re-
2 sponsible for the cost of such test if the indi-
3 vidual tests positive for any such substance; and

4 “(ii) subparagraph (B)(i)(II) shall be re-
5 sponsible for the cost of such test.

6 “(2) For purposes of this subsection—

7 “(A) the term ‘benefit year’ means the benefit
8 year as defined in the applicable State law;

9 “(B) the term ‘controlled substance’—

10 “(i) means a drug or other substance se-
11 lected by the State to be included in drug test-
12 ing under this subsection; and

13 “(ii) does not include any drug or other
14 substance used by the applicant pursuant to a
15 valid prescription or as otherwise authorized by
16 law;

17 “(C) the term ‘high-risk applicant’, with respect
18 to a benefit year, means an individual who is deter-
19 mined by the State to have a high risk of substance
20 abuse based on the results of a substance abuse risk
21 assessment administered under paragraph (1)(A)(i);
22 and

23 “(D) the term ‘substance abuse risk assess-
24 ment’ means a screening instrument, approved by
25 the Director of the National Institutes of Health, de-

1 signed to determine whether an individual has a
2 high risk of substance abuse.”.

3 (b) NO MERIT STAFFING REQUIREMENTS.—Section
4 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1))
5 shall not be construed in such a manner as to apply the
6 merit staffing requirements in section 900.603 of title 5,
7 Code of Federal Regulations, as in effect on October 1,
8 2011, to the implementation of section 303(l) of such Act
9 (as amended by subsection (a)).

10 (c) FUNDING FOR SUBSTANCE ABUSE TESTING.—

11 (1) FUNDING FROM IPAB.—Section 1899A(m)
12 of the Social Security Act (42 U.S.C. 1395kkk(m))
13 is amended—

14 (A) in paragraph (1), in the matter pre-
15 ceding subparagraph (A), by striking “to the
16 Board to carry” and inserting “for the purposes
17 of carrying out section 303(l), and, if any funds
18 remain in the fiscal year involved, for the Board
19 for the purpose of carrying”; and

20 (B) by striking paragraph (2).

21 (2) FUNDING FROM THE CO-OP PROGRAM.—
22 Section 1322(g) of the Patient Protection and Af-
23 fordable Care Act (42 U.S.C. 18042(g)) is amended
24 by striking “to carry out this section” and inserting
25 “to carry out section 303(l) of the Social Security

1 Act, to the extent funds are necessary to carry out
2 such section after the application of section
3 1899A(m)(1) of such Act”.

○

To: Unemployment Insurance Advisory Council

From: Andy Rubsam

CC: Janell Knutson, Chair

Date: September 21, 2017

Re: *DWD v. LIRC and Morse et al.* (Court of Appeals District 1)

Three claimants received monthly Social Security disability payments. The Department determined that the claimants were ineligible for benefits for each week in the month that the claimants received the SSDI payments. The claimants appealed and the appeal tribunals reversed the determinations. The appeal tribunals, *applying LIRC's prior interpretation of the 2013 SSDI disqualification statute*, held that the claimants were only ineligible for the *single week of the month* in which the claimants received an SSDI check. The Department sought LIRC review.

LIRC affirmed the appeal tribunals in two cases. The Department appealed those cases, among other similar cases LIRC decided, to the Circuit Court. The Circuit Court reversed and held that the claimants were ineligible for benefits for *each week in a month* in which the claimants received their SSDI payments.

In the third case, LIRC reversed the appeal tribunal after the Circuit Court had reversed LIRC's decisions in other cases that a claimant is ineligible only for the single week in which they receive a monthly Social Security disability payment.

In all three cases, two on remand from Circuit Court and one where LIRC reversed the appeal tribunal, LIRC waived the department's statutory right to recover the overpaid benefits while offering little explanation of the reason for doing so.

On the department's appeal to the circuit court, LIRC argued that its waiver of the overpayments was proper because the appeal tribunal decisions allowing benefits were "departmental error" because the appeal tribunal (and LIRC) had misinterpreted the law. The department argued that the overpayments should not be waived under ss. 108.02(10e)(am)1. and 108.22(8)(c)2 because reversal of the appeal tribunal's interpretation of the statute, without more, is insufficient grounds for waiver. The department also argued that the interpretation of the SSDI disqualification was, according to the courts that had reviewed the decisions, reasonable, though not the most reasonable, interpretation of the statute. The Circuit Court affirmed LIRC's decision that waived the overpayments.

The Department appealed to the Court of Appeals. The Court of Appeals, giving due weight to LIRC's interpretation of the statutes at issue, affirmed LIRC's decisions waiving recovery of the overpayments. The Court of Appeals held that the department's interpretation of the waiver statute is not more reasonable than LIRC's interpretation. And, the Court of Appeals held that, because ALJs are department employees, LIRC correctly determined that the ALJs' error in determining that the SSDI claimants were eligible for unemployment benefits constituted "departmental error."

Notably, for the cases in which the ALJs correctly found the claimants were ineligible for benefits for each week in the month that the claimant received SSDI, LIRC reversed the ALJs and the department appealed and won, the overpayments were *not* waived.

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP2066

Cir. Ct. Nos. 2015CV9946
2016CV0135
2016CV1085

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,

PLAINTIFF-APPELLANT,

v.

**WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION AND KENTON
MORSE,**

DEFENDANTS-RESPONDENTS,

RITEWAY BUS SERVICE, INC.,

DEFENDANT.

**WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,
PLAINTIFF-APPELLANT,**

v.

**WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION,
DEFENDANT-RESPONDENT,**

**KEVIN LUCEY, JOHN DOE NUMBER 1, JOHN DOE NUMBER 2, JOHN
DOE NUMBER 3, JOHN DOE NUMBER 4 AND COMPO STEEL PRODUCTS,
INC.,**

DEFENDANTS.

**WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,
PLAINTIFF-APPELLANT,**

v.

**WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION,
DEFENDANT-RESPONDENT,**

**BENNY NELMS, BOYS & GIRLS CLUB OF GREATER MILWAUKEE, INC.
AND MILWAUKEE PUBLIC SCHOOLS,**

DEFENDANTS.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN J. DIMOTTO, Judge. *Affirmed.*

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 KESSLER, J. The Department of Workforce Development (DWD) appeals a circuit court decision affirming the Labor and Industry Review Commission’s (LIRC) decision waiving DWD’s recovery of erroneously paid unemployment benefits to three claimants. LIRC found, and the circuit court upheld, that pursuant to WIS. STAT. § 108.22(8)(c) (2015-16),¹ the overpayment involved no fault of the claimants and was the result of a departmental error. We affirm.

BACKGROUND

¶2 Kenton Morse, Benny Nelms, and Kevin Lucey were disabled workers who received social security disability benefits (SSDI). When they became unemployed, they applied for unemployment insurance benefits. SSDI payments are paid on a monthly basis, while unemployment benefits are paid on a weekly basis. All three claimants were initially determined by DWD to be ineligible for benefits under WIS. STAT. § 108.04(12)(f)1. (2013-14), which provided, as relevant:

(12) PREVENTION OF DUPLICATE PAYMENTS.

....

Any individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter.

To avoid confusion, we refer hereafter to § 108.04(12)(f)1. (2013-14) as the “eligibility statute.”

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶3 The three claimants appealed DWD's initial determination to the department's appeals tribunal. The appeals tribunal, relying on LIRC's prior interpretation of the eligibility statute, reversed the DWD's initial determination, finding that the eligibility statute only prohibited claimants from receiving unemployment insurance benefits in the same week of each month in which the claimants actually received their monthly SSDI benefit. DWD appealed all three cases to LIRC.

¶4 LIRC affirmed the appeals tribunal as to Morse and Nelms, but its decisions were set aside by the circuit court. The circuit court determined that under the eligibility statute, a claimant is ineligible for benefits in every week of any month during which he or she receives SSDI benefits. Morse's and Nelms' cases were remanded to LIRC. On remand, LIRC declared Morse and Nelms ineligible for benefits, but found that pursuant to WIS. STAT. § 108.22(8)(c), DWD was not entitled to recover any overpayments made to Morse and Nelms. By DWD's calculations, Morse received an overpayment in the amount of \$1213 and Nelms received an overpayment in the amount of \$2554.

¶5 By the time the DWD's appeal of Lucey's case was before LIRC, the circuit court had already reversed LIRC's decisions as to Morse and Nelms. LIRC therefore reversed the appeals tribunal as to Lucey and concluded that the eligibility statute states that a claimant is ineligible for benefits in every week of any month in which the claimant receives SSDI benefits. LIRC then addressed the issue of whether DWD was entitled to recover any overpayment made to Lucey. By DWD's calculation, Lucey received an overpayment in the amount of \$2619. LIRC determined that pursuant to WIS. STAT. § 108.22(8)(c), DWD waived the ability to recovery any such overpayment.

¶6 WISCONSIN STAT. § 108.22(8)(c) describes certain circumstances warranting the waiver of overpayment recovery:

1. [T]he department *shall* waive recovery of benefits that were erroneously paid if:
 - a. The overpayment were a result of department error; and
 - b. The overpayment *did not result ...because of a claimant's false statement or misrepresentation.*
2. *If a determination or decision issued [under the benefit claims procedure in § 108.09] is amended, modified or reversed by an appeal tribunal, the commission or any court, that action shall not be treated as establishing a departmental error* for purposes of subd. 1. a.

(Emphasis added.) “Departmental error” is defined by WIS. STAT. § 108.02(10e)(am)1. as including errors made by DWD in paying benefits resulting from a “misinterpretation of the law.” *See id.* In essence, LIRC waived recovery of the overpayments as to all three claimants, concluding that the appeals tribunal and LIRC followed an erroneous interpretation of the eligibility statute, which resulted in the overpayments; thus, the overpayments were a result of departmental error and occurred through no fault of the claimants.

¶7 DWD sought judicial review of LIRC’s decisions waiving DWD’s ability to recover the overpayments. The circuit court affirmed LIRC’s determinations. This appeal follows.

DISCUSSION

¶8 Our review of unemployment insurance cases is governed by WIS. STAT. § 102.23, which applies to unemployment insurance decisions under WIS. STAT. § 108.09(7). We review LIRC’s decision, not that of the circuit court, *see Virginia Surety Co., Inc. v. LIRC*, 2002 WI App 277, ¶11, 258 Wis. 2d 665,

654 N.W.2d 306, although benefiting from the circuit court’s analysis. *See Heritage Mutual Ins. Co. v. Larsen*, 2001 WI 30, ¶25 n.13, 242 Wis. 2d 47, 624 N.W.2d 129. Statutory interpretation is a question of law that we review independently of the circuit court. *See Bank Mutual v. S.J. Boyer Constr. Inc.*, 2010 WI 74, ¶21, 326 Wis. 2d 521, 785 N.W.2d 462.

¶9 The material facts here are not disputed; this appeal involves only a determination of law. The legal issue before us is whether LIRC properly concluded that the appeals tribunal had misinterpreted the eligibility statute, resulting in a DWD error as defined by statute and requiring waiver of DWD’s recovery of the benefits it overpaid to certain SSDI recipients.

¶10 “While DWD is the agency charged with administering the unemployment insurance program, LIRC handles all appeals of unemployment insurance claims and has final review authority of DWD’s interpretations.” *DWD v. LIRC*, 2017 WI App 29, ¶8, 375 Wis. 2d 183, 895 N.W.2d 77. “Where deference to an agency decision is appropriate, we are to accord that deference to LIRC, not to the [DWD].” *Id.* (citation omitted; brackets in original).

¶11 “There are three levels of deference applicable to administrative agency interpretations: great weight, due weight, and *de novo* review.” *Id.*, ¶9 (italics added). “Great weight deference, the highest level of deference, is appropriate when ‘(1) the agency is charged by the legislature with administering the statute at issue; (2) the interpretation of the statute is one of longstanding; (3) the agency employed its expertise or specialized knowledge in forming the interpretation; and (4) the agency’s interpretation will provide uniformity in the application of the statute.’” *Id.* (citation omitted). “Due weight deference applies ‘when an agency has some experience in the area but has not developed the

expertise that necessarily places it in a better position than a court to interpret and apply a statute.” *Id.* (citation omitted). “*De novo* review is applied if the ‘issue before the agency is one of first impression or when an agency’s position on an issue provides no real guidance.’” *Id.* (citation omitted; italics added).

¶12 The parties dispute the appropriate level of deference we are to afford LIRC’s determination. LIRC contends that its decision is entitled to “great weight” deference because it has extensive experience in administering the unemployment insurance law generally, as well as WIS. STAT. §§ 108.22(8) and 108.02(10e) (provisions involving waiver of recovery of erroneously-paid benefits). DWD contends that LIRC is not entitled to any deference, arguing that “the interpretation LIRC employed in this case is neither longstanding nor the product of any expertise or specialized knowledge” because “LIRC’s decision waiving recovery of the overpayments in this case cannot reasonably be reconciled with its prior decisions interpreting and applying the waiver statutes.”

¶13 We conclude that due weight deference is appropriate here. LIRC has limited experience in interpreting “misinterpretations” due to departmental error in this context. Although LIRC has interpreted the statute requiring waiver of recovery of benefit payments, LIRC points to only two administrative decisions which involve the “misinterpretation” language. Both were decided by LIRC on April 24, 2015.² In both cases, the appeals tribunal had relied on an earlier LIRC interpretation of a statute. In both cases, a court ultimately concluded that LIRC’s interpretation of a statute was incorrect and remanded the case for further proceedings consistent with the court’s holdings. In the remand proceedings,

² See *Webster v. County of Milwaukee*, UI Hearing No. 12603521MW (LIRC April 24, 2015), and *Carrington-Field v. County of Milwaukee*, UI Hearing No. 12600610MW (LIRC April 24, 2015).

LIRC concluded the appeals tribunal misinterpreted the statute, and LIRC waived recovery of overpayments.

¶14 DWD raises multiple issues on appeal. First, DWD argues that LIRC based its findings of departmental error on the decisions of the circuit court, as prohibited by WIS. STAT. § 108.22(8)(c)2. DWD also argues that § 108.22(8)(c) does not permit LIRC to waive recovery of overpayments where DWD had a reasonable basis for erroneously allowing benefits. Finally, DWD argues that neither LIRC’s explanation of its decision, nor the circuit court’s analysis, is adequate to sustain LIRC’s decision and that this court should adopt DWD’s more reasonable interpretation of “misinterpretation” due to “departmental error.”

I. Circuit Court Decisions

¶15 DWD contends that after the circuit court reversed LIRC’s multiple decisions which misinterpreted the eligibility statute as prohibiting claimants from receiving unemployment benefits only in the same week as the week in which they received monthly SSDI benefits, LIRC then treated the circuit court decisions as an establishment of departmental error in violation of WIS. STAT. § 108.22(8)(c)2. DWD is mistaken.

¶16 WISCONSIN STAT. § 108.22(8)(c)2., the waiver limitation statute, states:

If a determination or decision issued under s. 108.09 is amended, modified or *reversed* by an appeal tribunal, the commission or *any court, that action shall not be treated as establishing a departmental error* for purposes of subd. 1. a.

(Emphasis added.) “Departmental error” is defined by WIS. STAT. § 108.02(10e)(am)1., as material here:

“Departmental error” means an error made by the department in computing or paying benefits which results *exclusively* from:

1. A mathematical mistake, miscalculation, *misapplication* or *misinterpretation of the law* or mistake of evidentiary fact, whether by commission or omission

¶17 The legal issue before us depends on an interpretation of WIS. STAT. § 108.02(8)(c)2. DWD argues that prior decisions establish that LIRC “was prohibited by statute from treating the circuit courts’ reversals of the [department] decisions as establishing a departmental error.” DWD’s premise is based on the large number of cases it cites³ which involved factual errors in the application (“misapplication”) of the law. Those cases are not helpful here where the court is the ultimate authority on a question of law and the issue turns solely on the meaning of the statute itself.

¶18 After remand from the circuit court, LIRC’s decisions here did *not* find that the circuit court reversals automatically created a departmental error. Rather, in each case, LIRC found as a fact that the departmental error was caused by the appeals tribunal and LIRC both getting the law wrong:

The *overpayment was the result of the ALJ and the commission’s misinterpretation of the law* when they concluded that the claimant was eligible for UI benefits in

³ In its brief to this court, DWD directs us to *Johnson v. Marten Transport LTD*, UI Hearing No. 03202095MD (LIRC Feb. 20, 2004), available at <http://lirc.wisconsin.gov/ucdecsns/1870.htm>; *Noriega v. Wisconsin Power & Light Co.*, UI Hearing No. 04003600MD (LIRC April 15, 2005), available at <http://lirc.wisconsin.gov/ucdecsns/2260.htm>; *Welsh v. Dental Associates*, UI Hearing No. 04608404MW (LIRC Nov. 17, 2004), available at <http://lirc.wisconsin.gov/ucdecsns/2124.htm>; and *Mueller v. Exel Logistics, Inc.*, UI Hearing No. 5607073R (LIRC Feb. 8, 2006), available at <http://lirc.wisconsin.gov/ucdecsns/2470.htm>.

the week he did not actually receive his SSDI payment. *The ALJ's misinterpretation of the law constitutes departmental error* within the meaning of WIS. STAT. § 108.02(10e). The overpayment did not result from the fault of the claimant. Therefore, the overpayment is waived pursuant to WIS. STAT. § 108.22(8)(a)and(c).

(Emphasis added.)

¶19 DWD employs administrative law judges (ALJs) who, under statute, are employees of the department. *See* WIS. STAT. § 108.09(3). Thus, LIRC's finding that both the department and the commission misinterpreted the eligibility statute is the basis for LIRC's ultimate finding that both entities caused a departmental error under WIS. STAT. § 108.02(10e). As a result of that error, the statutes required waiver of recovery of overpayments.

¶20 If we interpret DWD's argument to mean that LIRC cannot consider circuit court decisions on statutory interpretation, even when that court reverses LIRC's interpretation of a statute, then the effect of DWD's argument would prevent LIRC from changing prior legal interpretations regardless of potential consequences. Were we to adopt DWD's argument, we would eviscerate the statutes which guarantee unemployment claimants the right to judicial review by appeal to a court. *See* WIS. STAT. § 102.23. We would also vanquish the undisputed recognition by the highest court in this country of the ultimate authority of the courts to interpret the law.⁴ We decline to engage in such a slash and burn attack on centuries of established law.

⁴ Article III of the United States Constitution vests the judiciary with the authority to interpret the law. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

II. “Reasonable” Misinterpretation

¶21 DWD contends that LIRC’s decisions “waiving recovery of overpayments demonstrate that a departmental error is a misapplication or misinterpretation of law without a reasonable basis.” DWD contends that if we grant LIRC’s decisions “due weight” deference, then we must consider whether DWD’s interpretation of the waiver statute is more reasonable than LIRC’s interpretation. That is the appropriate test for reasonableness. *See DWD*, 375 Wis. 2d 183, ¶11 (“When employing due weight deference, we uphold the agency’s interpretation and application as long as it is reasonable and another interpretation is not more reasonable.”) (citation omitted).

¶22 DWD’s argument is that it should be permitted to recover the overpayments if there was a reasonable basis for DWD’s mistake. In essence, DWD contends that a departmental error stemming from a misinterpretation of law should not preclude overpayment recovery if the misinterpretation was reasonable.

¶23 As stated, WIS. STAT. § 108.02(10e)(am)1. defines “[d]epartmental error,” in part, as follows: “A mathematical mistake, miscalculation, misapplication or misinterpretation of the law or mistake of evidentiary fact, whether by commission or omission.” Nowhere in the statute do the words “reasonable” or “unreasonable” appear. We may not add words to the statute’s text. Words excluded from a statutory text must be presumed to have been excluded for a purpose. *Heritage Farms, Inc. v. Markel Ins. Co.*, 2009 WI 27, ¶14 & n.9, 316 Wis. 2d 47, 762 NW 2d 652. “One of the maxims of statutory construction is that courts should not add words to a statute to give it a certain meaning.” *Fond Du Lac Cty. v. Town of Rosendale*, 149 Wis. 2d 326, 334,

440 N.W.2d 818 (Ct. App. 1989). We deduce the legislature’s intent from the words it has chosen. *See id.* at 332. We reject DWD’s invitation to add additional requirements to these existing statutes. The legislature did not choose to insert adjectives such as “reasonable” or “unreasonable” or “longstanding” to limit the statutory terms “misapplication or misinterpretation of the law.” We have no power to insert what the legislature chose to omit.

¶24 Even if we did have such power, we would not exercise it here. First, we see no benefit to the claimants, DWD, LIRC, or the courts, in imposing DWD’s proposed “reasonable misinterpretation” exception to the waiver statute. Such an addition would result in additional litigation about whether an interpretation, though pronounced an error of law by a court, was still “reasonable.” Such a debate would inevitably cause unnecessary and unproductive expenditure of agency and judicial resources. It is a court’s job to interpret statutes. *See Ott v. Peppertree Resort Villas, Inc.*, 2006 WI App 77, ¶11, 292 Wis. 2d 173, 716 N.W.2d 127 (describing what a court must do when interpreting statutes). Courts should not be drawn into collateral litigation about whether a wrong interpretation was nonetheless “reasonable.” One person’s “reasonable” (e.g., an agency that wants its money back to pay other benefits) can be another person’s “absurd” (e.g., an unemployed claimant who really needed the money, did not misrepresent anything, was entitled to the benefits under the prevailing statute interpretation, and spent it before the court decision). DWD’s approach, if adopted, would produce the opposite of the certainty and predictability that the administrative system of unemployment benefits was designed to produce. We cannot conclude that DWD offers a more reasonable interpretation of WIS. STAT. § 108.02(10e)(am)1. than LIRC. *See DWD*, 375 Wis. 2d 183, ¶11.

¶25 Accordingly, we also reject DWD’s argument that neither LIRC’s nor the circuit court’s decisions provide adequate reasoning for sustaining LIRC’s decision waiving DWD’s ability to recover overpayments to the three claimants at issue.

By the Court—Order affirmed.

Recommended for publication in the official reports.

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Scott Walker, Governor
Raymond Allen, Secretary

September 21, 2017

Dear Members of the Unemployment Insurance Advisory Council:

Current law authorizes a 0.01% assessment of employers for program integrity efforts, to be offset by a corresponding reduction in the solvency tax. The Council and Legislature approved this law provision in 2016 to help maintain funding for anti-fraud and other program integrity efforts.

The law requires the Secretary of the Department to consult with the Council before directing the 0.01% to the Program Integrity Fund and to consider the balance of the Unemployment Insurance Trust Fund. The notice of assessment must be published by November 30 of each year for the assessment to be effective on January 1 of the following year.

In light of the need for continued funding of program integrity efforts and the large balance in the Trust Fund, I **recommend that the Department invest the 0.01% assessment into the Program Integrity Fund.** This will allow us to continue all current program integrity efforts without raising employer taxes in 2018.

In making this recommendation, I considered the following:

- The amount that would be generated for the Program Integrity Fund from this assessment is projected to be \$3.1 million for the year. This represents over 4% of the total UI operating budget;
- The projected Trust Fund balance at the end of 2018 is \$1.2 to \$1.6 billion. The projected assessment amount represents less than 0.4% of this balance;
- There are no economic forecasts that predict a significant economic downturn any time in 2018; and,
- The March 2017 fraud report showed that fraudulent activity dropped in 2016 both in terms of real dollars and as a percentage of claims – UI fraud claims in 2016 dropped by 35.3%. Our efforts are working.

The Department intends to continue placing a priority on program integrity and anti-fraud efforts. To this end, I believe the use of the 0.01% assessment to fund integrity efforts continues to be warranted.

As previously stated, the Department will use these funds to continue existing program integrity efforts. These include, but are not limited to, fraud investigation efforts, worker classification enforcement, identity verification and cross-matching efforts, and investigation and prosecution of criminal UI fraud.

Program integrity efforts help ensure that benefits are paid only to eligible claimants and that UI taxes are accurately assessed and paid by employers. The end result is a healthy Trust Fund.

I would appreciate your continued support for this proposal and am happy to answer any questions you may have. Thank you for your consideration and, as always, thank you for your service to the Department and the citizens of Wisconsin.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Allen", written over a horizontal line.

Ray Allen
Secretary