



## Unemployment Insurance Advisory Council

### Meeting Agenda

February 17, 2022, 10:00 a.m.

#### The public may attend by teleconference:

Phone: 415-655-0003 or 855-282-6330 (toll free) or [WebEx](#)  
Meeting number (access code): 2593 713 1645 Password: DWD1

Materials: <https://dwd.wisconsin.gov/uibola/uiac/meetings.htm>

1. Call to order and introductions
2. Approval of minutes of the Oct. 21, 2021 and Jan. 20, 2022 UIAC meetings
3. Department update
4. Trust Fund update
5. Judicial update
  - *Friendly Vill. Nursing & Rehab, LLC v. Dep't of Workforce Dev.*, 2022 WI 4.
6. Legislation update
  - Various changes to the unemployment insurance law (UIAC "Policy" Bill) ([AB 910](#) / [SB 897](#))
  - Various changes to the unemployment insurance law and making an appropriation (UIAC "Appropriations" Bill) ([SB 899](#))
  - Classification of motor vehicle operators as independent contractors or employees. ([AB 691](#) / [SB 703](#))
  - Various changes to the unemployment insurance law, a grant program for hiring qualified long-term unemployment recipients, allocation of federal American Rescue Plan Act of 2021 funding for certain purposes, the state plan under the federal Workforce Innovation and Opportunity Act of 2014, federal Reemployment Services and Eligibility Assessment grants, employment outcome data reporting, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority. ([AB 883](#) / [SB 914](#))

<https://dwd.wisconsin.gov/uibola/uiac/>

- The amount of benefits received under the unemployment insurance law. ([AB 937](#) / [SB 906](#))
- Various changes to the unemployment insurance law, requiring an audit to be conducted by the Legislative Audit Bureau, requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits, and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes. ([AB 938](#) / [SB 932](#))
- Various changes to the unemployment insurance law. ([AB 939](#) / [SB 911](#))

7. Rulemaking update

- [Emergency Rule 2125](#), DWD ch. 102, 113 & 123 (Eff. 10/3/21 – 3/1/22)
  - Protecting Wisconsin employers from the adverse financial effects of COVID-19
- Proposed Permanent Rule, DWD ch. 100-150 ([CR 22-010](#))
  - Converting references from Standard Industrial Classification codes to the North American Industry Classification System codes; and other minor technical changes to the unemployment insurance program
  - Public Hearing: February 24, 2022 at 10:00 am by [Webex](#)

8. Research requests

9. Future meeting dates: March 17, 2022; April 21, 2022; May 19, 2022

10. Adjourn

**Notice**

- ❖ The Council may take up action items at a time other than that listed.
- ❖ The Council may not address all agenda items or follow the agenda order. The Council may discuss other items, including those on any attached lists.
- ❖ The Council members may attend the meeting by teleconference.
- ❖ The employee or employer representative members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items listed in this agenda, under Wis. Stat. § 19.85(1)(ee). The Council may then reconvene again in open session after the closed session.
- ❖ This location is accessible to people with disabilities. If you need an accommodation, including an interpreter or information in an alternate format, please contact the UI Division Bureau of Legal Affairs at 608-266-0399 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, Madison, WI

October 21, 2021

Held Via Teleconference Due to Public Health Emergency

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

**Members:** Janell Knutson (Chair), Scott Manley, David Bohl, Susan Quam, Shane Griesbach, Terry Hayden, Dennis Delie, and Sally Feistel.

**Department Staff:** Mark Reihl, Andrew Rubsam, Jim Moe, Danielle Williams (Assistant Deputy Secretary), Jennifer Wakerhauser (Chief Legal Counsel), Pam James, Jason Schunk, Linda Hendrickson, Samantha Ahrendt (Staff Counsel), Maegan Evans, and Joe Brockman.

**Members of the Public:** Keri Routhieaux, Anita Krasno (General Counsel, Labor and Industry Review Commission) and Victor Forberger (Attorney, Wisconsin UI Clinic).

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:05 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

### 2. Approval of Minutes

Motion by Mr. Hayden, second by Mr. Manley, to approve the minutes of the September 16, 2021, meeting without correction. The vote was taken by roll call and passed unanimously.

### 3. Department Update

Mr. Reihl announced that this meeting would be his last before retiring. Mr. Reihl stated that he provided notice and would be leaving the Unemployment Insurance Division in early November. Mr. Reihl stated it had been a privilege to serve on the Council, thanked its members for their hard work, and wished them the best in their future deliberations.

Following Mr. Reihl's statement, many members thanked Mr. Reihl for his service and wished him the best in his retirement.

### 4. Trust Fund Update

Ms. Knutson stated that Tom McHugh will not give his usual report this month. A summary document is included in members' packets. Ms. Knutson stated that the Trust Fund balance as of

October 9<sup>th</sup> was \$936 million. Ms. Knutson also stated that Mr. McHugh would share more information, including reserve fund highlights, at the next meeting.

## **5. Rulemaking Update**

Ms. Knutson stated there are two emergency rules currently in effect:

Emergency Rule 2118. DWD Ch.102 (Eff. 6/29/21 – 11/25/21):

Employer contribution rates for 2022. This rule is in effect until November 25, 2021.

Emergency Rule 2125. DWD Ch. 102, 113 & 114 (Eff. 10/03/21 – 3/2/22):

Protecting Wisconsin employers from the adverse financial effects of COVID-19. The rule will be in effect until March 2, 2022. A public hearing was held on Tuesday for that emergency rule.

## **6. Preliminary Draft of UIAC Agreed-Upon Bill**

Mr. Rubsam stated the draft was the same as last meeting and was included in the packet. Mr. Rubsam asked whether there were any questions on the draft bill, or on the chart that explains the draft, which was included in the packet.

Mr. Hayden stated he did not have any questions but proposed that the Labor members meet briefly in closed caucus for a final discussion with Labor before approving the draft bill.

Mr. Manley agreed that the same opportunity would be desired by Management and stated that Mr. Gotzler would hopefully be able to join their caucus.

## **7. Department Proposals for the Wisconsin Unemployment Insurance Law**

Ms. Knutson stated the Department proposals that have not yet acted upon are included.

## **8. Labor Proposals for the Wisconsin Unemployment Insurance Law**

Ms. Knutson stated that the Labor proposals that have not been acted upon are included.

## **9. Management Proposals for the Wisconsin Unemployment Insurance Law**

Ms. Knutson stated that the Management proposals that have not been acted upon are included.

## **10. Research Requests**

Ms. Knutson stated there were no new research requests at the last meeting, but that it would remain an agenda item in case of new research requests.

## **11. Future Meeting Dates**

Ms. Knutson stated that the dates of the next two meetings are November 18, 2021 and December 16, 2021; however, if the Council can complete work on the agreed bill today, it

would be up to the Council whether to hold these meetings. Ms. Knutson stated that if the agreed bill is done, usually the Council tries not to have a December meeting to give the Council a break. If the November meeting is needed, one can be scheduled.

Mr. Hayden moved, second by Mr. Manley, that the Council convene in closed caucus to deliberate the items on the agenda and report back. The vote was taken by roll call and passed unanimously.

The Council convened in closed caucus at 10:17 am.

The public portion of the meeting recessed at 10:17 am.

The Council reconvened in open session at 11:08 am.

Sally Feistel joined the meeting. Mr. Gotzler was not available for the meeting.

Mr. Hayden stated that in caucus Labor decided to move forward with the bill draft as presented. Mr. Hayden stated there were no concerns from Labor. Mr. Hayden moved, second by Mr. Manley, to approve the bill draft. The vote was taken by roll call and passed unanimously.

Ms. Knutson stated that the department will prepare the bill for introduction in the Legislature. Ms. Knutson thanked the Council members for their hard work on the agreed bill.

Mr. Manley stated that unless there is an issue with the agreed bill between now and the end of the year, Management preferred that the Council not meet in November and December and focus on the Legislature and getting the bill scheduled for hearing in the Senate and Assembly. Mr. Manley stated that he would be willing to testify in support of the bill.

Mr. Hayden agreed that Labor was fine with not meeting in November and December. Mr. Hayden stated that he would be willing to testify in support of the bill as well.

Ms. Knutson asked members to keep the November and December dates on their schedules in case something comes up with the bill.

## **12. Adjourn**

Motion by Mr. Manley, second by Mr. Hayden, to adjourn the meeting. The vote was taken by voice vote and passed unanimously. The meeting was adjourned at 11:17 am.

# UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

## Meeting Minutes

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

January 20, 2022

Held Via Teleconference Due to Public Health Emergency

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

**Members:** Janell Knutson (Chair), Dennis Delie, Sally Feistel, Mike Gotzler, Shane Griesbach, Terry Hayden, Susan Quam and Kathy Thornton-Bias. ,

**Department Staff:** James Chiolino, Andrew Rubsam, Jason Schunk, Jim Moe, Linda Hendrickson, Maegan Evans, Janet Sausen, Mary Jan Rosenak, Danielle Williams (Assistant Deputy Secretary), Jennifer Wakerhauser (Chief Legal Counsel), Caitlin Madden (Deputy Legal Counsel), Samantha Ahrendt (Staff Counsel), and Joe Brockman

**Members of the Public:** Keri Routhieaux (Legislative Audit Bureau), Anita Krasno (General Counsel, Labor and Industry Review Commission), Jeff Shampo (Staff Attorney, LIRC), Brenda Lewison, David Lopnow, BJ Dernbach (office of Representative Warren Petryk) and Victor Forberger (Attorney, Wisconsin UI Clinic)

### 1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council to order at 10:03 am under the Wisconsin Open Meetings Law. Attendance was taken by roll call, and Ms. Knutson acknowledged the department staff in attendance.

Ms. Knutson introduced Mr. Chiolino to the Council. Mr. Chiolino provided his background to the Council.

Ms. Knutson introduced Kathy Thornton-Bias, the newest member of the Council. Ms. Thornton-Bias provided her background to the Council.

### 2. Approval of Minutes

Approval of the minutes from the October 21, 2021, meeting was deferred to the February 2022 meeting.

### 3. Department Update

Mr. Chiolino stated that Director Pamela James retired on December 11, 2021, and that Director Tom McHugh retired on January 10, 2022.

Mr. Chiolino stated there were 10,226 regular initial claims filed for week three of 2022 as compared to 16,977 for the same week in 2021.

Mr. Chiolino stated there were 45,317 weekly claims filed for week three of 2022 as compared to 103,969 for the same week in 2021.

Mr. Chiolino stated that 56.79% of separation related issues have been adjudicated in a timely manner. For non-separation related issues, 72.69% have been adjudicated in a timely manner.

Mr. Chiolino stated that that the Bureau of Legal Affairs received 778 appeals in week three of 2022 and disposed of 1,468 appeals.

#### **4. Correspondence**

Ms. Knutson directed Council members' attention to a letter in their packets from Ms. Barbara Santiago. Ms. Santiago's letter expressed her concern that the Job Center in Fond du Lac was only open virtually and by phone. Ms. Santiago wrote that callers to the Fond du Lac Job Center were being referred to the Fond du Lac Public Library.

Ms. Knutson stated that DPI announced a federal grant that provides funding for public libraries to develop workforce related materials, along with resume and application assistance to job seekers. Ms. Knutson provided the hyperlink to the DPI press release.

#### **5. Trust Fund Update**

Ms. Knutson stated that the financial report is found on page 8 of members' packets. Ms. Knutson stated that preliminary numbers for 2021 are also in the packets. The Trust Fund balance as of December 31, 2022, was \$1.1 billion.

#### **6. Legislation Update**

##### Classification of motor vehicle operators as independent contractors or employees (AB 691 / SB 703)

Ms. Knutson stated that Representative John Spiros was unable to attend today's meeting, and he asked that Council members review the bill and provide any comments.

Mr. Rubsam described the current law. Mr. Rubsam stated that this bill, for the purposes of Unemployment Insurance, Workers Compensation, the minimum wage law, income and franchise tax, and wage claims, provides that if the operator of a motor vehicle for a motor carrier deploys, implements, or uses a motor carrier safety improvement it is not evidence that the operator is an employee rather than an independent contractor. This bill applies to all drivers of motor vehicles in employment.

Mr. Griesbach asked about the type of employer to which this bill applies. Mr. Rubsam stated that this bill applies to anyone who drives a motor vehicle for work purposes.

Ms. Thornton-Bias asked for clarification on whether driving must be the whole job for the worker or just part of the job. Mr. Rubsam stated that it is anyone who drives a motor vehicle for work.

Mr. Hayden asked for an example of safety equipment covered under the bill. Mr. Rubsam stated that bill states that it is anything used to facilitate safety. Mr. Rubsam stated that this could include lane departure sensors or adaptive cruise control.

## **7. Rulemaking Update**

Ms. Knutson stated that there are two emergency rules currently in effect:

Emergency Rule 2125, DWD Ch. 102, 113 & 123 (Eff. 10/03/21 – 3/2/22):

Protecting Wisconsin employers from the adverse financial effects of COVID-19. Ms. Knutson stated that this emergency rule will be in effect until March 2, 2022.

Proposed Permanent Rule, DWD Ch 100-150

Ms. Knutson stated that this proposed rule will convert references from Standard Industrial Classification (SIC) codes to the North American Industry Classification System (NAICS) codes. Ms. Knutson stated that this proposed rule also contains other minor technical changes. Ms. Knutson requested Council members' approval of the rule draft at today's meeting

Mr. Rubsam referred Council members to page 19 of their packets, provided a brief overview of the rule change, and stated that the codes have not been updated since 1987.

Proposed Permanent Rule, LIRC Ch. 1 (CR 21-105)

Ms. Knutson introduced LIRC attorneys Anita Krasno and Jeff Shampo to the Council.

Mr. Shampo stated that this is a procedural rule for cases before LIRC. This rule addresses changes that have occurred in the statutes since 2006. The proposed rule involves petitions for review from Unemployment Insurance, Equal Rights, and Workers Compensation administrative decisions. It adds review authority in UI cases from UI ALJ decisions regarding worker classification cases and false statements made in attempts to obtain benefits, and Workers Compensation cases heard by ALJ's involving certain duty disability claims involving certain municipalities. The number of days to file an answer to a petition for review is reduced from 21 to 14. The rules from four chapters are combined into one chapter. The scope statement has been approved. There is a public hearing on the rule on Wednesday, January 26, 2022, at 9:00 am.

## **8. UIAC Agreed-Upon Bill Drafts**

Ms. Knutson stated that the agreed upon bill has not been introduced by the Legislature. The bill draft has been split into two separate bills per the preference of legislators: the first for policy items and the second for appropriations. Ms. Knutson stated that the Department would like Council approval on the bill drafts today.

The Council then briefly recessed and no business was discussed during the recess.

Ms. Quam moved that the Council convene in closed caucus to deliberate the bill drafts, rule draft and other items on the agenda and report back. The motion was seconded by Mr. Delie. The vote was taken by roll call and passed unanimously.

The Council convened in closed caucus at 10:58 am.

The Council reconvened in open session at 11:39 am.

Motion by Mr. Hayden, second by Ms. Quam, to approve the draft of the Proposed Permanent Rule, DWD Ch. 100-150. The vote was taken by roll call and passed unanimously.

Motion by Mr. Hayden, second by Ms. Quam, to approve the agreed upon bill drafts. The vote was taken by roll call and passed unanimously.

### **9. Research Requests**

Ms. Knutson stated that there were no research requests.

### **10. Future Meeting Dates**

Ms. Knutson stated that the dates of the next two meetings are February 17, 2022, and March 17, 2022.

### **11. Adjourn**

Motion by Mr. Hayden, second by Ms. Thornton-Bias, to adjourn the meeting. The vote was taken by voice vote and passed unanimously. The meeting was adjourned at 11:45am.

## UI Reserve Fund Highlights

February 17, 2022

- Benefit payments for 2021 declined by \$947.9 million or 65.4% when compared to benefits paid in 2020.

<b>Benefits Paid</b>	<b>2021</b> <i>(in millions)</i>	<b>2020</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Regular UI Paid	\$502.2	\$1,450.1	(\$947.9)	(65.4%)

- Tax receipts in 2021 declined by \$36.4 million or 7.3% when compared to taxes paid in 2020. Since both tax years were rated in Schedule D, the difference in taxes paid is a result of improvement of individual employers' tax rates. Federal and state programs relieved employers of the impact of pandemic related unemployment.

<b>Tax Receipts</b>	<b>2021</b> <i>(in millions)</i>	<b>2020</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Tax Receipts	\$463.5	\$499.9	(\$36.4)	(7.3%)

- The 2021 Trust Fund ending balance was over \$1 billion, a decrease of 3.2% when compared to the end of last year.

<b>UI Trust Fund Balance</b>	December <b>2021</b> <i>(in millions)</i>	December <b>2020</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Trust Fund Balance	\$1,014.2	\$1,047.5	(\$33.3)	(3.2%)

- Interest earned on the Trust Fund is received quarterly. Interest for 2021 was \$20.4 million compared to \$37.9 million for 2020. The U.S. Treasury annualized interest rate for this quarter is 1.6%.

<b>UI Trust Fund Interest</b>	<b>2021</b> <i>(in millions)</i>	<b>2020</b> <i>(in millions)</i>	<b>Change</b> <i>(in millions)</i>	<b>Change</b> <i>(in percent)</i>
Total Interest Earned	\$20.4	\$37.9	(\$17.5)	(46.2%)

Based on the December 31, 2021 Financial Statements.

# FINANCIAL STATEMENTS

For the Month Ended December 31, 2021



Unemployment Insurance Division

Bureau of Tax and Accounting

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
BALANCE SHEET  
FOR THE MONTH ENDED December 31, 2021

<u>ASSETS</u>	<u>CURRENT YEAR</u>	<u>PRIOR YEAR</u>
<b>CASH:</b>		
U.I. CONTRIBUTION ACCOUNT	(1,241,162.15)	(213,283.10)
U.I. BENEFIT ACCOUNTS	83,791.64	(8,368.06)
U.I. TRUST FUND ACCOUNTS (1) (2) (3)	<u>1,122,691,172.76</u>	<u>1,132,490,430.13</u>
TOTAL CASH	<u>1,121,533,802.25</u>	<u>1,132,268,778.97</u>
<b>ACCOUNTS RECEIVABLE:</b>		
BENEFIT OVERPAYMENT RECEIVABLES	194,127,492.11	92,946,799.93
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(42,199,987.92)</u>	<u>(29,325,687.50)</u>
NET BENEFIT OVERPAYMENT RECEIVABLES	151,927,504.19	63,621,112.43
TAXABLE EMPLOYER RFB & SOLVENCY RECEIV (5) (6)	30,995,440.92	27,923,151.56
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS (4)	<u>(14,675,704.27)</u>	<u>(16,028,871.47)</u>
NET TAXABLE EMPLOYER RFB & SOLVENCY RECEIV	16,319,736.65	11,894,280.09
OTHER EMPLOYER RECEIVABLES	89,772,322.85	62,726,747.78
LESS ALLOWANCE FOR DOUBTFUL ACCOUNTS	<u>(8,039,960.21)</u>	<u>(8,864,372.83)</u>
NET OTHER EMPLOYER RECEIVABLES	81,732,362.64	53,862,374.95
TOTAL ACCOUNTS RECEIVABLE	<u>249,979,603.48</u>	<u>129,377,767.47</u>
TOTAL ASSETS	<u><u>1,371,513,405.73</u></u>	<u><u>1,261,646,546.44</u></u>
<b><u>LIABILITIES AND EQUITY</u></b>		
<b>LIABILITIES:</b>		
CONTINGENT LIABILITIES (7)	121,920,223.99	50,850,028.98
OTHER LIABILITIES	143,671,984.37	14,588,058.76
FEDERAL BENEFIT PROGRAMS	(2,744,436.45)	205,684.92
CHILD SUPPORT HOLDING ACCOUNT	9,457.00	36,633.00
FEDERAL WITHHOLDING TAXES DUE	74,410.00	358,146.00
STATE WITHHOLDING TAXES DUE	2,932,081.48	23,766,442.48
DUE TO OTHER GOVERNMENTS (8)	<u>331,747.41</u>	<u>349,118.77</u>
TOTAL LIABILITIES	266,195,467.80	90,154,112.91
<b>EQUITY:</b>		
RESERVE FUND BALANCE	2,575,721,804.36	1,621,371,969.13
BALANCING ACCOUNT	<u>(1,470,403,866.43)</u>	<u>(449,879,535.60)</u>
TOTAL EQUITY	<u>1,105,317,937.93</u>	<u>1,171,492,433.53</u>
TOTAL LIABILITIES AND EQUITY	<u><u>1,371,513,405.73</u></u>	<u><u>1,261,646,546.44</u></u>

1. \$20,221,257 of this balance is for administration purposes and is not available to pay benefits.
2. \$1,429,129 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.
3. \$13,629,290 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.
4. The allowance for uncollectible benefit overpayments is 34.0%. The allowance for uncollectible delinquent employer taxes is 44.0%. This is based on the historical collectibility of our receivables. This method of recognizing receivable balances is in accordance with generally accepted accounting principles.
5. The remaining tax due at the end of the current month for employers utilizing the 1st quarter deferral plan is \$209,821. Deferrals for the prior year were \$347,618.
6. \$15,163,069, or 48.9%, of this balance is estimated.
7. \$102,297,948 of this balance is net benefit overpayments which, when collected, will be credited to a reimbursable or federal program. \$19,622,276 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.
8. This balance includes SAFI Payable of \$3,961. The 12/31/2021 balance of the Unemployment Interest Payment Fund (DWD Fund 214) is \$51,933. Total Life-to-date transfers from DWD Fund 214 to the Unemployment Program Integrity Fund (DWD Fund 298) were \$9,501,460.

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RESERVE FUND ANALYSIS  
FOR THE MONTH ENDED December 31, 2021

	<u>CURRENT ACTIVITY</u>	<u>YTD ACTIVITY</u>	<u>PRIOR YTD</u>
BALANCE AT BEGINNING OF MONTH/YEAR:			
U.I. TAXABLE ACCOUNTS	2,346,920,393.52	2,067,917,022.31	2,909,863,506.12
BALANCING ACCOUNT	<u>(1,238,933,117.38)</u>	<u>(896,424,588.78)</u>	<u>(916,159,078.07)</u>
TOTAL BALANCE	1,107,987,276.14	1,171,492,433.53	1,993,704,428.05
<b>INCREASES:</b>			
TAX RECEIPTS/RFB PAID	1,088,950.60	328,747,102.28	360,088,162.88
ACCRUED REVENUES	(485,679.12)	6,717,136.39	832,959.29
SOLVENCY PAID	215,191.04	134,736,675.60	139,784,444.46
FORFEITURES	0.00	9,765.00	103,553.72
BENEFIT CONCEALMENT INCOME	39,951.96	535,577.00	473,552.68
INTEREST EARNED ON TRUST FUND	4,343,729.30	20,423,182.43	37,924,093.24
FUTA TAX CREDITS	0.00	9,611.50	5,484.10
OTHER CHANGES	<u>(42,351.78)</u>	<u>37,717,267.36</u>	<u>88,700,297.85</u>
TOTAL INCREASES	5,159,792.00	528,896,317.56	627,912,548.22
<b>DECREASES:</b>			
TAXABLE EMPLOYER DISBURSEMENTS	(678,143,761.42)	(645,158,011.68)	1,206,322,491.65
QUIT NONCHARGE BENEFITS	(126,691,263.48)	(102,268,549.71)	202,406,464.21
OTHER DECREASES	34,664,464.84	93,157,103.92	925,134.03
OTHER NONCHARGE BENEFITS	<u>777,999,690.27</u>	<u>1,249,340,270.63</u>	<u>40,470,452.85</u>
TOTAL DECREASES	7,829,130.21	595,070,813.16	1,450,124,542.74
BALANCE AT END OF MONTH/YEAR:			
RESERVE FUND BALANCE	2,575,721,804.36	2,575,721,804.36	1,621,371,969.13
BALANCING ACCOUNT	<u>(1,470,403,866.43)</u>	<u>(1,470,403,866.43)</u>	<u>(449,879,535.60)</u>
TOTAL BALANCE (9) (10) (11) (12)	<u>1,105,317,937.93</u>	<u>1,105,317,937.93</u>	<u>1,171,492,433.53</u>

9. This balance differs from the cash balance related to taxable employers of \$1,048,002,601 because of non-cash accrual items.

10. \$20,221,257 of this balance is set up in the Trust Fund in three subaccounts to be used for administration purposes and is not available to pay benefits.

11. \$1,429,129 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

12. \$13,629,290 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

**DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
RECEIPTS AND DISBURSEMENTS STATEMENT  
FOR THE MONTH ENDED 12/31/2021**

<u>RECEIPTS</u>	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE</u>	<u>PRIOR YEAR TO DATE</u>
TAX RECEIPTS/RFB	\$1,088,950.60	\$328,747,102.28	\$360,088,162.88
SOLVENCY	215,191.04	134,736,675.60	139,784,444.46
ADMINISTRATIVE FEE	14.82	621.17	551.45
ADMINISTRATIVE FEE - PROGRAM INTEGRITY	4,615.64	3,333,312.67	3,204,106.56
UNUSED CREDITS	(17,545,360.72)	(37,018,919.18)	1,317,713.68
GOVERNMENTAL UNITS	9,680,545.98	38,309,817.21	60,614,887.81
NONPROFITS	8,176,451.89	47,234,959.70	64,292,005.96
REDA PAID	0.00	0.00	0.00
INTERSTATE CLAIMS (CWC)	624,312.36	10,749,650.50	10,563,958.20
ERROR SUSPENSE	(12,100.52)	6,987.59	8,279.15
FEDERAL PROGRAMS RECEIPTS	71,732,422.20	1,885,526,685.24	3,186,710,169.44
OVERPAYMENT COLLECTIONS	2,320,413.32	40,130,650.99	32,429,860.10
FORFEITURES	0.00	9,765.00	103,553.72
BENEFIT CONCEALMENT INCOME	39,951.96	535,577.00	473,552.68
EMPLOYER REFUNDS	(4,157,785.36)	(9,166,851.06)	(5,114,236.95)
COURT COSTS	16,237.51	311,859.51	331,772.27
INTEREST & PENALTY	255,305.28	3,629,650.35	3,507,964.80
CARD PAYMENT SERVICE FEE	1,612.64	27,552.53	20,156.29
BENEFIT CONCEALMENT PENALTY-PROGRAM INTEGRITY	41,569.06	773,227.35	745,861.75
MISCLASSIFIED EMPLOYEE PENALTY-PROG INTEGRITY	500.00	20,445.29	6,964.07
LEVY NONCOMPLIANCE PENALTY-PROGRAM INTEGRITY	1,044.92	31,165.17	16,620.27
SPECIAL ASSESSMENT FOR INTEREST	2,186.89	17,605.64	22,727.01
LOST WAGES ASSISTANCE (LWA) ADMIN	60,301.49	426,199.38	0.00
EMERGENCY ADMIN GRANT-EUISAA 2020	0.00	0.00	18,914,772.00
EMERGENCY UC RELIEF (EUR)	0.00	32,452,349.00	68,861,234.00
INTEREST EARNED ON U.I. TRUST FUND BALANCE	4,343,729.30	20,423,182.43	37,924,093.24
MISCELLANEOUS	9,137.55	99,490.16	297,684.39
TOTAL RECEIPTS	<u>\$76,899,247.85</u>	<u>\$2,501,348,761.52</u>	<u>\$3,985,126,859.23</u>
<b><u>DISBURSEMENTS</u></b>			
CHARGES TO TAXABLE EMPLOYERS	(\$675,592,915.85)	(\$588,959,081.50)	\$1,241,014,838.61
NONPROFIT CLAIMANTS	(32,192,147.14)	(69,369,413.75)	84,150,160.97
GOVERNMENTAL CLAIMANTS	(36,772,891.19)	(56,980,428.32)	71,961,247.77
INTERSTATE CLAIMS (CWC)	75,326.48	5,613,057.85	13,914,753.47
QUITS	(126,691,263.48)	(102,268,549.71)	202,406,464.21
OTHER NON-CHARGE BENEFITS	807,141,170.51	1,317,227,630.31	39,220,048.73
CLOSED EMPLOYERS	(50,421.92)	(146,923.75)	(209,189.64)
FEDERAL PROGRAMS			
FEDERAL EMPLOYEES (UCFE)	223,651.01	3,532,315.34	2,892,936.00
EX-MILITARY (UCX)	43,627.82	1,071,131.11	1,805,829.06
TRADE ALLOWANCE (TRA/TRA-NAFTA)	156,676.00	378,948.76	828,146.24
DISASTER UNEMPLOYMENT (DUA)	0.00	0.00	0.00
WORK-SHARE (STC)	17,561,908.84	19,930,740.18	0.00
FEDERAL PANDEMIC UC (FPUC)	4,894,663.29	1,241,676,455.54	2,599,907,302.77
LOST WAGES ASSISTANCE \$300 ADD-ON (LWA)	488,791.02	13,219,657.24	217,358,690.95
MIXED EARNERS UC (MEUC)	4,200.00	520,600.00	0.00
PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA)	1,049,695.57	153,479,629.08	194,771,210.56
PANDEMIC EMERGENCY UC (PEUC)	1,564,160.85	379,915,518.93	165,675,656.50
PANDEMIC FIRST WEEK (PFW)	46,776,119.30	72,282,110.93	0.00
EMER UC RELIEF REIMB EMPL (EUR)	34,666,434.51	87,600,048.09	84,245.20
2003 TEMPORARY EMERGENCY UI (TEUC)	(129.19)	(7,564.38)	(20,432.93)
FEDERAL ADD'L COMPENSATION \$25 ADD-ON (FAC)	(6,245.84)	(164,562.74)	(187,296.33)
FEDERAL EMERGENCY UI (EUC)	(89,169.56)	(1,436,798.30)	(1,789,426.11)
FEDERAL EXTENDED BENEFITS (EB)	16,423.08	4,072,897.26	5,353,090.34
FEDERAL EMPLOYEES EXTENDED BEN (UCFE EB)	(5,447.33)	18,679.25	7,455.87
FEDERAL EX-MILITARY EXTENDED BEN (UCX EB)	(65.89)	4,445.94	(1,022.13)
INTERSTATE CLAIMS EXTENDED BENEFITS (CWC EB)	(70,379.56)	(7,112.70)	4,890.93
INTEREST & PENALTY	398,803.59	3,541,964.85	3,564,597.87
CARD PAYMENT SERVICE FEE TRANSFER	1,698.43	29,178.04	18,981.04
PROGRAM INTEGRITY	48,145.99	4,847,949.35	4,007,130.61
SPECIAL ASSESSMENT FOR INTEREST	0.00	18,866.74	24,409.12
COURT COSTS	14,520.21	321,574.03	348,807.77
ADMINISTRATIVE FEE TRANSFER	87.25	661.82	635.60
LOST WAGES ASSISTANCE (LWA) ADMIN TRANSFER	60,301.49	426,199.38	0.00
FEDERAL WITHHOLDING	84,992.84	283,736.00	(201,348.06)
STATE WITHHOLDING	(951,561.35)	20,834,361.00	(22,025,059.23)
REED ACT & ARRA SPECIAL ADMIN EXPENDITURES	0.00	585,427.87	0.00
FEDERAL LOAN REPAYMENTS	0.00	(9,611.50)	(5,484.10)
TOTAL DISBURSEMENTS	<u>\$42,848,759.78</u>	<u>\$2,512,083,738.24</u>	<u>\$4,824,882,271.66</u>
NET INCREASE(DECREASE)	<u>34,050,488.07</u>	<u>(10,734,976.72)</u>	<u>(839,755,412.43)</u>
BALANCE AT BEGINNING OF MONTH/YEAR	\$1,087,483,314.18	\$1,132,268,778.97	\$1,972,024,191.40
BALANCE AT END OF MONTH/YEAR	<u>\$1,121,533,802.25</u>	<u>\$1,121,533,802.25</u>	<u>\$1,132,268,778.97</u>

DEPARTMENT OF WORKFORCE DEVELOPMENT  
U.I. TREASURER'S REPORT  
CASH ANALYSIS  
FOR THE MONTH ENDED December 31, 2021

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BEGINNING U.I. CASH BALANCE	\$1,050,420,360.05	\$1,137,108,896.48	\$1,960,524,402.01
INCREASES:			
TAX RECEIPTS/RFB PAID	1,088,950.60	328,747,102.28	360,088,162.88
U.I. PAYMENTS CREDITED TO SURPLUS	(21,308.66)	152,146,598.69	228,701,248.45
INTEREST EARNED ON TRUST FUND	4,343,729.30	20,423,182.43	37,924,093.24
FUTA TAX CREDITS	0.00	9,611.50	5,484.10
TOTAL INCREASE IN CASH	<u>5,411,371.24</u>	<u>501,326,494.90</u>	<u>626,718,988.67</u>
TOTAL CASH AVAILABLE	<u>1,055,831,731.29</u>	<u>1,638,435,391.38</u>	<u>2,587,243,390.68</u>
DECREASES:			
TAXABLE EMPLOYER DISBURSEMENTS	(678,143,761.42)	(645,158,011.68)	1,206,322,491.65
BENEFITS CHARGED TO SURPLUS	<u>651,306,457.12</u>	<u>1,147,405,326.02</u>	<u>243,727,757.35</u>
TOTAL BENEFITS PAID DURING PERIOD	<u>(26,837,304.30)</u>	<u>502,247,314.34</u>	<u>1,450,050,249.00</u>
REED ACT EXPENDITURES	0.00	585,427.87	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	<u>34,666,434.51</u>	<u>87,600,048.09</u>	<u>84,245.20</u>
ENDING U.I. CASH BALANCE (13) (14) (15) (16) (17)	<u><u>1,048,002,601.08</u></u>	<u><u>1,048,002,601.08</u></u>	<u><u>1,137,108,896.48</u></u>

13. \$1,021,900 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.

14. \$284,585 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.

15. \$18,914,772 of this balance was set up in 2020 in the Trust Fund as an Emergency Admin Grant (EUISAA) subaccount to be used for administration of the Unemployment Compensation Program and is not available to pay benefits.

16. \$1,429,129 of this balance is the remaining amount set aside for charging of benefits financed by Reimbursable Employers in cases of Identity Theft.

17. \$13,629,290 of this balance is Emergency Unemployment Compensation Relief (EUR) reserved exclusively for funding 50% of the benefits paid for Reimbursable Employers for UI Weeks 12/20-14/21 and 75% of the benefits paid for reimbursable employers for UI Weeks 15/21-36/21 per 2103 of the CARES Act, the Continued Assistance Act, and the American Rescue Act.

BUREAU OF TAX AND ACCOUNTING  
U.I. TREASURER'S REPORT  
BALANCING ACCT SUMMARY  
FOR THE MONTH ENDED December 31, 2021

	<u>CURRENT ACTIVITY</u>	<u>YEAR TO DATE ACTIVITY</u>	<u>PRIOR YTD ACTIVITY</u>
BALANCE AT THE BEGINNING OF THE MONTH/YEAR	(\$846,059,816.34)	(\$484,263,072.65)	(\$503,517,440.13)
INCREASES:			
U.I. PAYMENTS CREDITED TO SURPLUS:			
SOLVENCY PAID	215,191.04	134,736,675.60	139,784,444.46
FORFEITURES	0.00	9,765.00	103,553.72
OTHER INCREASES	<u>(236,499.70)</u>	<u>17,400,158.09</u>	<u>88,813,250.27</u>
U.I. PAYMENTS CREDITED TO SURPLUS SUBTOTAL	(21,308.66)	152,146,598.69	228,701,248.45
TRANSFERS BETWEEN SURPLUS ACCTS (18)	(8,915.95)	19,555,278.73	(3,564,455.76)
INTEREST EARNED ON TRUST FUND	4,343,729.30	20,423,182.43	37,924,093.24
FUTA TAX CREDITS	<u>0.00</u>	<u>9,611.50</u>	<u>5,484.10</u>
TOTAL INCREASES	4,313,504.69	192,134,671.35	263,066,370.03
DECREASES:			
BENEFITS CHARGED TO SURPLUS:			
QUITS	(126,691,263.48)	(102,268,549.71)	202,406,464.21
OTHER NON-CHARGE BENEFITS	<u>777,997,720.60</u>	<u>1,249,673,875.73</u>	<u>41,321,293.14</u>
BENEFITS CHARGED TO SURPLUS SUBTOTAL	651,306,457.12	1,147,405,326.02	243,727,757.35
REED ACT EXPENDITURES	0.00	585,427.87	0.00
EMER UC RELIEF REIMB EMPL EXPENDITURES	<u>34,666,434.51</u>	<u>87,600,048.09</u>	<u>84,245.20</u>
BALANCE AT THE END OF THE MONTH/YEAR	<u>(1,527,719,203.28)</u>	<u>(1,527,719,203.28)</u>	<u>(484,263,072.65)</u>

18. The 10% writeoff for 2021 was \$4.7 million and is included in this balance. The 10% writeoff shifts employer benefit charges to the balancing account. The 10% writeoff has no effect on receivable balances.

**SUPREME COURT OF WISCONSIN**

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CASE No. : 2020AP520

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COMPLETE TITLE: Friendly Village Nursing and Rehab, LLC and  
Friendly Village Healthcare Center,  
Plaintiffs-Appellants-Petitioners,  
v.  
State of Wisconsin Department of Workforce  
Development and State of Wisconsin Labor and  
Industry Review Commission,  
Defendants-Respondents,  
v.  
Rhineland Healthcare Operator 150, LLC,  
Defendant.

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REVIEW OF DECISION OF THE COURT OF APPEALS  
Reported at 395 Wis. 2d 701,954 N.W.2d 392  
PDC No:2021 WI App 9 - Published

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OPINION FILED: January 26, 2022  
SUBMITTED ON BRIEFS:  
ORAL ARGUMENT: October 25, 2021

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SOURCE OF APPEAL:  
COURT: Circuit  
COUNTY: Oneida  
JUDGE: Michael H. Bloom

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JUSTICES:  
DALLET, J., delivered the majority opinion of the Court, in  
which ANN WALSH BRADLEY, HAGEDORN, and KAROFSKY, JJ., joined.  
ROGGENSACK, J., filed a dissenting opinion, in which ZIEGLER,  
C.J., and REBECCA GRASSL BRADLEY, J., joined.  
NOT PARTICIPATING:

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ATTORNEYS:

For the plaintiffs-appellants-petitioners, there were briefs  
filed by *Alon Stein* and *Stein Law Offices*, Des Plaines, Illinois.  
There was an oral argument *Alon Stein*.

For the defendants-respondents, there was a brief filed by *Ryan X. Farrell* and *The Department of Workforce Development*; with whom on the brief was *Kim T. Castelaz* and *The Labor and Industry Review Commission*. There was oral argument by *Ryan X. Farrell*.

2022 WI 4

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2020AP520  
(L.C. 2019CV121)  
No.

STATE OF WISCONSIN

:

IN SUPREME COURT

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**Friendly Village Nursing and Rehab, LLC and  
Friendly Village Healthcare Center,**

**Plaintiffs-Appellants-Petitioners,**

**v.**

**State of Wisconsin Department of Workforce  
Development and State of Wisconsin Labor and  
Industry Review Commission,**

**Defendants-Respondents,**

**v.**

**Rhineland Healthcare Operator 150, LLC,**

**Defendant.**

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**FILED**

**JAN 26, 2022**

Sheila T. Reiff  
Clerk of Supreme  
Court

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DALLET, J., delivered the majority opinion of the Court, in which ANN WALSH BRADLEY, HAGEDORN, and KAROFSKY, JJ., joined. ROGGENSACK, J., filed a dissenting opinion, in which ZIEGLER, C.J., and REBECCA GRASSL BRADLEY, J., joined.

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REVIEW of a decision of the court of appeals. *Affirmed.*

¶1 REBECCA FRANK DALLET, J. After purchasing Friendly Village Nursing and Rehab, Eden Senior Care<sup>1</sup> untimely filed its application with the Department of Workforce Development to succeed the unemployment insurance account of Friendly Village's previous owner. This was a potentially costly mistake, because successors generally pay lower rates for unemployment insurance than non-successors. See generally Wis. Stat. § 108.18 (2019-20).<sup>2</sup> Eden's mistake was not necessarily fatal if it was "a result of excusable neglect." See § 108.16(8)(b)4. The Labor and Industry Review Commission, however, concluded that the record was insufficient to establish that Eden's application was late because of excusable neglect. Eden challenges that conclusion and claims that the Commission also erred by failing to apply the "interests of justice" factors in its analysis. We disagree. The "interests of justice" factors are not a necessary component of the excusable-neglect analysis under § 108.16(8)(b)4., and Eden has failed to demonstrate excusable neglect for filing its application late.

I

¶2 Eden Senior Care is an Illinois company that purchases and rehabilitates nursing homes. On September 1, 2017, Eden

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<sup>1</sup> Eden Senior Care is the parent company of Friendly Village Nursing and Rehab, LLC. In addition to Friendly Village Nursing and Rehab being the name of one of Eden's subsidiaries, it is also the name of the nursing home at issue here. Therefore, to avoid confusion between Friendly Village the company and Friendly Village the place, we use "Eden" to refer to the company.

<sup>2</sup> All subsequent statutory references are to the 2019-20 version unless otherwise indicated.

purchased its first two nursing homes in Wisconsin, including Friendly Village Nursing and Rehab.<sup>3</sup> The acquisition triggered several statutory requirements, among them registration and reporting of a business transfer. Eden could comply with those two requirements by submitting two Department forms: the Employer Registration Report and the Report of Business Transfer.

¶3 The Employer Registration Report serves several purposes. One purpose is that it provides a means for a business new to Wisconsin to meet the requirement that it register with the Department of Workforce Development. See Wis. Admin. Code § DWD 110.04 (May 2020).<sup>4</sup> Another purpose is that it helps the Department determine whether the business is an "employer" as defined by Wis. Stat. § 108.02(13). If the business is an employer, it is required to contribute to the state's unemployment-insurance fund. See Wis. Stat. §§ 108.16, 108.18.

¶4 Additionally, the Employer Registration Report alerts the Department that the new business is taking over an already existing business, in which case the transferee (the new business) may be eligible to acquire (or succeed) the previous employer's unemployment-account "experience." See § 108.16(8). If the previous employer has a high amount of account experience, then the transferee will likely benefit from succeeding that experience as, generally, the more account experience a business has, the

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<sup>3</sup> Eden also purchased Northpoint Nursing and Rehab; that purchase is not at issue here.

<sup>4</sup> All subsequent references to the Wis. Admin. Code § DWD are to the May 2020 version.

lower its contribution to the unemployment-insurance fund. See § 108.18. The Employer Registration Report, however, does not state those implications directly. The closest it gets is a question that asks whether the new business acquired its "activity from a previous employer," borrowing from the language of § 108.16(8)(a). See § 108.16(8)(a) ("[A] business is deemed transferred if any asset or any activity of an employer . . . is transferred in whole or in part . . ."). In any event, the Employer Registration Report is not part of the statutory requirements for succeeding a previous owner's unemployment-account experience; those requirements are laid out in § 108.16(8)(b)4.<sup>5</sup>

¶5 The second form relevant to Eden's statutory obligations is the Report of Business Transfer. Any time one business is transferred to another, the Department must be notified within 30 days of the transfer, even if both the transferee and transferor have previously operated in the state. See Wis. Stat. § 108.16(8)(k); Wis. Admin. Code § DWD 115.03. Completing and returning the Report of Business Transfer to the Department satisfies this notice requirement. A transferee who wants to acquire the previous employer's unemployment-account experience must file a "written application . . . requesting that it be deemed a successor." See Wis. Stat. § 108.16(8)(b)4. The Report

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<sup>5</sup> All businesses, new to Wisconsin or previously established, are subject to the same requirements for succeeding a prior owner's unemployment-account experience. The Employer Registration Report, however, applies only to businesses new to Wisconsin.

of Business Transfer also satisfies this requirement if the transferee checks a box on the form indicating that "[t]his is [its] application to acquire the account experience of the former owner."<sup>6</sup> The Report of Business Transfer is available online as part of the Department's "Handbook for Employers,"<sup>7</sup> which includes detailed instructions for how to fill out the form, as well as how to contact the Department with any questions.

¶6 Although the Employer Registration Report and the Report of Business Transfer serve different purposes, there is one relevant connection between them. In the Employer Registration Report, when a new business answers "yes" to the question "Did you acquire this activity from a previous employer?," the Department typically contacts the business and alerts it to the Report of Business Transfer. There is no statutory requirement, however, that the Department do so. See generally Wis. Stat. § 108.16(8); Wis. Admin. Code § DWD ch. 115. Rather, the statutes place compliance with all registration and application requirements squarely on businesses. See Wis. Stat. § 108.16(8)(b)4., (k); Wis. Admin. Code § DWD 115.03.

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<sup>6</sup> Although reporting a transfer is required—both generally and to acquire the previous employer's unemployment-account experience—using the Report of Business Transfer is not. Under Wis. Stat. § 108.16(8)(k) and Wis. Admin. Code § DWD 115.03, parties are required only to "notify the [D]epartment in writing." As for applying to acquire a previous employer's unemployment-account experience, Wis. Stat. § 108.16(8)(b)4. similarly requires transferees to submit only a "written application."

<sup>7</sup> <https://dwd.wisconsin.gov/ui201/t6201.htm>.

¶7 Here, Eden directed its Senior Business Analyst—a 22-year-old with bachelor's degrees in communications and biology—to complete the Employer Registration Report in early August 2017. In response to the question "Did you acquire this activity from a previous employer?" the analyst answered "no." That response meant that the Department did not contact Eden regarding the Report of Business Transfer since, as far as the Department knew, Eden was not involved in a business transfer.<sup>8</sup>

¶8 Eden filed its Report of Business Transfer on March 13, 2018,<sup>9</sup> and indicated that it was using that form as its application to succeed the previous employer's unemployment-account experience. The application was roughly six weeks late, as Eden's September 1, 2017 acquisition date set its application due date as January 31, 2018. Eden traces its untimely application to the Department's failure to contact it regarding the Report of Business Transfer. That failure, Eden says, was caused by its analyst's "misunderstanding" of the question on the Employer Registration Report regarding whether it had acquired an "activity" from a previous employer.

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<sup>8</sup> The dissent asserts that Eden notified the Department of the business transfer in August 2017 via the Employer Registration Report. But by answering "no" to whether it acquired a previous employer's activity, Eden notified the Department that there was no transfer.

<sup>9</sup> Both Eden and Friendly Village's previous owner signed the Report of Business Transfer, thereby notifying the Department of the transfer. Both were late in doing so, however, because the notice was due no later than October 1, 2017. See Wis. Stat. § 108.16(8)(k) (requiring notice to the Department within 30 days of the transfer).

¶9 According to Eden, it was not until February 2018 that it learned it even had the option to acquire the prior owner's unemployment-account experience. After filing its successorship application in mid-March, Eden emailed the Department, explaining that its application was late due to an "error in completing our initial DWD account application," adding that it was "new to the Wisconsin operations space and [was] not familiar with how the [unemployment-insurance] process worked." The Department found that Eden's explanation did not amount to excusable neglect and therefore it rejected the application.<sup>10</sup>

¶10 Eden appealed to an administrative law judge. After a hearing at which only the Department employee who handled Eden's application and Eden's corporate manager testified, the ALJ reversed the Department's determination. The ALJ concluded that Eden had moved quickly to remedy its mistake and that Eden had not acted in bad faith. The ALJ also noted that accepting Eden's untimely application "served the interests of justice."

¶11 The Department appealed that decision to the Commission, which reversed. The Commission concluded that the record contained insufficient evidence to warrant a finding of excusable neglect. Specifically, it noted that the analyst who filled out the Employer Registration Report did not testify, so there was "no competent

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<sup>10</sup> The Department accepted Eden's untimely successorship application related to Northpoint Nursing and Rehab after determining that certain registration forms were mistakenly mailed to Eden's power of attorney's address rather than its corporate address. The record contains no evidence of a similar problem regarding Friendly Village Nursing and Rehab.

evidence establishing the nature of his error." It explained that, because Eden's central business is acquiring and rehabilitating nursing homes, Eden's failing to be aware of the law regarding registering such business transfers was "less excusable than it otherwise might be," even accounting for the analyst's inexperience. The Commission also concluded that Eden's prompt remedy did "not eliminate the requirement that a dilatory party demonstrate excusable neglect for its initial failure to meet the statutory deadline."

¶12 Eden appealed to the circuit court,<sup>11</sup> arguing that the Commission erred because it failed to consider whether the "interests-of-justice factors"<sup>12</sup> supported a finding of excusable neglect. Eden asserted that in Casper v. American International Southern Insurance Co., 2011 WI 81, 336 Wis. 2d 267, 800 N.W.2d 880, we held that analyzing those factors is a necessary part of every excusable-neglect analysis. The circuit court rejected that argument and affirmed the Commission's determination, as did the court of appeals.

## II

¶13 Our review is limited to the Commission's decision, not the circuit court's or the court of appeals'. Operton v. LIRC, 2017 WI 46, ¶18, 375 Wis. 2d 1, 894 N.W.2d 426. We defer to the

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<sup>11</sup> The Honorable Michael H. Bloom of the Oneida County Circuit Court presided.

<sup>12</sup> See Connor v. Connor, 2001 WI 49, ¶41, 243 Wis. 2d 279, 627 N.W.2d 182.

Commission's findings of fact so long as there is "substantial and credible evidence" to support them, id., but we review its legal conclusions de novo, Wis. Bell, Inc. v. LIRC, 2018 WI 76, ¶29, 382 Wis. 2d 624, 914 N.W.2d 1.

### III

¶14 To qualify as a successor to an acquired business's "unemployment account experience," the transferee must meet two statutory requirements. First, it must establish that a business was, in fact, transferred. Under Wis. Stat. § 108.16(8)(a), a transfer occurs when a business's "asset or activity" is conveyed to another business "by any means, other than in the ordinary course of business." Second, the transferee must satisfy the Department that it meets all four successorship conditions in § 108.16(8)(b): the transferee must continue the transferor's business with generally the same employees, the transfer must have included at least 25 percent of the transferor's total business, the transferee must be subject to certain statutory financing provisions, and it must file a timely successorship application. There is no dispute that Eden is a transferee or that it meets the first three successorship conditions. Our focus is therefore on only the timeliness of Eden's successorship application.

¶15 A timely successorship application is one that the Department receives no later than "the contribution payment due date for the first full quarter following the date of the transfer." § 108.16(8)(b)4. Up to 90 days after that deadline, however, the Department may accept a late application, but only if

"the transferee satisfies the [D]epartment that the application was late as a result of excusable neglect." Id.<sup>13</sup> Here, Eden submitted its application late but within the 90-day post-deadline window. The question is whether its application was late due to excusable neglect.

¶16 The Commission concluded that it was not, and Eden challenges that conclusion on two grounds. It first argues that the Commission applied the wrong law by failing to include the "interests of justice factors" in its excusable-neglect analysis. Eden then argues that the Commission erred in concluding that, as a matter of law, the record evidence was insufficient to show excusable neglect. We address each argument in turn.

A

¶17 Eden argues that the Commission applied the incorrect standard for excusable neglect because the Commission did not consider the "interests-of-justice factors." Eden asserts that our holding in Casper makes those factors part of every excusable-neglect analysis. But this reads too much into Casper and ignores key differences between the text of the statute at issue there (§ 801.15(2)(a)) and the one at issue here (§ 108.16(8)(b)4.).

¶18 In Casper, we considered what a party must show for a circuit court to grant a motion to extend certain filing deadlines

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<sup>13</sup>The legislature added the excusable-neglect provision in 2013. See 2013 Wis. Act 36, § 99. Prior to that amendment, the Department was required to deny all late successorship applications, no matter why they were late. See Wis. Stat. § 108.16(8)(b)4. (2011-12).

under § 801.15(2)(a). 336 Wis. 2d 267, ¶¶34-49. That statute provides that a court may grant such an extension "only on motion for cause shown and upon just terms." § 801.15(2)(a) (emphasis added). When a party moves for an extension after the original deadline has already passed, the court may grant the extension only if it makes the additional finding that the party's "failure to act [before the deadline] was the result of excusable neglect." Id. Therefore, § 801.15(2)(a), by its plain terms, permits a court to grant a motion for an extension that is made after the original filing deadline passes only if it makes two separate findings: (1) granting the extension is "just"; and (2) the party's neglect in failing to file earlier is excusable. See id.; Casper, 336 Wis. 2d 267, ¶¶37-38. Nowhere in Casper did we hold that the interests of justice are part of the excusable-neglect analysis. Rather, we reiterated that they guide part one of the two-part analysis required by the explicit language of § 801.15(2)(a). Casper, 336 Wis. 2d 267, ¶¶35-38; Miller v. Hanover Ins. Co., 2010 WI 75, ¶43, 326 Wis. 2d 640, 785 N.W.2d 493 (explaining that a court may grant a motion to enlarge time under § 801.15(2)(a) "if the circuit court makes a finding of excusable neglect 'and if the interests of justice would be served by the enlargement of time'" (quoting Estate of Otto v. Physicians Ins. Co. of Wis., Inc., 2008 WI 78, ¶114, 311 Wis. 2d 84, 751 N.W.2d 805 (emphasis added))).

¶19 Our analysis of the interests of justice in Casper was rooted in the text of § 801.15(2)(a), which explicitly allows a court to grant relief on "just terms." Other statutes similarly pair "excusable neglect" with notions of justice or equity. For

example, § 806.07(1) allows a court to grant a party relief from judgment "upon such terms as are just" and for reasons including excusable neglect or a finding that applying the judgment is "no longer equitable," as well as "[a]ny other reason[] justifying relief." But § 108.16(8)(b)4. contains no similar language directing the Department to consider just terms, equity, or "other reasons" for relief. Rather, "excusable neglect" is the only justification for the Department's accepting a late successorship application. See § 108.16(8)(b)4. (limiting even this exception to applications submitted fewer than 90 days late).

¶20 Given these differences in the statutory text, we cannot read "excusable neglect" as encompassing other interests-of-justice considerations. See Miller, 326 Wis. 2d 640, ¶¶43-44 (declining to extend to another statute the excusable-neglect requirement in § 801.15(2)(a) because the other statute "does not by its plain language require" such a finding); Village of Elm Grove v. Brefka, 2013 WI 54, ¶¶35-40, 348 Wis. 2d 282, 832 N.W.2d 121. The Commission therefore applied the correct legal standard for excusable neglect.<sup>14</sup>

## B

¶21 Eden's other claim is that the Commission erred in concluding that the record does not demonstrate excusable neglect. We have defined "excusable neglect" as an error that "a reasonably

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<sup>14</sup> Because the interests-of-justice factors are not part of the excusable-neglect analysis under Wis. Stat. § 108.16(8)(b)4., we deny as moot the Commission's motion to strike.

prudent person" would have committed "under the same circumstances." E.g., Hedtcke v. Sentry Ins. Co., 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982).<sup>15</sup> The inquiry is context dependent and requires a showing of something more than ordinary neglect or carelessness. E.g., id.; Casper, 336 Wis. 2d 267, ¶37. A party seeking relief under an excusable-neglect provision must offer a "persuasive explanation" for its mistake by pointing to "specific incidents" that occurred at the time of the mistake. See Hedtcke, 109 Wis. 2d at 473. In assessing a party's explanation, courts may consider the negligent actor's familiarity with the subject matter, as well as the actor's "age, education and experience." Hansher v. Kaishian, 79 Wis. 2d 374, 391-92, 255 N.W.2d 564 (1977). Ultimately, "the analysis in each case is fact specific," with the inquiry turning on a party's reasons or justifications for its negligent conduct as reflected in the record. See Casper, 336 Wis. 2d 267, ¶39.

¶22 In cases where we have held that a party's mistake was due to excusable neglect, the record contained some concrete, non-speculative evidence for why the mistake occurred. For example, excusable neglect includes a foreign corporation untimely filing its answer to a complaint due to reasonable "confusion created by

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<sup>15</sup> Black's Law Dictionary contains a definition of "excusable neglect" that largely mirrors ours. See Neglect-excusable neglect, Black's Law Dictionary (11th ed. 2019) ("A failure—which the law will excuse—to take some proper step at the proper time . . . not because of the party's own carelessness, inattention, or willful disregard . . . but because of some unexpected or unavoidable hindrance or accident . . .").

the interplay between the summons and the notice of service," each of which seemingly set a different date for when the answer was due. See Shirk v. Bowling, Inc., 2001 WI 36, ¶21, 242 Wis. 2d 153, 624 N.W.2d 375. We have also excused a corporation's untimely answer when the record demonstrated that the company had developed certain procedures for handling lawsuits, had followed those procedures, and, "despite its best efforts," its claims specialist had never received the complaint. See Casper, 336 Wis. 2d 267, ¶¶44-45.

¶23 But when the record is silent, or contains only speculation about the reasons for a party's mistake or its failure to take reasonably prudent precautions, there is no basis for the Commission or the court to excuse the party's neglect. For instance, we declined to excuse a defendant's untimely filing of its answer when it claimed it had misunderstood the terms of a "courtesy extension agreement," but the record contained "no notes, confirmation letters, or other documentation" reflecting the alleged misunderstanding. See Connor v. Connor, 2001 WI 49, ¶22, 243 Wis. 2d 279, 627 N.W.2d 182. We have also held that when a party attempts to justify its neglect by pointing to other typical work circumstances, such as the "press of other legal business" or "summer vacations," those reasons are insufficient, absent some additional "extraordinary explanation." See, e.g., Giese v. Giese, 43 Wis. 2d 456, 461-62, 168 N.W.2d 832 (1969); Cruis Along Boats, Inc. v. Standard Steel Prods. Mfg. Co., 22 Wis. 2d 403, 409, 126 N.W.2d 85 (1964). And when a defendant missed a 20-day deadline to file its answer but offered no

explanation for why it took 19 days to send the complaint from its office in Waukesha to its claims manager in California, the court of appeals declined to excuse the late filing because, "in the era of overnight express mail" and fax machines, a reasonably prudent person in the party's shoes would have ensured the complaint made it to California sooner. See Gerth v. Am. Star Ins. Co., 166 Wis. 2d 1000, 1008, 480 N.W.2d 836 (Ct. App. 1992); see also Dugenske v. Dugenske, 80 Wis. 2d 64, 70, 257 N.W.2d 865 (1977) (declining to reverse the circuit court's finding of no excusable neglect because the record "shed[] little light" on whether a reasonably prudent person would have acted as the negligent party did).

¶24 Here, Eden traces its untimely application to an employee mistakenly answering "no" to the question on the Employer Registration Report asking if Eden had "acquired an activity from a previous employer." According to Eden, its employee misunderstood the question—due to his young age, inexperience, and lack of legal training—and therefore answered it incorrectly. Because of that mistake, the Department did not contact Eden regarding the Report of Business Transfer. And because the Department did not alert it to that form, Eden did not return the form as its successorship application prior to the application deadline. There are two problems with Eden's argument.

¶25 First, the record contains only speculation about why Eden incorrectly answered the question of whether it acquired an activity from a previous employer. Eden's owner—who was not the person who filled out the Employer Registration Report—testified

that there "might have been [a] misunderstanding or mistake on one of the questions" (emphasis added). The record, however, contains no evidence that the employee who completed the form in fact misunderstood the question. That employee did not testify, and the record contains no other evidence explaining why he answered the question "no." See Connor, 243 Wis. 2d 279, ¶22.

¶26 In the absence of the employee's direct testimony, Eden points to the employee's relatively young age, inexperience, and lack of legal training as sufficiently justifying his mistake. To the extent that the employee's youth and inexperience contributed to his supposed confusion, a reasonably prudent person in the same situation—having no unemployment-insurance experience and not fully understanding the consequences of certain responses on the Employer Registration Report—would ask for help before submitting the document, or at least do additional research. See Hansher, 79 Wis. 2d at 391-92; Maier Constr., Inc. v. Ryan, 81 Wis. 2d 463, 474, 260 N.W.2d 700 (1978), overruled on other grounds by J.L. Phillips & Assocs., Inc. v. E & H Plastic Corp., 217 Wis. 2d 348, 577 N.W.2d 13 (1998). There is no evidence that Eden's employee did so. Moreover, Eden has offered no explanation for why it directed someone so inexperienced and unfamiliar with Wisconsin's business-registration procedures to complete the Employer Registration Report. See Carmain v. Affiliated Cap. Corp., 2002 WI App 271, ¶27, 258 Wis. 2d 378, 654 N.W.2d 265.

¶27 Second, no matter how Eden completed the Employer Registration Report, it was still obligated to fulfill the successorship requirements under Wis. Stat. § 108.16(8)(b) and

Wis. Admin. Code § DWD 115.03. It is true that had Eden answered "yes" to the question of whether it acquired a previous employer's activity, the Department likely would have contacted Eden and notified Eden of its obligation to file the Report of Business Transfer. But the Department has no statutory duty to contact the employer. Eden, on the other hand, has a statutory obligation to "notify the [D]epartment in writing" of both its business acquisition, Wis. Stat. § 108.16(8)(b)(k); Wis. Admin. Code § DWD 115.03, and that it was applying to succeed the previous employer's unemployment-account experience, Wis. Stat. § 108.16(8)(b)4. Those obligations apply regardless of how an employer answers the questions in the Employer Registration Report or whether the Department alerts the employer to the Report of Business Transfer.<sup>16</sup> Not to mention, anyone can find the Report of Business Transfer on the Department's public website.

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<sup>16</sup> For this same reason, the dissent's focus on the mechanism by which the Department contacts businesses who may be involved in a transfer is misplaced. The Department could eliminate that voluntary process and Eden's statutory obligations would remain. Moreover, the dissent's argument that Eden was disadvantaged because it didn't know how the Department's process worked is self-defeating. If Eden had no idea that certain answers on the Employer Registration Report would have generated an alert from the Department, then it had no reason to wait for the Department to contact it before fulfilling its statutory requirements.

The dissent also confusingly suggests that because Eden and Friendly Village's previous owner failed to comply with their joint requirement to notify the Department of the business transfer under § 108.16(8)(k), the court should excuse Eden's failure to comply with the separate successorship-application requirements under § 108.16(8)(b)4. We fail to see why the previous owner's failure under para. (8)(k) is relevant or how Eden's two wrongs make a right.

¶28 Eden makes no specific argument for why, independent of its mistake on the Employer Registration Report, it failed to timely file its successorship application. Rather, Eden urges generally that we should excuse its neglect because it was "not familiar with how the [unemployment-insurance] process worked" in Wisconsin. But mere ignorance of the law, particularly in the area of one's business expertise, is not excusable neglect. See Putnam v. Time Warner Cable, 2002 WI 108, ¶13 n.4, 255 Wis. 2d 447, 649 N.W.2d 626 ("[E]very person is presumed to know the law and cannot claim ignorance of the law as a defense."). Eden's owner testified that he was aware Wisconsin's laws may differ from Minnesota's (where Eden had exclusively conducted its previous business), but he "d[id]n't recall" speaking to anyone regarding what those differences might be. A reasonably prudent business in these circumstances would have at least attempted to familiarize itself with Wisconsin's requirements before submitting official documentation to the Department. See Edwards v. Kotlarek, No. 2009AP123, unpublished op., ¶¶8-10 (Wis. Ct. App. Aug. 31, 2010) (holding that a party's unfamiliarity with the law, without more, is not excusable neglect). Eden could have contacted the Department directly for guidance or taken advantage of the Department's publicly available resources regarding new employers' unemployment-insurance responsibilities. Indeed, Eden reached out to the Department after its deadline passed, but offers no reason for why it did not do so earlier.

¶29 In sum, focusing on the Employer Registration Report distracts from the real issue—that Eden failed to timely file a

successorship application under § 108.16(8)(b)4. As the Commission correctly concluded, nowhere does the record contain evidence of a reason for that failure that rises to the level of excusable neglect.

IV

¶30 We conclude that the Commission applied the correct legal standard. The interests-of-justice factors are not part of the excusable-neglect analysis under Wis. Stat. § 108.16(8)(b)4. We further conclude that there is no basis in the record on which to excuse Eden's neglect in filing its successorship application after the statutory deadline. The Department thus correctly rejected Eden's successorship application.

*By the Court.*—The court of appeals' decision is affirmed.

¶31 PATIENCE DRAKE ROGGENSACK, J. (*dissenting*). The Labor Industry Review Commission (LIRC) denied Friendly Village Nursing and Rehab, LLC (Friendly Village) successor status for the Department of Workforce Development (DWD) unemployment account experience of the business Friendly Village purchased because LIRC concluded that Friendly Village's untimely request to become a successor was not excusable. Wis. Stat. § 108.16(8)(b)4. Late filings that occur within 90 days of the DWD deadline are accepted if the totality of circumstances relative to the late filing meet the legal standard of excusable neglect. Wis. Stat. § 108.16(8)(b)4; Wis. Admin. Code § DWD 115.07(2)(a).

¶32 In the case before us, the manner in which DWD programmed its response to answers to its online questions denied Friendly Village effective communication that would have facilitated Friendly Village's timely filing as a successor business.<sup>1</sup> Stated otherwise, DWD's programming was a reasonable factual cause that contributed to Friendly Village's late filing. In addition, Friendly Village's seller did not notify DWD of its sale as Wis. Stat. § 108.16(8)(k) required. And finally, Friendly Village promptly filed corrected information with DWD. Therefore, under the totality of circumstances, I conclude that Friendly Village proved excusable neglect. Because the majority opinion follows LIRC's erroneous lead and does not review the totality of circumstances as is required, I respectfully dissent.

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<sup>1</sup> Program: "to work out a sequence of operations to be performed by (a mechanism, such as a computer)." Merriam Webster. Merriam-Webster.com/dictionary/program (last visited Jan. 19, 2022).

## I. BACKGROUND

¶33 On September 1, 2017, Friendly Village purchased a business from Rhinelander Healthcare Operator 150, and Northpoint Nursing and Rehab, LLC (Northpoint) purchased a business from Simon Oshkosh Properties, LLC. Friendly Village and Northpoint are both operated by Eden Senior Care (Eden), whose nursing home rehabilitation business is new to Wisconsin. As employers new to Wisconsin, both were required to register with DWD. Wis. Stat. § 108.16(8)(k). This can be accomplished with DWD's "Internet Employer Registration Report," also referred to herein as DWD's online report.<sup>2</sup>

¶34 On August 9, 2017, in anticipation of closing on purchases of Friendly Village and Northpoint, an Eden employee completed the DWD online report for each facility. The report had numerous questions. The first question asked, "Did you acquire this activity from a previous employer?" That question was answered "No" for both Friendly Village and Northpoint. The second question on the report was, "Have you paid employees for work performed in Wisconsin?" That question was answered "No," as well, for both facilities. The third question asked, "Do you expect to pay wages for work performed in Wisconsin in the future?" Both facilities answered "Yes" to this online report question. "Activity" was not defined in the online report, nor was there a statutory reference to Wis. Stat. § 108.16(8) that might link "activity" to a business purchase.

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<sup>2</sup> Transcript of Administrative Hearing Department of Workforce Development, Exhibit 5 (Oct. 3, 2018).

¶35 The Report of Business Transfer (ROBT) form differs from the online report and provides significant communication about options that a business new to Wisconsin should know.<sup>3</sup> To explain further, the ROBT requires that each "Former Owner/Operator" and each "New Owner/Operator" sign a joint ROBT for each business transfer. Wisconsin Stat. § 108.16(8)(k) also provides that "both the transferor and the transferee shall notify the department in writing of the transfer, within 30 days after the date of transfer." In the matter before us, Friendly Village complied when it completed the online report, but the transferor to Friendly Village did not notify DWD of the transfer within 30 days.<sup>4</sup>

¶36 ROBT provision 5, contains "Options for New Owner/Operator," which instructs, "You may have an option to acquire the Unemployment Insurance experience of the former owner. An application to acquire this experience must be filed by the appropriate date. See chart at right." The ROBT permits a new owner to choose, "This is my application to acquire the account experience of the former owner." The ROBT communicates that if the change of business ownership or operation occurs during the period of "July 1 to Sept. 30," the new owner should apply to transfer the account experience by January 31.

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<sup>3</sup> The ROBT form references Wis. Stat. § 108.16(8), which provides additional business-transfer information.

<sup>4</sup> It is possible, although the record is not clear, that the transferor to Northpoint did notify DWD of the transfer because DWD knew Northpoint was a new employer and tried to send Northpoint forms relative to becoming a successor to account experience. Transcript of Administrative Hearing Department of Workforce Development, Exhibit 6 (Oct. 3, 2018).

¶37 And finally, ROBT provision 8 is labeled "Continuation of Business" and it asks, "Has the new owner/operator continued to operate the same business activity without interruption?" To which, the Eden employee answered, "Yes" for Friendly Village. Provision 8 also asks, "Has the new owner/operator continued to operate the same business activity in the same location?" Again, the query was answered, "Yes." The questions and answers provide the necessary factual foundation for Friendly Village and Northpoint to succeed to the prior owners/operators unemployment account experiences.

¶38 DWD rejected Friendly Village's ROBT, but it accepted Northpoint's ROBT, which also was filed late but reviewed by a different DWD employee.<sup>5</sup> Friendly Village asked for an administrative review, which DWD provided.

¶39 Chelsea Church, the DWD employee who reviewed Friendly Village's request to conclude that its late filing was due to excusable neglect, testified at the administrative hearing. She explained how the DWD online report operated as part of DWD's

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<sup>5</sup> Initially, DWD rejected Northpoint's request to become a successor for its seller's unemployment account experience. On February 27, 2018, Northpoint appealed stating, "I am writing to appeal the initial determination made that Northpoint Nursing and Rehab LLC . . . is not the successor to the Wisconsin Unemployment Reserve account of Simon Oshkosh Properties LLC." The Eden employee said that his requests for information had been sent to the former management company on 11/06/2017 and 12/06/2017, rather than Eden Senior Care. Daniel McHugh of DWD responded to Northpoint, saying that "I should be able to process this without processing the appeal. It was late, but this seems to be 'excusable neglect' and I should be able to approve it." Transcript of Administrative Hearing Department of Workforce Development, Exhibit 6 (Oct. 3, 2018).

"system." She explained that if the first question of the report had been answered yes, "then after they submitted this registration online, they'll receive a notification from our system that they need to complete their Report of Business Transfer form."<sup>6</sup> She also explained that with a "yes" answer to the first online report question, "our department receives notification that we need start a transfer investigation, and they would start contacting them for that."<sup>7</sup> On cross-examination, she also explained that there was nothing in the online report that directed the person completing it to the ROBT.<sup>8</sup> She explained, "It only does that if the employer answers yes to that question, the --- did you acquire this activity from a previously employer question, otherwise, it does not."<sup>9</sup>

¶40 Rostislav Pukshansky, an owner of Friendly Village, also testified. He said that Jesse Pukshansky completed the online report for Friendly Village. He explained that Jesse is 22 years old and had no legal education or experience with DWD. As part of his testimony, Mr. Pukshansky also presented a communication that concluded that Northpoint's late filing was accepted based on a determination that the lateness was due to excusable neglect.

¶41 Mr. Pukshansky never received any communication from DWD or from the seller, Rhinelander Healthcare Operator, regarding successor status or an ROBT application. He was provided with a

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<sup>6</sup> Transcript of Administrative Hearing, Department of Workforce Development, at 21 (Oct. 3, 2018).

<sup>7</sup> Id.

<sup>8</sup> Id. at 24.

<sup>9</sup> Id.

ROBT form in early March of 2018 after he reached out to DWD with questions about what he had heard about Northpoint's experience. He was told he could still apply to become a successor to the seller's account experience and to write a letter, as Northpoint had, explaining why the ROBT filing was late. He testified that he called the contact for the seller that same day and asked him to complete the seller's part of the ROBT.<sup>10</sup> The seller did so.<sup>11</sup> It was that joint ROBT that Friendly Village filed with DWD on March 13, 2018.

¶42 Mr Pukshansky also testified about his call with Ms. Church. "I remember she confirmed that there hadn't been any forms sent by the unemployment office for the Rhinelander/Friendly Village sale. We both figured out maybe because of the way the registration was filled out by Jesse initially, there might have been misunderstanding or mistake on one of the questions."<sup>12</sup> After their discussion, he submitted a letter explaining why the ROBT

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<sup>10</sup> Id. at 36.

<sup>11</sup> Id. at 38.

<sup>12</sup> Id. at 40. Later, on redirect, Ms. Church confirmed that Northpoint's answer to the first report question had been, "no," just as Friendly Village had answered its first report question. She also explained that a second report had been submitted for Northpoint on March 8, 2018, and in that report, Northpoint answered the first question, "yes." Ms. Church explained that March 8th "was about the same time as [her] activity with, uh, Mr. [Pukshansky] was going on regarding Friendly Village." She further explained that March 8, 2018 was after DWD's March 6, 2018 grant of successorship to Northpoint. Transcript of Administrative Hearing Department of Workforce Development, at 53-54 (Oct. 3, 2018).

was late, and he asked her "to grant the excusable neglect exception in a similar basis as the North Point facility."<sup>13</sup>

¶43 After a full evidentiary hearing, the Administrative Law Judge determined that Friendly Village's late filing was due to excusable neglect; and therefore, its ROBT should be accepted. LIRC reversed the Administrative Law Judge's decision, without taking any additional testimony and without conferring with the Administrative Law Judge.<sup>14</sup>

¶44 LIRC concluded that because the Eden employee who completed the online report did not appear to testify, "[t]here thus is no competent evidence establishing the nature of his error, such that a finder of fact could conclude that the error was excusable."<sup>15</sup> The issue, however, is whether the totality of circumstances relative to the late filing fulfilled the legal standard for excusable neglect pursuant to Wis. Stat. § 108.16(8)(b)4. This includes the factual background for the late filing and subsequent actions taken by Friendly Village in regard to becoming the successor of its seller's unemployment account experience. As I explain below, it is the undisputed facts applied to the statutory standard that drives the question of law that controls this case. LIRC did not apply the correct standard of review because it thought excusable neglect was a finding of

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<sup>13</sup> Id. at 41.

<sup>14</sup> Rhinelander Healthcare Operator 150, LLC Employer/Transferor Friendly Village Nursing and Rehab, LLC, Employer/Transferee, No. S1800077MD, slip op. at 2 (April 24, 2019).

<sup>15</sup> Id. at 3.

fact and that it could be shown only by testimony from Jesse Pukshansky that relayed what he was thinking when he completed DWD's online report.

¶45 Friendly Village appealed LIRC's determination. The circuit court affirmed LIRC, as did the court of appeals.

## II. DISCUSSION

### A. Standard of Review

¶46 The Administrative Law Judge concluded that excusable neglect had been shown for Friendly Village's late ROBT filing. LIRC concluded the opposite.<sup>16</sup> Whether excusable neglect has been shown requires us to determine whether the uncontested facts fulfill the statutory standard set out in Wis. Stat. § 108.16(8)(b)4. This determination presents a question of law, Brown v. LIRC, 2003 WI 142, ¶11, 267 Wis. 2d 31, 671 N.W.2d 279; Johns v. County of Oneida, 201 Wis. 2d 600, 605, 549 N.W.2d 269 (Ct. App. 1996), which we review independently. Tetra Tech EC, Inc. v. DOR, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21.

### B. Excusable Neglect

¶47 Excusable neglect is not an easy legal principle to apply. It appears in a number of different statutes to be used in a number of different contexts. For example, Wis. Stat. § 801.15(2)(a), which employs excusable neglect, often is discussed in opinions involving default judgments when a filing deadline has been missed. See e.g., Hedtcke v. Sentry Ins. Co., 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982).

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<sup>16</sup> We review LIRC's decision not that of the circuit court or the court of appeals. Operton v. LIRC, 2017 WI 46, ¶18, 375 Wis. 2d 1, 894 N.W.2d 426.

¶48 In regard to LIRC's decision on a transferee's successor status when the transferee's application is received late, excusable neglect is driven by Wis. Stat. § 108.16(8), which provides in relevant part:

(b) If the business of any employer is transferred, the transferee is deemed a successor for purposes of this chapter if the department determines that all of the following conditions have been satisfied:

. . . .

4. The department has received a written application from the transferee requesting that it be deemed a successor. Unless the transferee satisfies the department that the application was late as a result of excusable neglect, the application must be received by the department on or before the contribution payment due date for the first full quarter following the date of the transfer. The department shall not accept a late application under this subdivision more than 90 days after its due date.<sup>[17]</sup>

§ 108.16(8)(b). All agree that Friendly Village met all the criteria to become a successor to Rhinelander Healthcare Operator 150's unemployment account experience, except for its tardy filing of the ROBT.

¶49 Whether the undisputed facts fulfill "excusable neglect" for the late filing of Friendly Village's ROBT pursuant to Wis. Stat. § 108.16(8)(b)4. is central to this controversy. The majority opinion does not cite a decision interpreting § 108.16(8)(b)4., and I could find none. The majority opinion

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<sup>17</sup> Wisconsin Admin. Code § DWD 115.07(2)(a) contains a similar directive: "The department shall accept a late application received no more than 90 days after its due date if the transferee satisfies the department that the application was late as a result of excusable neglect."

simply concludes Friendly Village had an obligation to timely file a ROBT and it did not meet it.<sup>18</sup>

¶50 I conclude that a plain reading of Wis. Stat. § 108.16(8)(b)4. requires that a reasonable factual cause must contribute to filing the ROBT late in order to constitute excusable neglect. This conclusion is consistent with employing a reasonable factual cause as a contributing factor for excusable neglect in other contexts.

¶51 For example, applying Wis. Stat. § 801.15(2)(a), we concluded in Hedtcke that "the first step is to determine if there are reasonable grounds for the noncompliance with the statutory time period (excusable neglect)." Id. We also reasoned that a court must "be aware of the effects of an order denying or granting relief." Id. at 469. That is, what effect would the court's decision have on both parties.

¶52 Wisconsin courts have defined excusable neglect as "conduct that 'might have been the act of a reasonably prudent person under the same circumstances.'" Binsfeld v. Conrad, 2004 WI App 77, ¶23, 272 Wis. 2d 341, 679 N.W.2d 851. In Binsfeld where a motion for default judgment was lodged against Conrad, Conrad responded that he should not be subject to a default judgment because confusion was caused, in part, by Binsfeld's counsel. Conrad relayed that when the insurance company's representative asked counsel for Binsfeld for the answer's due date, he said that he would get back to him but never did. Id., ¶27. In considering the totality of circumstances that bear on excusable neglect, the

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<sup>18</sup> Majority op., ¶¶27, 28.

court concluded that "ineffective communication" had occurred thereby supporting the legal conclusion of excusable neglect. Id., ¶30.

¶53 In the matter before us, I consider the totality of circumstances that contributed to Friendly Village's late filing. First, when Friendly Village attempted to register as an employer with DWD by completing DWD's online report, the first question did not ask about the purchase of a business. Instead it asked, "Did you acquire this activity from a previous employer?" Because Friendly Village answered that question, "No," DWD's report was programmed not to communicate with Friendly Village about successor status, as it would have if the answer to that question had been "Yes."<sup>19</sup>

¶54 If DWD had contacted Friendly Village as a new employer, effective communication would have facilitated Friendly Village's timely filing. Also, Friendly Village's seller did not report the sale of its business to DWD within 30 days of the September 1, 2017 sale as Wis. Stat. § 108.16(8)(k) required. If it had done so, DWD would have known about Friendly Village as a new employer, as apparently DWD did with Northpoint. Therefore, ineffective communications from DWD due to DWD's programming of the online report and the seller, who did not comply with § 108.16(8)(k) were contributing causes of Friendly Village's late filing because both resulted in limiting DWD's communication of necessary information to Friendly Village. Id.

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<sup>19</sup> Transcript of Administrating Hearing, Department of Workforce Development, at 21 (Oct. 3, 2018).

¶55 Second, Friendly Village corrected its late filing as soon as it learned what it should do. Mr. Pukshansky explained that he learned about successor status in late February 2018 when he heard about Northport's experience.<sup>20</sup> He testified that he called DWD and learned of the ROBT and that both Friendly Village and its seller had to sign it. He called his contact with the seller that same day, asked him to sign the ROBT, and sent him the form.<sup>21</sup> When the seller returned the signed ROBT, Mr. Pukshansky promptly filed it with DWD.<sup>22</sup> Prompt corrective action is supportive of concluding that excusable neglect has been shown. Charolais Breeding Ranches, Ltd. v. Wiegel, 92 Wis. 2d 498, 512, 285 N.W.2d 720 (1979) (directing that in "determining whether the 'reasonably prudent person' standard has been met, the trial court should consider whether the person has acted promptly to remedy his situation").

¶56 The majority opinion quotes excerpts from Black's Law Dictionary that defines excusable neglect as, "A failure—which the law will excuse—to take some proper step at the proper time . . . not because of the party's own carelessness, inattention, or willful disregard . . . but because of some unexpected or unavoidable hindrance or accident."<sup>23</sup> Although I do

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<sup>20</sup> Transcript of Administrative Hearing, Department of Workforce Development, at 50 (Oct. 3, 2018).

<sup>21</sup> Id. at 36.

<sup>22</sup> Id. at 38.

<sup>23</sup> Majority op., ¶21 n.15; Black's Law Dictionary, 1133 (9th ed).

not agree with the majority opinion's ultimate conclusion, I have no problem with Black's definition.

¶57 In the matter before us, the majority opinion does not seem to have a clue about why Friendly Village was a victim of DWD's computer program that underlies its online report. This is surprising because as explained by Ms. Church in her testimony at the administrative hearing, the report controls whether communication about filing a ROBT will be sent from DWD's "system" to a new Wisconsin employer. It also controls whether DWD will receive notice so that it will begin contacting the new employer.

¶58 Friendly Village had no knowledge of DWD's programming and how it impacted effective communication between DWD and Friendly Village, nor is it reasonable to expect that as a new employer it should have had such knowledge. Accordingly, the reason for Jesse Pukshansky's answering the first question "No" does not matter. Whatever his reason, communication from DWD to Friendly Village would be the same: no communication because of the program's response to a "No" answer.<sup>24</sup>

¶59 The Administrative Law Judge who heard Ms. Church's testimony concluded that given an employee inexperienced with DWD completed the online report, excusable neglect for the late filing had been shown. LIRC reversed.<sup>25</sup>

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<sup>24</sup> I hope that DWD reads this dissent and revises its program for the online report so that sending ROBT filing information and departmental-successor contacts occur for all new employers who complete DWD's online report.

<sup>25</sup> LIRC decision at 3.

¶60 Although LIRC's opinion shows it likely knew how the online report program functioned, its decision ignores how critical that knowledge was to effectively completing the online report. Its decision also seems to presume that the employee who completed Friendly Village's online report should have known what results would be generated by DWD's system if question one were answered "Yes." The record contains nothing to support such a presumption.

¶61 DWD set up the online report through its Bureau of Tax and Accounting - Tax Unit. How the report is programmed and functions is beyond the control and knowledge of those who complete the report for the first time. Ms. Church may not have understood the underlying programming, but she knew how the online program worked, as her testimony showed.

¶62 There is no way that the Eden employee who was new to Wisconsin and completed DWD's online report would know, or should know, that a "No" answer to the first online report question would deny Friendly Village communications from DWD that would facilitate its registration as an employer with successor status. Rather, the failures of DWD to send necessary information and to begin its business transfer investigation resulted from the way in which DWD's online report is programmed. The resulting "ineffective communication" from DWD was a contributing cause of Friendly Village's late filing, just as "ineffective communication" contributed to the court of appeals' conclusion of excusable neglect in Binsfeld.

¶63 Accordingly, because the programming of DWD's online report set up the chain of events that resulted in Friendly Village's tardy filing of its ROBT, together with the seller's failing to register the business sale and Friendly Village's prompt efforts at correcting its tardy filing, I conclude that the statutory standard for excusable neglect has been met. Friendly Village was not careless. Rather, the online report created an unexpected hindrance to an employer who did not know that the report provided differing assistance to the employer as the result of differing answers to the first report question.

### III. CONCLUSION

¶64 In the case before us, the manner in which DWD programmed its response to answers to its online questions denied Friendly Village effective communication that would have facilitated Friendly Village's timely filing as a successor business. Stated otherwise, DWD's programming was a reasonable factual cause that contributed to Friendly Village's late filing. In addition, Friendly Village's seller did not notify DWD as Wis. Stat. § 108.16(8)(k) required. And finally, Friendly Village promptly filed corrected information with DWD. Therefore, under the totality of circumstances, I conclude that Friendly Village proved excusable neglect. Because the majority opinion follows LIRC's erroneous lead and does not review the totality of circumstances as is required, I respectfully dissent.

¶65 I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice REBECCA GRASSL BRADLEY join this dissent.







State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-5585/1  
MED&EAW:cjs&wlj

## 2021 ASSEMBLY BILL 910

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

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

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

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***Analysis by the Legislative Reference Bureau***

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

***Unemployment insurance financial outlook statement; council report; special committee***

Under current law, DWD must submit a statement regarding the unemployment insurance financial outlook to the governor and legislative leadership by April 15 of every odd-numbered year. The report must contain all of the following: 1) financial projections of unemployment insurance operations, including benefit payments, tax collections, borrowing or debt repayments, and any amounts of interest charges and the economic and public policy assumptions upon which the projections are based, and the impact upon the projections of variations from those assumptions; 2) proposed changes to the laws relating to unemployment insurance financing, benefits, and administration and financial projections under the proposed changes; 3) if there are significant cash reserves in the unemployment fund, the justifications for maintaining them; and 4) if program debt is projected at the end of the forecast period, the reasons DWD is not proposing to liquidate the debt.

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

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

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

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

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

***Effect of criminal convictions***

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

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

***Reimbursable employer debt assessment***

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

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

The bill does the following:

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

***Waiver of overpayments***

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

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

***Excluded employment***

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

***Work-share programs***

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

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

***Collection of debt by Department of Revenue***

Subject to certain exceptions, current law requires a state agency and the Department of Revenue to enter into a written agreement to have DOR collect certain amounts owed to the state agency. The bill provides that this requirement does not apply to amounts owed to DWD under the UI law or other federal unemployment programs administered by DWD.

***Fiscal agent election of employer status***

Generally, under current law, an individual who receives long-term support services in his or her home through certain government-funded care programs is

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considered to be an employer under the UI law of a person who provides those services to the individual. Such individuals may use fiscal agents, whose responsibilities include remitting any federal UI taxes or state UI contributions owed by the individual as a result of that employment.

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

***Other changes***

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

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

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

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

- 1           **SECTION 1.** 16.48 (1) (a) (intro.) of the statutes is renumbered 16.48 (1) (intro.)  
2           and amended to read:  
3           16.48 (1) (intro.) No later than ~~April 15~~ May 31 of each ~~odd-numbered~~  
4           even-numbered year, the secretary of workforce development shall prepare and  
5           furnish to the governor, the speaker of the assembly, the minority leader of the  
6           assembly, ~~and the majority and minority leaders of the senate, and the council on~~  
7           unemployment insurance, a statement of unemployment insurance financial

**ASSEMBLY BILL 910****SECTION 1**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 910****SECTION 17**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 910**

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

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 910****SECTION 37**

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

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

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 910**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 910**

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

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

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

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

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

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

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

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

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

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

14 **SECTION 79. Initial applicability.**

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

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

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

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

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



### Fiscal Estimate - 2021 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>21-5585/1</b>	<b>Introduction Number</b> <b>AB-0910</b>
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**Description**  
 various changes to the unemployment insurance law

**Fiscal Effect**

**State:**

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

**Local:**

<input checked="" type="checkbox"/> No Local Government Costs	<b>5. Types of Local Government Units Affected</b>	
<input type="checkbox"/> Indeterminate	1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
	<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.445 (1) (n)	

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	2/9/2022

## Fiscal Estimate Narratives

DWD 2/9/2022

LRB Number	21-5585/1	Introduction Number	AB-0910	Estimate Type	Original
<b>Description</b> various changes to the unemployment insurance law					

### Assumptions Used in Arriving at Fiscal Estimate

This bill makes various changes in the unemployment insurance (UI) law, which is administered by the Department of Workforce Development. The proposed changes under the bill have a fiscal impact to the department. The fiscal effect to department operations is a one-time cost of \$33,640 and is absorbable in the agency's budget. The fiscal effect to the UI Trust Fund is indeterminate.

The provisions in the bill with a fiscal effect to the department operations are the changes to reimbursable insurer debt assessments, excluded employment, workshare, and fiscal agent election of employer status.

The provisions that affect the UI Trust fund are changes to criminal convictions in UI law, reimbursable employer debt assessments, waiver of overpayments due to department error, and excluded employment. Please note that these provisions in the bill are anticipated to have fiscal effects to the UI Trust Fund's revenues and payments, but the combined annual net effect is indeterminate.

The fiscal estimates by provision and assumptions used at arriving at the fiscal estimates are included below. Other provisions in the bill are not estimated to have a fiscal impact to UI operations or to the UI Trust Fund.

This bill proposes to expand options to collect unemployment debt based on a criminal conviction. Though an uncommon scenario, this could result in faster unemployment debt recovery and a higher percentage of unemployment debt collection, resulting in a negligible but positive impact on the Trust Fund. This law change proposal is not expected to have an IT or administrative impact.

The reimbursable employer change proposal could have a negative Trust Fund impact of up to \$330,000. This impact would be due to writing off reimbursable debt in lieu of billing and is at the fund's treasurer's discretion. The UI Trust Fund impact could be greater or less depending on fund balances related to identity theft and the amount of write offs related to reimbursable employers in a given year. This law change proposal is not expected to have one-time administrative effects but is estimated to provide ongoing administrative savings of up to \$3,169 annually due to the flexibility in debt collection provided under this provision.

The proposed change to waiver of overpayments due to department error such that "departmental error" does not include an error made by an administrative law judge is estimated to save the UI Trust Fund \$5,200 annually in the short term. The UI Trust Fund impact may be less in the future. This proposal is not estimated to have an impact on operations.

The proposed changes to excluded employment is estimated to reduce the UI Trust Fund balance up to \$76,000 annually due to a reduction in employer taxes. The net effect to the UI Trust Fund may be smaller if there is a greater impact on benefits than expected. This law change proposal requires 72 hours of IT work costing \$6,408. There is a one-time expected administrative cost of \$2,115.

The bill makes a number of the former-law modifications to work share programs permanent. Because work-share participants comprise a very small portion of all UI claimants, this law change proposal is expected to have a negative but negligible UI Trust Fund impact. This law change proposal requires 180 hours of IT work estimated to cost \$16,000. There is a one-time expected administrative cost of \$5,287.

The proposed changes to allow the fiscal agent for individuals who receive long term care benefits to elect to become the employer of the individual's long term care service provider is not estimated to have a long-term impact to the UI Trust Fund. While there could be an immediate increase in benefits paid, new taxes will cover these costs. Assuming that all fiscal agents will elect to make this change, this proposal is estimated to have a one-time administrative cost of \$3,830 related to anticipated additional processing and program operational work.

## Long-Range Fiscal Implications

## Fiscal Estimate Worksheet - 2021 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>21-5585/1</b>	<b>Introduction Number</b> <b>AB-0910</b>	
<b>Description</b> various changes to the unemployment insurance law		
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>  The fiscal effect to department operations is a one time cost of \$33,640 and is absorbable in the agency's budget.		
<b>II. Annualized Costs:</b>	<b>Annualized Fiscal Impact on funds from:</b>	
	Increased Costs      Decreased Costs	
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$</b>
<b>B. State Costs by Source of Funds</b>		
GPR		
FED		
PRO/PRS		
SEG/SEG-S		
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUE	\$	\$
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	2/9/2022



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-5846/1  
MED&EAW:cjs&wlj

## 2021 SENATE BILL 899

February 1, 2022 - Introduced by COMMITTEE ON LABOR AND REGULATORY REFORM.  
Referred to Committee on Labor and Regulatory Reform.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT** *to repeal* 20.445 (1) (gg), 20.445 (1) (gm), 108.02 (1), 108.14 (7) (c) and  
2     108.14 (23) (d); *to renumber and amend* 20.445 (1) (gc), 20.445 (1) (gd), 20.445  
3     (1) (gh), 108.14 (12) (e), 108.14 (18), 108.19 (1), 108.19 (1m), 108.19 (1n), 108.19  
4     (1p), 108.19 (1q), 108.19 (1s), 108.19 (2), 108.19 (2m) and 108.19 (4); *to*  
5     *consolidate, renumber and amend* 108.14 (12) (a) to (d), 108.161 (1) and  
6     (1m) and 108.161 (5) and (6); *to amend* 20.445 (1) (n), 20.445 (1) (nb), 20.445  
7     (1) (nd), 20.445 (1) (ne), 20.445 (1) (u), 20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf),  
8     103.05 (5) (d), 108.04 (11) (f), 108.07 (5) (am) (intro.), 108.07 (5) (am) 1., 108.07  
9     (5) (am) 3., 108.07 (6), 108.09 (5) (b), 108.14 (2m), 108.14 (3m), 108.14 (16),  
10     108.16 (5) (c), 108.16 (6) (k), 108.16 (6) (m), 108.16 (8) (f), 108.161 (title), 108.161  
11     (2), 108.161 (3), 108.161 (3e), 108.161 (4), 108.161 (7), 108.161 (8), 108.161 (9),  
12     108.162 (7), 108.17 (2m), 108.17 (3), 108.17 (3m), 108.18 (7) (a) 1., 108.18 (7) (h),  
13     108.19 (1e) (a), 108.19 (1e) (d), 108.19 (1f) (a), 108.19 (1f) (c), 108.22 (1) (am) and  
14     108.22 (1m); *to repeal and recreate* 108.19 (title) and 108.20; and *to create*

**SENATE BILL 899**

1           20.427 (1) (g), 108.19 (1) (d), 108.19 (1e) (cm) and 108.19 (1m) (e) of the statutes;  
2           **relating to:** various changes to the unemployment insurance law and making  
3           an appropriation.

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***Analysis by the Legislative Reference Bureau***

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

***Segregated fund***

The bill creates a segregated fund to receive various program revenue moneys received by DWD under the UI law that are not otherwise credited to other segregated funds, including various moneys collected by DWD as interest and penalties under the UI law and all other nonfederal moneys received for the administration of the UI law that are not otherwise appropriated. Current law provides for depositing these revenues in appropriations in the general fund.

***Other changes***

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

1. Repealing and consolidating certain appropriations and making other changes to clarify the funding sources and receiving appropriations for various revenues and expenses under the UI law.

2. Creating a program revenue appropriation for the Labor and Industry Review Commission to collect moneys received for the copying and generation of documents and for other services provided in carrying out its functions.

3. Deleting obsolete references to state laws.

4. Correcting various cross-references that are otherwise incomplete or erroneous.

5. Replacing certain references to provisions in federal acts or to the Internal Revenue Code with references to the U.S. Code in order to facilitate accessibility to federal law.

6. Making other nonsubstantive changes to the UI law to improve organization, modernize language, and provide further clarity, specificity, and consistency in the law.

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

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

**SENATE BILL 899**

1           **SECTION 1.** 20.427 (1) (g) of the statutes is created to read:

2           20.427 (1) (g) *Agency collections.* All moneys received from fees or other  
3 charges for copying of documents, generation of copies of documents from optical disc  
4 or electronic storage, publication of books, and other services provided in carrying  
5 out the functions of the commission.

6           **SECTION 2.** 20.445 (1) (gc) of the statutes is renumbered 20.445 (1) (wc) and  
7 amended to read:

8           20.445 (1) (wc) *Unemployment administration.* ~~All From the unemployment~~  
9 administration fund, all moneys received by the department under s. 108.19 ~~not~~  
10 ~~otherwise appropriated under this subsection (1)~~ for the administration of ch. 108.

11           **SECTION 3.** 20.445 (1) (gd) of the statutes is renumbered 20.445 (1) (wd) and  
12 amended to read:

13           20.445 (1) (wd) *Unemployment interest and penalty payments.* ~~All From the~~  
14 unemployment administration fund, all moneys received as interest and penalties  
15 collected under ss. 108.04 (11) (c) and (cm) ~~and (13) (e)~~ and 108.22 except interest and  
16 penalties deposited under s. 108.19 (1q), ~~and forfeitures under s. 103.05 (5), all~~  
17 ~~moneys not appropriated under par. (gg) and 108.20 (3), all moneys received as~~  
18 forfeitures under s. 103.05 (5), all moneys received under s. 108.09 (5) (c), all moneys  
19 received under s. 108.14 (16), all moneys received under s. 108.18 (1) (c), all moneys  
20 transferred to this appropriation account from the appropriation account under par.  
21 ~~(gh) (wh), and all other nonfederal moneys received for the employment service or~~  
22 for the administration of ch. 108 that are not otherwise appropriated under this  
23 subsection, for the payment of benefits specified in s. 108.07 (5) ~~and 1987 Wisconsin~~  
24 ~~Act 38, section 132 (1) (e), for the payment of interest to employers under s. 108.17~~  
25 ~~(3m), for research relating to the condition of the unemployment reserve fund under~~

**SENATE BILL 899****SECTION 3**

1 s. 108.14 (6), for administration of the unemployment insurance program and federal  
2 or state unemployment insurance programs authorized by the governor under s.  
3 16.54, for satisfaction of any federal audit exception concerning a payment from the  
4 unemployment reserve fund or any federal aid disallowance concerning the  
5 unemployment insurance program, for assistance to the department of justice in the  
6 enforcement of ch. 108, for the payment of interest due on advances from the federal  
7 unemployment account under ~~title XII of the social security act~~ 42 USC 1321 to 1324  
8 to the unemployment reserve fund, and for payments made to the unemployment  
9 reserve fund to obtain a lower interest rate or deferral of interest payments on these  
10 advances, ~~except as otherwise provided in s. 108.20.~~

11 **SECTION 4.** 20.445 (1) (gg) of the statutes is repealed.

12 **SECTION 5.** 20.445 (1) (gh) of the statutes is renumbered 20.445 (1) (wh) and  
13 amended to read:

14 20.445 (1) (wh) *Unemployment information technology systems; assessments.*  
15 ~~All~~ From the unemployment administration fund, all moneys received from  
16 assessments levied under s. 108.19 (1e) (a) and ~~1997 Wisconsin Act 39, section 164~~  
17 ~~(2)~~, for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment  
18 reserve fund may transfer moneys from this appropriation account to the  
19 appropriation account under par. ~~(gd)~~ (wd).

20 **SECTION 6.** 20.445 (1) (gm) of the statutes is repealed.

21 **SECTION 7.** 20.445 (1) (n) of the statutes is amended to read:

22 20.445 (1) (n) *Employment assistance and unemployment insurance*  
23 *administration; federal moneys.* All federal moneys received, as authorized by the  
24 governor under s. 16.54, for the administration of employment assistance and  
25 unemployment insurance programs of the department, for the performance of the

**SENATE BILL 899**

1 department's other functions under subch. I of ch. 106 and ch. 108, and to pay the  
2 compensation and expenses of appeal tribunals and of employment councils  
3 appointed under s. 108.14, to be used for such purposes, except as provided in s.  
4 108.161 (3e), and, from the moneys received by this state under ~~section 903~~ 42 USC  
5 1103 (d) of the federal Social Security Act, as amended, to transfer to the  
6 appropriation account under par. (nb) an amount determined by the treasurer of the  
7 unemployment reserve fund not exceeding the lesser of the amount specified in s.  
8 108.161 (4) (d) or the amounts in the schedule under par. (nb), to transfer to the  
9 appropriation account under par. (nd) an amount determined by the treasurer of the  
10 unemployment reserve fund not exceeding the lesser of the amount specified in s.  
11 108.161 (4) (d) or the amounts in the schedule under par. (nd), to transfer to the  
12 appropriation account under par. (ne) an amount not exceeding the lesser of the  
13 amount specified in s. 108.161 (4) (d) or the sum of the amounts in the schedule under  
14 par. (ne) and the amount determined by the treasurer of the unemployment reserve  
15 fund that is required to pay for the cost of banking services incurred by the  
16 unemployment reserve fund, and to transfer to the appropriation account under s.  
17 20.427 (1) (k) an amount determined by the treasurer of the unemployment reserve  
18 fund.

19 **SECTION 8.** 20.445 (1) (nb) of the statutes is amended to read:

20 20.445 (1) (nb) *Unemployment administration; information technology*  
21 *systems.* From the moneys received from the federal government under ~~section 903~~  
22 42 USC 1103 (d) of the federal Social Security Act, as amended, as a continuing  
23 appropriation, the amounts in the schedule, as authorized by the governor under s.  
24 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par.  
25 (n) for this purpose shall be credited to this appropriation account. No moneys may

**SENATE BILL 899****SECTION 8**

1 be expended from this appropriation unless the treasurer of the unemployment  
2 reserve fund determines that such expenditure is currently needed for the purpose  
3 specified in s. 108.19 (1e) (d).

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

5 20.445 (1) (nd) *Unemployment administration; apprenticeship and other*  
6 *employment services.* From the moneys received from the federal government under  
7 ~~section 903~~ 42 USC 1103 (d) of the federal Social Security Act, as amended, the  
8 amounts in the schedule, as authorized by the governor under s. 16.54, to be used for  
9 administration by the department of apprenticeship programs under subch. I of ch.  
10 106 and for administration and service delivery of employment and workforce  
11 information services, including the delivery of reemployment assistance services to  
12 unemployment insurance claimants. All moneys transferred from par. (n) for this  
13 purpose shall be credited to this appropriation account. No moneys may be expended  
14 from this appropriation unless the treasurer of the unemployment reserve fund  
15 determines that such expenditure is currently needed for the purposes specified in  
16 this paragraph.

17 **SECTION 10.** 20.445 (1) (ne) of the statutes is amended to read:

18 20.445 (1) (ne) *Unemployment insurance administration and bank service*  
19 *costs.* From the moneys received by this state under ~~section 903 of the federal Social~~  
20 ~~Security Act, as amended~~ 42 USC 1103, all moneys transferred from the  
21 appropriation account under par. (n) to be used for the administration of  
22 unemployment insurance and for the payment of the cost of banking services  
23 incurred by the unemployment reserve fund. No moneys may be expended from this  
24 appropriation unless the treasurer of the unemployment reserve fund determines

**SENATE BILL 899**

1 that such expenditure is currently needed for the purpose specified in this  
2 paragraph.

3 **SECTION 11.** 20.445 (1) (u) of the statutes is amended to read:

4 20.445 (1) (u) *Unemployment interest payments and transfers.* From the  
5 unemployment interest payment fund, all moneys received from assessments under  
6 s. 108.19 (1m) (a) for the purpose of making the payments and transfers authorized  
7 under s. 108.19 (1m) (f).

8 **SECTION 12.** 20.445 (1) (v) of the statutes is amended to read:

9 20.445 (1) (v) *Unemployment program integrity.* From the unemployment  
10 program integrity fund, all moneys received from sources identified under s. ~~108.19~~  
11 ~~(1s)~~ 108.20 (2) (a) for the purpose of making the payments authorized under s. ~~108.19~~  
12 ~~(1s)~~ 108.20 (2) (b).

13 **SECTION 13.** 25.17 (1) (xe) of the statutes is amended to read:

14 25.17 (1) (xe) Unemployment interest payment fund (s. ~~108.19 (1q)~~ 108.20 (3));

15 **SECTION 14.** 25.17 (1) (xf) of the statutes is amended to read:

16 25.17 (1) (xf) Unemployment program integrity fund (s. ~~108.19 (1s)~~ 108.20 (2));

17 **SECTION 15.** 103.05 (5) (d) of the statutes is amended to read:

18 103.05 (5) (d) The department shall deposit all moneys received under this  
19 subsection in the appropriation account under s. 20.445 (1) (~~gd~~) (wd).

20 **SECTION 16.** 108.02 (1) of the statutes is repealed.

21 **SECTION 17.** 108.04 (11) (f) of the statutes is amended to read:

22 108.04 (11) (f) All amounts forfeited under par. (c) and all collections from  
23 administrative assessments under par. (cm) shall be credited to the administrative  
24 account appropriation under s. 20.445 (1) (wd).

25 **SECTION 18.** 108.07 (5) (am) (intro.) of the statutes is amended to read:

**SENATE BILL 899****SECTION 18**

1           108.07 (5) (am) (intro.) Except as provided in sub. (7), whenever benefits  
2    ~~which that~~ would otherwise be chargeable to the fund's balancing account are paid  
3    based on wages paid by an employer that is not subject to the contribution  
4    requirements of ss. 108.17 and 108.18, and the benefits are so chargeable under  
5    sub. (3) or s. 108.04 (1) (f) ~~or, (5),~~ or (5g) or 108.14 (8n) (e), or under s. 108.16 (6m)  
6    (e) for benefits specified in s. 108.16 (3) (b), the department shall charge the  
7    benefits as follows:

8           **SECTION 19.** 108.07 (5) (am) 1. of the statutes is amended to read:

9           108.07 (5) (am) 1. If no employer from which the claimant has base period  
10   wages is subject to the contribution requirements of ss. 108.17 and 108.18, the  
11   benefits shall be ~~charged to the administrative account and~~ paid from the  
12   appropriation under s. 20.445 (1) (gd) (wd).

13          **SECTION 20.** 108.07 (5) (am) 3. of the statutes is amended to read:

14          108.07 (5) (am) 3. If 2 or more employers from which the claimant has base  
15   period wages are not subject to the contribution requirements of ss. 108.17 and  
16   108.18, and one or more employers from which the claimant has base period wages  
17   are subject to the contribution requirements of ss. 108.17 and 108.18, that  
18   percentage of the employee's benefits which would otherwise be chargeable to the  
19   fund's balancing account under sub. (3) or s. 108.04 (1) (f) ~~or, (5),~~ or (5g), or under s.  
20   108.16 (6m) (e) for benefits specified in s. 108.16 (3) (b), shall be ~~charged to the~~  
21   ~~administrative account and~~ paid from the appropriation under s. 20.445 (1) (gd) (wd).

22          **SECTION 21.** 108.07 (6) of the statutes is amended to read:

23          108.07 (6) The department may initially charge benefits otherwise ~~chargeable~~  
24   ~~to the administrative account~~ payable from the appropriation under s. 20.445 (1)  
25   (wd) as provided under this section to the fund's balancing account, and periodically

**SENATE BILL 899**

1 reimburse the charges to the balancing account from the ~~administrative account~~  
2 appropriation under s. 20.445 (1) (wd).

3 **SECTION 22.** 108.09 (5) (b) of the statutes is amended to read:

4 108.09 (5) (b) All testimony at any hearing under this section shall be recorded  
5 by electronic means, but need not be transcribed unless either of the parties requests  
6 a transcript before expiration of that party's right to further appeal under this  
7 section and pays a fee to the commission in advance, the amount of which shall be  
8 established by rule of the commission. When the commission provides a transcript  
9 to one of the parties upon request, the commission shall also provide a copy of the  
10 transcript to all other parties free of charge. The transcript fee collected shall be ~~paid~~  
11 to the administrative account credited to the appropriation account under s. 20.427  
12 (1) (g).

13 **SECTION 23.** 108.14 (2m) of the statutes is amended to read:

14 108.14 (2m) In the discharge of their duties under this chapter an appeal  
15 tribunal, commissioner, or other authorized representative of the department or  
16 commission may administer oaths to persons appearing before them, take  
17 depositions, certify to official acts, and by subpoenas, served in the manner in which  
18 circuit court subpoenas are served, compel attendance of witnesses and the  
19 production of books, papers, documents, and records necessary or convenient to be  
20 used by them in connection with any investigation, hearing, or other proceeding  
21 under this chapter. A party's attorney of record may issue a subpoena to compel the  
22 attendance of a witness or the production of evidence. A subpoena issued by an  
23 attorney must be in substantially the same form as provided in s. 805.07 (4) and must  
24 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of  
25 issuance, send a copy of the subpoena to the appeal tribunal or other representative

**SENATE BILL 899****SECTION 23**

1 of the department responsible for conducting the proceeding. However, in any  
2 investigation, hearing, or other proceeding involving the administration of oaths or  
3 the use of subpoenas under this subsection due notice shall be given to any interested  
4 party involved, who shall be given an opportunity to appear and be heard at any such  
5 proceeding and to examine witnesses and otherwise participate therein. Witness  
6 fees and travel expenses involved in proceedings under this chapter may be allowed  
7 by the appeal tribunal or representative of the department at rates specified by  
8 department rules, and shall be paid from the ~~administrative account~~ appropriation  
9 under s. 20.445 (1) (n).

10 **SECTION 24.** 108.14 (3m) of the statutes is amended to read:

11 108.14 (3m) In any court action to enforce this chapter the department, the  
12 commission, and the state may be represented by any licensed attorney who is an  
13 employee of the department or the commission and is designated by either of them  
14 for this purpose or at the request of either of them by the department of justice. If  
15 the governor designates special counsel to defend, in behalf of the state, the validity  
16 of this chapter or of any provision of ~~Title IX of the social security act~~ 42 USC 1101  
17 to 1111, the expenses and compensation of the special counsel and of any experts  
18 employed by the department in connection with that proceeding may be charged to  
19 the ~~administrative account~~ appropriation under s. 20.445 (1) (wd). If the  
20 compensation is being determined on a contingent fee basis, the contract is subject  
21 to s. 20.9305.

22 **SECTION 25.** 108.14 (7) (c) of the statutes is repealed.

23 **SECTION 26.** 108.14 (12) (a) to (d) of the statutes are consolidated, renumbered  
24 108.14 (12) (am) and amended to read:

**SENATE BILL 899**

1           108.14 **(12)** (am) Consistently with the provisions of ~~pars. (8) and (9) of section~~  
2           ~~303 (a) of Title III of the federal social security act, 42 USC 503 (a) (8) and (9), the~~  
3           ~~department shall expend~~ all moneys received in the federal administrative financing  
4           account from any federal agency under said Title III ~~shall be expended~~ 42 USC ch.  
5           7 subch. III solely for the purposes and in the amounts found necessary by said ~~that~~  
6           agency for the ~~proper and efficient~~ administration of this chapter. ~~(b) Consistently~~  
7           ~~with said provisions of said Title III, any~~ The department shall replace, within a  
8           ~~reasonable time, any such moneys, that were received prior to~~ before July 1, 1941,  
9           and ~~remaining~~ remained unencumbered on said ~~that~~ date, or ~~that were~~ received on  
10          or after said ~~that~~ date, ~~which, because of any action or contingency, have been~~ if the  
11          moneys are lost or have been expended for purposes other than, or in amounts in  
12          excess of, those found necessary by said the federal agency for the proper  
13          administration of this chapter, ~~shall be replaced within a reasonable time. This~~  
14          ~~paragraph is the declared policy of this state, as enunciated by the 1941 legislature,~~  
15          and shall be implemented as further provided in this subsection. ~~(c). If it is believed~~  
16          ~~that any amount of money thus received has been thus~~ is lost or improperly  
17          expended, the department, on its own motion or on notice from said the federal  
18          agency, shall promptly investigate and determine the matter and shall, depending  
19          on the nature of its determination, take such steps as it ~~may deem~~ considers  
20          necessary to protect the interests of the state. ~~(d) If it is finally determined that~~  
21          ~~moneys thus received have been thus~~ lost or improperly expended, ~~then the~~  
22          department shall either make the necessary replacement from ~~those moneys in the~~  
23          ~~administrative account specified in s. 108.20 (2m)~~ the appropriation under s. 20.445  
24          (1) (wd) or shall submit, at the next budget hearings conducted by the governor and  
25          at the budget hearings conducted by the next legislature convened in regular session,

**SENATE BILL 899****SECTION 26**

1 a request that the necessary replacement be made by an appropriation from the  
2 general fund.

3 **SECTION 27.** 108.14 (12) (e) of the statutes is renumbered 108.14 (12) (bm) and  
4 amended to read:

5 108.14 (12) (bm) This subsection shall not be construed to relieve this state of  
6 any obligation existing ~~prior to its enactment~~ before July 1, 1941, with respect to  
7 moneys received ~~prior to~~ before July 1, 1941, ~~pursuant to said Title III~~ under 42 USC  
8 ch. 7 subch. III.

9 **SECTION 28.** 108.14 (16) of the statutes is amended to read:

10 108.14 (16) The department shall have duplicated or printed, ~~and shall~~  
11 ~~distribute without charge, such employment security~~ any reports, studies and,  
12 forms, records, decisions, regulations, rules, or other materials, including the text of  
13 this chapter ~~and, the handbook under sub. (23), and other~~ instructional or  
14 explanatory pamphlets for employers or workers, as that it deems necessary for  
15 public information or for the proper administration of this chapter; ~~but the.~~ The  
16 department may collect a reasonable charge, which shall be credited to the  
17 administrative appropriation account under s. 20.445 (1) (wd), for any such item the  
18 cost of which is not fully covered by federal administrative grants.

19 **SECTION 29.** 108.14 (18) of the statutes is renumbered 108.19 (1e) (e) and  
20 amended to read:

21 108.19 (1e) (e) No later than the end of the month following each quarter in  
22 which the department expends moneys derived from assessments levied under ~~s.~~  
23 ~~108.19 (1e)~~ this subsection, the department shall submit a report to the council on  
24 unemployment insurance describing the use of the moneys expended and the status  
25 at the end of the quarter of any project for which moneys were expended.

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1           **SECTION 30.** 108.14 (23) (d) of the statutes is repealed.

2           **SECTION 31.** 108.16 (5) (c) of the statutes is amended to read:

3           108.16 (5) (c) While the state has an account in the “Unemployment Trust  
4 Fund”,” public deposit insurance charges on the fund’s balances held in banks,  
5 savings banks, savings and loan associations, and credit unions in this state, the  
6 premiums on surety bonds required of the fund’s treasurer under this section, and  
7 any other expense of administration otherwise payable from the fund’s interest  
8 earnings, shall be paid from the ~~administrative account~~ appropriation under s.  
9 20.445 (1) (n) or (ne).

10          **SECTION 32.** 108.16 (6) (k) of the statutes is amended to read:

11          108.16 (6) (k) All payments to the fund from the ~~administrative account as~~  
12 ~~authorized under s. 108.20 (2m)~~ appropriation under s. 20.445 (1) (wd).

13          **SECTION 33.** 108.16 (6) (m) of the statutes is amended to read:

14          108.16 (6) (m) Any amounts transferred to the balancing account from the  
15 unemployment interest payment fund under s. 108.19 (1m) (f).

16          **SECTION 34.** 108.16 (8) (f) of the statutes is amended to read:

17          108.16 (8) (f) The successor shall take over and continue the transferor’s  
18 account, including its positive or negative balance and all other aspects of its  
19 experience under this chapter in proportion to the payroll assignable to the  
20 transferred business and the liability of the successor shall be proportioned to the  
21 extent of the transferred business. The transferor and the successor shall be jointly  
22 and severally liable for any amounts owed by the transferor ~~to the fund and to the~~  
23 ~~administrative account~~ under this chapter at the time of the transfer, but a successor  
24 under par. (c) is not liable for the debts of the transferor except in the case of fraud  
25 or malfeasance.

**SENATE BILL 899****SECTION 35**

1           **SECTION 35.** 108.161 (title) of the statutes is amended to read:

2           **108.161 (title) Federal administrative financing account; Reed Act**  
3           **distributions.**

4           **SECTION 36.** 108.161 (1) and (1m) of the statutes are consolidated, renumbered  
5 108.161 (1) and amended to read:

6           108.161 (1) The fund's treasurer shall maintain within the fund an  
7 employment security "federal administrative financing account", and shall credit  
8 thereto to that account all amounts credited to the fund pursuant to the federal  
9 employment security administrative financing act (of 1954) and section 903 of the  
10 federal social security act, as amended. ~~(1m) The treasurer of the fund shall also~~  
11 ~~credit to said account~~ under 42 USC 1101 to 1103 and all federal moneys credited to  
12 the fund pursuant to under sub. (8).

13           **SECTION 37.** 108.161 (2) of the statutes is amended to read:

14           108.161 (2) The requirements of ~~said section 903~~ 42 USC 1103 shall control any  
15 appropriation, withdrawal, and use of any moneys in said the federal administrative  
16 financing account.

17           **SECTION 38.** 108.161 (3) of the statutes is amended to read:

18           108.161 (3) Consistently with this chapter and ~~said section 903~~, such 42 USC  
19 1103, moneys in the federal administrative financing account shall be used solely for  
20 benefits or employment security administration by the department, including  
21 unemployment insurance, employment service, apprenticeship programs, and  
22 related statistical operations.

23           **SECTION 39.** 108.161 (3e) of the statutes is amended to read:

24           108.161 (3e) Notwithstanding sub. (3), any moneys allocated under ~~section 903~~  
25 ~~of the federal Social Security Act, as amended,~~ 42 USC 1103 for federal fiscal years

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1 2000 and 2001 and the first \$2,389,107 of any distribution received by this state  
2 under ~~section 903 of that act~~ 42 USC 1103 in federal fiscal year 2002 shall be used  
3 solely for unemployment insurance administration.

4 **SECTION 40.** 108.161 (4) of the statutes is amended to read:

5 108.161 (4) ~~Such moneys~~ Moneys in the federal administrative financing  
6 account shall be encumbered and spent for employment security administrative  
7 purposes only pursuant to, and after the effective date of, a specific legislative  
8 appropriation enactment that does all of the following:

9 (a) ~~Stating States~~ for which such purposes and in what amounts the  
10 appropriation is being made to ~~the administrative account created by s. 108.20.~~

11 (b) ~~Directing Directs~~ the fund's treasurer to transfer the appropriated amounts  
12 to ~~the administrative account~~ the appropriation account under s. 20.445 (1) (n) only  
13 as and to the extent that they are currently needed for such expenditures, and  
14 ~~directing directs~~ that there shall be restored to the federal administrative financing  
15 ~~account created by sub. (1)~~ any amount thus transferred ~~which~~ that has ceased to be  
16 needed or available for such expenditures.

17 (c) ~~Specifying Specifies~~ that the appropriated amounts are available for  
18 obligation solely within the 2 years beginning on the appropriation law's date of  
19 enactment. This paragraph does not apply to the appropriations under s. 20.445 (1)  
20 (nd) and (ne) or to any amounts expended from the appropriation under s. 20.445 (1)  
21 (nb) from moneys transferred to this state on March 13, 2002, pursuant to ~~section 903~~  
22 ~~(d) of the federal Social Security Act~~ 42 USC 1103 (d).

23 (d) ~~Limiting Limits~~ the total amount ~~which~~ that may be obligated during any  
24 fiscal year to the aggregate of all amounts credited under sub. (1), including amounts

**SENATE BILL 899****SECTION 40**

1 credited pursuant to under sub. (8), reduced at the time of any obligation by the sum  
2 of the moneys obligated and charged against any of the amounts credited.

3 **SECTION 41.** 108.161 (5) and (6) of the statutes are consolidated, renumbered  
4 108.161 (5m) and amended to read:

5 108.161 **(5m)** The total of the amounts ~~thus~~ appropriated under sub. (4) for use  
6 in any fiscal year shall in no event exceed the moneys available for such use  
7 ~~hereunder~~ under this section, considering the timing of credits ~~hereunder~~ under this  
8 section and the sums already spent or appropriated or transferred or otherwise  
9 encumbered ~~hereunder. (6)~~ under this section. The fund's treasurer shall keep a  
10 record of all such ~~times and amounts; shall charge transactions and shall do all of the~~  
11 following:

12 (a) Charge each sum against the earliest credits ~~duly~~ available therefor; ~~shall~~  
13 ~~include.~~

14 (b) Include any sum ~~thus~~ that has been appropriated but not yet spent  
15 ~~hereunder~~ under this section in computing the fund's net balance as of the close of  
16 any month, in line with the federal requirement that any such sum shall, until spent,  
17 be considered part of the fund; ~~and shall certify.~~

18 (c) Certify the relevant facts whenever necessary ~~hereunder.~~

19 **SECTION 42.** 108.161 (7) of the statutes is amended to read:

20 108.161 **(7)** If any moneys appropriated ~~hereunder~~ under this section are used  
21 to buy and hold suitable land, ~~with a view to the future construction of an~~ and to build  
22 a suitable employment security building thereon, and if such land is later sold or  
23 transferred to other use, the proceeds of such sale ( ~~or~~ or the value of such land when  
24 transferred), shall be credited to the federal administrative financing account  
25 ~~created by sub. (1)~~ except as otherwise provided in ss. 13.48 (14) and 16.848.

**SENATE BILL 899**

1           **SECTION 43.** 108.161 (8) of the statutes is amended to read:

2           108.161 (8) If any sums are appropriated and spent hereunder under this  
3 section to buy land and to build a suitable employment security building thereon, or  
4 to purchase information technology hardware and software, ~~then~~ any federal  
5 moneys thereafter credited to the fund or paid to the department by way of gradual  
6 reimbursement of such employment security capital expenditures, or in lieu of the  
7 estimated periodic amounts ~~which~~ that would otherwise (, in the absence of such  
8 expenditures), be federally granted for the rental of substantially equivalent  
9 quarters, shall be credited to the federal administrative financing account ~~created~~  
10 ~~by sub. (1)~~, consistently with any federal requirements applicable to the handling  
11 and crediting of such moneys.

12           **SECTION 44.** 108.161 (9) of the statutes is amended to read:

13           108.161 (9) Any land and building or office quarters acquired under this section  
14 shall continue to be used for employment security purposes. Realty or quarters may  
15 not be sold or transferred to other use if prior action is taken under s. 13.48 (14) (am)  
16 or 16.848 (1) and may not be sold or transferred without the governor's approval. The  
17 proceeds from the sale, or the value of realty or quarters upon transfer, shall be  
18 credited to the federal administrative financing account ~~established in sub. (1)~~ or  
19 credited to the ~~fund established in s. 108.20~~ appropriate appropriation account  
20 under s. 20.445, or both as determined by the department in accordance with federal  
21 requirements. Equivalent substitute rent-free quarters may be provided, as  
22 federally approved. Amounts credited under this subsection shall be used solely to  
23 finance employment security quarters according to federal requirements.

24           **SECTION 45.** 108.162 (7) of the statutes is amended to read:

**SENATE BILL 899****SECTION 45**

1           108.162 (7) Any amount appropriated under s. 20.445 (1) (na) ~~which~~ that has  
2 not been obligated shall be available for employment security local office building  
3 projects, consistent with this section and ~~ss. s. 108.161 and 108.20.~~

4           **SECTION 46.** 108.17 (2m) of the statutes is amended to read:

5           108.17 (2m) When a written statement of account is issued to an employer by  
6 the department, ~~showing as duly credited~~ that shows a specified amount received  
7 from the employer under this chapter as having been credited, no other form of state  
8 receipt ~~therefor~~ is required.

9           **SECTION 47.** 108.17 (3) of the statutes is amended to read:

10           108.17 (3) If an employing unit ~~makes application~~ applies to the department  
11 to adjust an alleged overpayment by the employer of contributions or interest under  
12 this chapter, and files such an application within 3 years after the close of the  
13 calendar year in which such payment was made, the department shall ~~make a~~  
14 ~~determination~~ determine under s. 108.10 ~~as to the existence and whether and to~~  
15 ~~what~~ extent of any such an overpayment, and said section shall apply to such  
16 ~~determination~~ exists. Except as provided in sub. (3m), the department shall allow  
17 an employer a credit for any amount determined under s. 108.10 to have been  
18 erroneously paid by the employer, without interest, against its future contribution  
19 payments; or, if the department finds it impracticable to allow the employer such a  
20 credit, it shall refund ~~such~~ the overpayment to the employer, without interest, from  
21 the fund or the ~~administrative account, as the case may be~~ appropriate appropriation  
22 under s. 20.445.

23           **SECTION 48.** 108.17 (3m) of the statutes is amended to read:

24           108.17 (3m) If an appeal tribunal or the commission issues a decision under  
25 s. 108.10 (2), or a court issues a decision on review under s. 108.10 (4), in which it is

**SENATE BILL 899**

1 determined that an amount has been erroneously paid by an employer, the  
2 department shall, from the ~~administrative account~~ appropriation under s. 20.445 (1)  
3 (wd), credit the employer with interest at the rate of 0.75 percent per month or  
4 fraction thereof on the amount of the erroneous payment. Interest shall accrue from  
5 the month which the erroneous payment was made until the month in which it is  
6 either used as a credit against future contributions or refunded to the employer.

7 **SECTION 49.** 108.18 (7) (a) 1. of the statutes is amended to read:

8 108.18 (7) (a) 1. Except as provided in pars. (b) to (i), any employer may make  
9 payments to the fund during the month of November in excess of those required by  
10 this section and s. 108.19 (1), ~~(1e)~~, and ~~(1f)~~. Each payment shall be credited to the  
11 employer's account for the purpose of computing the employer's reserve percentage  
12 as of the immediately preceding computation date.

13 **SECTION 50.** 108.18 (7) (h) of the statutes is amended to read:

14 108.18 (7) (h) The department shall establish contributions, other than those  
15 contributions required by this section and assessments required under s. 108.19 (1),  
16 ~~(1e)~~, and ~~(1f)~~ and contributions other than those submitted during the month of  
17 November or authorized under par. (f) or (i) 2., as a credit, without interest, against  
18 future contributions payable by the employer or shall refund the contributions at the  
19 employer's option.

20 **SECTION 51.** 108.19 (title) of the statutes is repealed and recreated to read:

21 **108.19 (title) Special assessments.**

22 **SECTION 52.** 108.19 (1) of the statutes is renumbered 108.19 (1) (a) and  
23 amended to read:

24 108.19 (1) (a) Each employer subject to this chapter shall regularly ~~contribute~~  
25 ~~to the administrative account at the rate of two-tenths of one~~ pay an assessment

**SENATE BILL 899****SECTION 52**

1 equal to 0.2 percent per year on its payroll, except that the department may prescribe  
2 at the close of any fiscal year such lower rates ~~of contribution~~ under this section  
3 subsection, to apply to classes of employers throughout the ensuing fiscal year, as will  
4 in the department's judgment adequately finance the administration of this chapter,  
5 and as will in the department's judgment fairly represent the relative cost of the  
6 services rendered by the department to each such class.

7 **SECTION 53.** 108.19 (1) (d) of the statutes is created to read:

8 108.19 (1) (d) Assessments under this subsection shall be credited to the  
9 appropriation account under s. 20.445 (1) (wc).

10 **SECTION 54.** 108.19 (1e) (a) of the statutes is amended to read:

11 108.19 (1e) (a) Except as provided in par. (b), each employer, other than an  
12 employer that finances benefits by reimbursement in lieu of contributions under s.  
13 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable  
14 under s. 108.18 and this section, pay an assessment ~~to the administrative account~~  
15 for each year ~~prior to~~ before the year 2010 equal to the lesser of 0.01 percent of its  
16 payroll for that year or the solvency contribution that would otherwise be payable  
17 by the employer under s. 108.18 (9) for that year.

18 **SECTION 55.** 108.19 (1e) (cm) of the statutes is created to read:

19 108.19 (1e) (cm) Assessments under this subsection shall be credited to the  
20 appropriation under s. 20.445 (1) (wh).

21 **SECTION 56.** 108.19 (1e) (d) of the statutes is amended to read:

22 108.19 (1e) (d) The department may expend the moneys received from  
23 assessments levied under this subsection in the amounts authorized under s. 20.445  
24 (1) ~~(gh)~~ (wh) for the renovation and modernization of unemployment insurance  
25 information technology systems, specifically including development and

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1 implementation of a new system and reengineering of automated processes and  
2 manual business functions.

3 **SECTION 57.** 108.19 (1f) (a) of the statutes is amended to read:

4 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an  
5 employer that finances benefits by reimbursement in lieu of contributions under s.  
6 108.15, 108.151, or 108.152 shall, in addition to other ~~contributions~~ amounts payable  
7 under s. 108.18 and this section, pay an assessment for each year equal to the lesser  
8 of 0.01 percent of its payroll for that year or the solvency contribution that would  
9 otherwise be payable by the employer under s. 108.18 (9) for that year.

10 (d) Assessments under this ~~paragraph~~ subsection shall be deposited in the  
11 unemployment program integrity fund.

12 **SECTION 58.** 108.19 (1f) (c) of the statutes is amended to read:

13 108.19 (1f) (c) Notwithstanding par. (a), the department may, if it finds that the  
14 full amount of the levy is not required to effect the purposes specified in ~~sub. (1s) s.~~  
15 108.20 (2) (b) for any year, prescribe a reduced levy for that year and in such case shall  
16 publish in the notice under par. (b) the rate of the reduced levy.

17 **SECTION 59.** 108.19 (1m) of the statutes is renumbered 108.19 (1m) (a) and  
18 amended to read:

19 108.19 (1m) (a) Each employer subject to this chapter as of the date a rate is  
20 established under this subsection shall pay an assessment ~~to the unemployment~~  
21 ~~interest payment fund~~ at a rate established by the department sufficient to pay  
22 interest due on advances from the federal unemployment account under ~~Title XII of~~  
23 ~~the federal social security act~~, 42 USC 1321 to 1324. The rate established by the  
24 department for employers who finance benefits under s. 108.15 (2), 108.151 (2), or  
25 108.152 (1) shall be 75 percent of the rate established for other employers. The

**SENATE BILL 899****SECTION 59**

1 amount of any employer's assessment shall be the product of the rate established for  
2 that employer multiplied by the employer's payroll of the previous calendar year as  
3 taken from quarterly employment and wage reports filed by the employer under s.  
4 108.205 (1) or, in the absence of the filing of such reports, estimates made by the  
5 department.

6 (d) Each assessment made under this subsection is due within 30 days after the  
7 date the department issues the assessment. ~~If the~~

8 (f) The department shall use amounts collected from employers under this  
9 subsection ~~exceed the amounts needed to pay interest due on advances from the~~  
10 federal unemployment account under 42 USC 1321 to 1324. If the amounts collected  
11 exceed the amounts needed to pay that interest for a given year, the department shall  
12 use any the excess to pay interest owed in subsequent years on advances from the  
13 federal unemployment account. If the department determines that additional  
14 interest obligations are unlikely, the department shall transfer the excess to the  
15 fund's balancing account ~~of the fund,~~ the unemployment program integrity fund, or  
16 both in amounts determined by the department.

17 **SECTION 60.** 108.19 (1m) (e) of the statutes is created to read:

18 108.19 **(1m)** (e) Assessments under this subsection shall be deposited in the  
19 unemployment interest payment fund.

20 **SECTION 61.** 108.19 (1n) of the statutes is renumbered 108.19 (1m) (b) and  
21 amended to read:

22 108.19 **(1m)** (b) The department shall publish as a class 1 notice under ch. 985  
23 any rate established under ~~sub. (1m) par. (a)~~ par. (a) within 10 days of after the date that the  
24 rate is established.

**SENATE BILL 899**

1           **SECTION 62.** 108.19 (1p) of the statutes is renumbered 108.19 (1m) (c) and  
2 amended to read:

3           108.19 **(1m)** (c) Notwithstanding ~~sub. (1m) par. (a)~~, an employer having a  
4 payroll of \$25,000 or less for the preceding calendar year is exempt from any  
5 assessment under ~~sub. (1m)~~ this subsection.

6           **SECTION 63.** 108.19 (1q) of the statutes is renumbered 108.20 (3) and amended  
7 to read:

8           108.20 **(3)** UNEMPLOYMENT INTEREST PAYMENT FUND. There is created a separate,  
9 nonlapsible trust fund designated as the unemployment interest payment fund  
10 consisting of all amounts collected under ~~sub. s. 108.19~~ (1m) (a) and all interest and  
11 penalties on those amounts collected under s. 108.22.

12           **SECTION 64.** 108.19 (1s) of the statutes is renumbered 108.20 (2), and 108.20  
13 (2) (a) 2. and 3., as renumbered, are amended to read:

14           108.20 **(2)** (a) 2. Assessments levied and deposited into the unemployment  
15 program integrity fund under ~~sub. (1f)~~ s. 108.19 (1f).

16           3. Amounts transferred under ~~sub. (1m)~~ s. 108.19 (1m) (f).

17           **SECTION 65.** 108.19 (2) of the statutes is renumbered 108.19 (1) (b) and  
18 amended to read:

19           108.19 **(1)** (b) If the department finds, at any time within a fiscal year for which  
20 it has prescribed lower contribution rates to the administrative account than the  
21 maximum rate permitted under ~~sub. (1) par. (a)~~, that such lower rates will not  
22 adequately finance the administration of this chapter or are excessive for that  
23 purpose, the department may by general rule prescribe a new schedule of rates in no  
24 case exceeding the specified maximum to apply under this ~~section~~ subsection for the  
25 balance of the fiscal year.

**SENATE BILL 899****SECTION 66**

1           **SECTION 66.** 108.19 (2m) of the statutes is renumbered 108.19 (1) (c) and  
2 amended to read:

3           108.19 (1) (c) Within the limit specified by ~~sub. (1)~~ under par. (a), the  
4 department may by rule prescribe at any time as to any period any such rate or rates  
5 or schedule as it deems necessary and proper ~~hereunder~~ under this subsection.  
6 Unless thus prescribed, no such rate or rates or schedule shall apply under ~~sub. (1)~~  
7 ~~or (2)~~ par. (a) or (b).

8           **SECTION 67.** 108.19 (4) of the statutes is renumbered 108.18 (1) (c) and  
9 amended to read:

10           108.18 (1) (c) ~~If section 303 Notwithstanding par. (b), if 42 USC 503 (a) (5) of~~  
11 ~~title III of the social security act and section 26 USC 3304 (a) (4) of the internal~~  
12 ~~revenue code are amended to permit a state agency to use, in financing~~  
13 ~~administrative expenditures incurred in carrying out its employment security~~  
14 ~~functions, some any part of the moneys collected or to be collected under the state~~  
15 ~~unemployment insurance law, an employer's contributions in partial or complete~~  
16 ~~substitution for grants under title III 42 USC 501 to 506, then this chapter shall, by~~  
17 ~~rule of the department, be modified in the manner and to the extent and within the~~  
18 ~~limits necessary to permit such use by the department under this chapter; and the~~  
19 ~~modifications shall become effective on the same date as such use becomes~~  
20 ~~permissible under the federal amendments~~ the department may credit any portion  
21 of that part of an employer's contributions to the appropriation under s. 20.445 (1)  
22 (wd).

23           **SECTION 68.** 108.20 of the statutes is repealed and recreated to read:

24           **108.20 Segregated funds. (1) UNEMPLOYMENT ADMINISTRATION FUND.** There  
25 is created a separate, nonlapsible trust fund designated as the unemployment

**SENATE BILL 899**

1 administration fund consisting of moneys credited to the appropriation accounts  
2 under s. 20.445 (1) (wc), (wd), and (wh).

3 **(2) UNEMPLOYMENT PROGRAM INTEGRITY FUND.**

4 **SECTION 69.** 108.22 (1) (am) of the statutes is amended to read:

5 108.22 **(1)** (am) The interest, penalties, and tardy filing fees levied under pars.  
6 (a), (ac), (ad), and (af) shall be paid to the department and credited to the  
7 ~~administrative account~~ appropriation under s. 20.445 (1) (wd).

8 **SECTION 70.** 108.22 (1m) of the statutes is amended to read:

9 108.22 **(1m)** If any person owes any contributions, reimbursements or  
10 assessments under s. 108.15, 108.151, 108.152, 108.155, or 108.19 ~~(1m)~~, benefit  
11 overpayments, interest, fees, payments for forfeitures, other penalties, or any other  
12 amount to the department under this chapter and fails to pay the amount owed, the  
13 department has a perfected lien upon the right, title, and interest in all of the  
14 person's real and personal property located in this state in the amount finally  
15 determined to be owed, plus costs. Except where creation of a lien is barred or stayed  
16 by bankruptcy or other insolvency law, the lien is effective upon the earlier of the date  
17 on which the amount is first due or the date on which the department issues a  
18 determination of the amount owed under this chapter and shall continue until the  
19 amount owed, plus costs and interest to the date of payment, is paid, except as  
20 provided in sub. (8) (d). If a lien is initially barred or stayed by bankruptcy or other  
21 insolvency law, it shall become effective immediately upon expiration or removal of  
22 such bar or stay. The perfected lien does not give the department priority over  
23 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges  
24 whose interests have been recorded before the department's lien is recorded.

25 **SECTION 71. Fiscal changes.**





State of Wisconsin  
2021 - 2022 LEGISLATURE

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## 2021 ASSEMBLY BILL 691

November 12, 2021 - Introduced by Representatives SPIROS, ARMSTRONG, AUGUST, MACCO, STEFFEN and KNODL, cosponsored by Senators COWLES and BALLWEG. Referred to Committee on Labor and Integrated Employment.

1     **AN ACT** *to amend* 102.07 (8) (a); and *to create* 73.03 (75), 102.07 (8) (bs), 104.01  
2           (5k), 104.013, 108.02 (12) (cm), 109.01 (2m) and 109.013 of the statutes;  
3           **relating to:** classification of motor vehicle operators as independent  
4           contractors or employees.

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***Analysis by the Legislative Reference Bureau***

This bill provides that, for the purposes of the worker's compensation law, the unemployment insurance law, the minimum wage law, the administration of income and franchise taxes, and wage claims, the fact that the operator of a motor vehicle for a motor carrier deploys, implements, or uses a motor carrier safety improvement is not evidence that the operator is an employee rather than an independent contractor.

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

5           **SECTION 1.** 73.03 (75) of the statutes is created to read:  
6           73.03 (75) To not consider the deployment, implementation, or use of a motor  
7           carrier safety improvement, as defined in s. 102.07 (8) (bs) 1., in determining whether

**ASSEMBLY BILL 691****SECTION 1**

1 the operator of a motor vehicle is an employee for the administration of the income  
2 and franchise taxes imposed under ch. 71, to the extent that such a determination  
3 does not conflict with the federal Internal Revenue Code.

4 **SECTION 2.** 102.07 (8) (a) of the statutes is amended to read:

5 102.07 (8) (a) Except as provided in pars. (b) and ~~(bm)~~ (bs), every  
6 independent contractor is, for the purpose of this chapter, an employee of any  
7 employer under this chapter for whom he or she is performing service in the course  
8 of the trade, business, profession or occupation of such employer at the time of the  
9 injury.

10 **SECTION 3.** 102.07 (8) (bs) of the statutes is created to read:

11 102.07 (8) (bs) 1. In this paragraph, “motor carrier safety improvement” means  
12 any device, equipment, software, technology, procedure, training, policy, program, or  
13 practice intended and primarily used to improve or facilitate compliance with federal  
14 or state laws that govern any of the following:

- 15 a. Traffic safety or motor carrier safety.
- 16 b. The safety of motor vehicles.
- 17 c. The safety of operators of motor vehicles.
- 18 d. The safety of other users of highways.

19 2. The deployment, implementation, or use of a motor carrier safety  
20 improvement by or as required by a motor carrier or its related entity, as defined in  
21 s. 71.22 (9am), including by contract, or by the operator of a motor vehicle is not  
22 evidence that an operator of a motor vehicle does not meet the conditions of par. (b).

23 **SECTION 4.** 104.01 (5k) of the statutes is created to read:

24 104.01 (5k) “Motor carrier safety improvement” has the meaning given in s.  
25 102.07 (8) (bs) 1.

**ASSEMBLY BILL 691**

1           **SECTION 5.** 104.013 of the statutes is created to read:

2           **104.013 Certain motor vehicle operators excluded.** For purposes of this  
3 chapter, the deployment, implementation, or use of a motor carrier safety  
4 improvement by or as required by a motor carrier or its related entity, as defined in  
5 s. 71.22 (9am), including by contract, or by the operator of a motor vehicle is not  
6 evidence that an individual is an employee of a motor carrier.

7           **SECTION 6.** 108.02 (12) (cm) of the statutes is created to read:

8           108.02 (12) (cm) 1. In this paragraph, “motor carrier safety improvement” has  
9 the meaning given in s. 102.07 (8) (bs) 1.

10           2. The deployment, implementation, or use of a motor carrier safety  
11 improvement by or as required by a motor carrier or its related entity, as defined in  
12 s. 71.22 (9am), including by contract, or by the operator of a motor vehicle is not  
13 evidence of control or direction by an employing unit for purposes of pars. (bm) and  
14 (c).

15           **SECTION 7.** 109.01 (2m) of the statutes is created to read:

16           109.01 (2m) “Motor carrier safety improvement” has the meaning given in s.  
17 102.07 (8) (bs) 1.

18           **SECTION 8.** 109.013 of the statutes is created to read:

19           **109.013 Certain motor vehicle operators excluded.** For purposes of this  
20 chapter, the deployment, implementation, or use of a motor carrier safety  
21 improvement by or as required by a motor carrier or its related entity, as defined in  
22 s. 71.22 (9am), including by contract, or by the operator of a motor vehicle is not  
23 evidence that an individual is an employee of a motor carrier.

24

(END)



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# Wisconsin Legislative Council

## AMENDMENT MEMO

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Memo published: February 10, 2022

Contact: David Moore, Senior Staff Attorney

2021 Senate Bill 703

Senate  
Amendment 1

### 2021 SENATE BILL 703

Under Senate Bill 703, the fact that a motor vehicle carrier or the operator of a motor vehicle deployed, implemented, or used a motor carrier safety improvement is not evidence that the operator is an employee, rather than an independent contractor, for the purposes of the state income and franchise tax, workers compensation, unemployment insurance, and minimum wage laws. The bill defines **“motor carrier safety improvement” as any device, equipment software, technology, procedure, training, policy, program, or practice intended and primarily used to improve or facilitate compliance with federal or state laws that govern any of the following:**

- Traffic safety or motor carrier safety.
- The safety of motor vehicles.
- The safety of operators of motor vehicles.
- The safety of other users of highways.

### SENATE AMENDMENT 1

Senate Amendment 1 **modifies the definition of “motor carrier safety improvement” to clarify that it only applies to a motor carrier, as defined by federal law.**

### BILL HISTORY

Senator Cowles offered Senate Amendment 1 on February 3, 2022. On February 8, 2022, the Senate Committee on Transportation and Local Government voted to recommend adoption of the amendment on a vote of Ayes, 5; Noes, 0, and passage of Senate Bill 703, as amended, on a vote of Ayes 3; Noes, 2.

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State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-4768/1  
MED&EAW:cjs

## 2021 ASSEMBLY BILL 883

January 21, 2022 - Introduced by Representatives PETRYK, PENTERMAN, ARMSTRONG, BORN, DITTRICH, DUCHOW, EDMING, KNODL, KUGLITSCH, LOUDENBECK, MOSES, MURSAU, PETERSEN, THIESFELDT, TITTL, WICHGERS and WITTKÉ, cosponsored by Senators ROTH, BALLWEG, BERNIER and FEYEN. Referred to Committee on Labor and Integrated Employment.

1     **AN ACT** *to renumber and amend* 108.04 (2) (a) 4., 108.04 (15) (a) 2., 108.05 (3)  
2           (a) and 108.13 (4) (a) 4.; *to consolidate, renumber and amend* 108.04 (15)  
3           (a) (intro.) and 1.; *to amend* 20.445 (1) (aL), 20.445 (1) (gd), 20.445 (1) (nd),  
4           40.02 (22) (b) 3., 40.65 (5) (b) 2., 49.147 (3) (ac) 2., 49.163 (3) (a) 3. c., 71.67 (7)  
5           (title), 105.01 (1) (b) 1., 105.115 (2) (b), 105.115 (2) (c), 105.115 (3) (a) 1., 105.115  
6           (4) (b) 1., 105.115 (4) (b) 3., 106.11, 106.13 (2), 106.38 (3) (c) 3., 108.04 (2) (a) 3.,  
7           108.04 (12) (b), 108.133 (2) (a) (intro.), 108.133 (2) (am), 108.14 (1), 108.141 (1)  
8           (b) 3., 108.142 (1) (h) 3., 108.19 (1m), 111.39 (4) (c), 230.43 (4), 230.85 (3) (d) and  
9           779.01 (2) (am); *to repeal and recreate* chapter 108 (title); and *to create*  
10          15.223 (2), 106.113, 106.28, 108.01 (2m), 108.013, 108.02 (21r), 108.04 (2) (a) 4.  
11          c., 108.04 (2) (a) 5., 108.04 (15) (a) 2. b., 108.04 (15) (am), (an) and (ao), 108.05  
12          (3) (a) 3., 108.14 (8o) and 108.14 (30) of the statutes; **relating to:** various  
13          changes to the unemployment insurance law, a grant program for hiring  
14          qualified long-term unemployment recipients, allocation of federal American

**ASSEMBLY BILL 883**

1 Rescue Plan Act of 2021 funding for certain purposes, the state plan under the  
2 federal Workforce Innovation and Opportunity Act of 2014, federal  
3 Reemployment Services and Eligibility Assessment grants, employment  
4 outcome data reporting, extending the time limit for emergency rule  
5 procedures, providing an exemption from emergency rule procedures, and  
6 granting rule-making authority.

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***Analysis by the Legislative Reference Bureau*****UNEMPLOYMENT INSURANCE**

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

***Program name change***

The bill changes references in the statutes to “unemployment insurance” to “reemployment assistance” and requires the program and its benefits to be known as reemployment assistance. The bill also requires DWD to have a division known as the Division of Reemployment Assistance and requires the reemployment assistance law to be administered by that division.

***General qualifying requirements***

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate in a public employment office workshop or training program or in similar reemployment services required by DWD.

This bill does the following:

1. Requires, for the third and subsequent weeks of a claimant’s benefit year, that at least two of the required weekly work search actions be direct contacts with potential employers.
2. Requires a claimant who resides in this state, for each week other than an initial week, to submit and keep posted on the DWD’s job center website a current resume.
3. Requires, when a claimant is claiming benefits with less than three weeks of benefits left, that the claimant complete a reemployment counseling session.

Additionally, current law allows DWD to use information or job application materials described above to assess a claimant’s efforts, skills, and ability to find or

**ASSEMBLY BILL 883**

obtain work and to develop a list of potential opportunities for a claimant to obtain suitable work. However, current law provides that a claimant who otherwise satisfies the required weekly work search requirement is not required to apply for any specific positions on the list of potential opportunities in order to satisfy the work search requirement. The bill requires, instead of allows, DWD to provide this assistance. The bill also repeals the language in current law providing that a claimant who otherwise satisfies the weekly work search requirement is not required to apply for specific positions provided by DWD and requires DWD to provide each claimant with at least four potential opportunities each week, one or more of which may be opportunities with a temporary help company.

Finally, current law allows DWD to require a claimant to participate in a public employment office workshop or training program. This bill provides that DWD must require a claimant to participate in a public employment office workshop or training program if the claimant is likely to exhaust regular UI benefits. DWD may also require other claimants to participate in a public employment office workshop or training program, but must prioritize claimants more likely to have difficulty obtaining reemployment.

***Drug testing***

Current state law requires DWD to establish a program that is consistent with federal law to test certain claimants who apply for UI benefits for the presence of controlled substances. A claimant who tests positive for a controlled substance for which the claimant does not have a prescription is ineligible for UI benefits until certain requalification criteria are satisfied or unless he or she enrolls in a substance abuse treatment program and undergoes a job skills assessment, and a claimant who declines to submit to a test is simply ineligible for benefits until he or she requalifies. Claimants who are required to undergo drug testing include individuals for whom suitable work is only available in occupations for which drug testing is regularly conducted in this state. However, current law provides that these provisions do not apply until DWD promulgates rules to implement the requirements and those rules take effect, including rules identifying occupations for which drug testing is regularly conducted in this state.

This bill requires DWD to immediately promulgate the required rules.

***Reemployment Services and Eligibility Assessment grants***

Under federal law, the United States Department of Labor (USDOL) operates the Reemployment Services and Eligibility Assessment (RESEA) program, whereby grants are awarded to states to provide reemployment services to claimants. Participation in the RESEA program is voluntary and requires that a state submit a state plan to USDOL that outlines how the state intends to conduct a program of reemployment services and eligibility assessments.

This bill requires that DWD act to continue to participate in the RESEA program and provide RESEA services to all UI claimants likely to exhaust regular UI benefits. The bill further requires DWD, until December 31, 2024, to provide certain RESEA services to all UI claimants and requires the governor to allocate moneys available under the federal American Rescue Plan Act of 2021 to provide these services.

**ASSEMBLY BILL 883*****Wage threshold for receipt of benefits***

Under current law, if a claimant for UI earns more than \$30 in a given week, the partial benefits formula reduces the claimant's weekly UI benefit payment by a certain percentage of the wages earned over \$30. Under current law, if a claimant receives wages totaling more than \$500 in a given week, the claimant is generally ineligible to receive any benefits. This bill changes the partial benefits formula so that the UI benefit payment is not reduced unless a claimant earns more than \$30 or 40 percent of the claimant's weekly benefit rate in a given week, whichever amount is greater. However, the bill does not affect the \$500 cap on wages for receipt of benefits.

**OTHER CHANGES*****Grant program for hiring long-term unemployment recipients***

The bill directs the governor to allocate sufficient moneys of the moneys received from the federal government under the American Rescue Plan Act of 2021 for costs associated with a grant program to provide payments to employers that hire qualified long-term unemployment benefit recipients who became unemployed due to the COVID-19 pandemic. Under the program, an employer may receive up to two payments of up to \$1,000 each for each qualified long-term unemployment recipient the employer hires as compensation for wages, training, benefits, and other employment costs incurred by the employer.

***WIOA State Plan***

Under the federal Workforce Innovation and Opportunity Act of 2014 (WIOA), federal funds are allocated to the state and, in turn, to local workforce development areas designated by the governor to provide employment and training activities for job seekers and workers. The WIOA repealed a prior law known as the federal Workforce Investment Act of 1998, which contained many similar provisions. To receive funding under the WIOA, the state must undertake a number of activities, including submitting a state plan to the federal government. A plan must outline a four-year strategy for the state's workforce development system. This bill requires the combined state plan submitted by the state to include programs authorized under state unemployment compensation laws, which is one of the 11 specific federal programs listed in the WIOA that states may include in their plans to assist in workforce development.

The bill also updates references to the United States Code regarding the WIOA.

***Data reporting***

The bill requires DWD, using quarterly wage data filed by employers with DWD, to semiannually compile data and prepare a report to provide information on and analysis of the employment outcomes of claimants after receiving UI benefits. Each claimant's wage data must be used for 12 quarters following the claimant's first of benefits.

**ASSEMBLY BILL 883**

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

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

1           **SECTION 1.** 15.223 (2) of the statutes is created to read:

2           15.223 (2) DIVISION OF REEMPLOYMENT ASSISTANCE. There is created in the  
3 department of workforce development a division of reemployment assistance.

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

5           20.445 (1) (aL) *Unemployment insurance* Reemployment assistance  
6 *administration; controlled substances testing and substance abuse treatment.*

7 Biennially, the amounts in the schedule for conducting screenings of applicants,  
8 testing applicants for controlled substances, the provision of substance abuse  
9 treatment to applicants and claimants, and related expenses under s. 108.133.

10 Notwithstanding s. 20.001 (3) (b), the unencumbered balance on June 30 of each  
11 odd-numbered year shall be transferred to the unemployment reemployment  
12 assistance program integrity fund.

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

14           20.445 (1) (gd) *Unemployment* Reemployment assistance; interest and penalty  
15 *payments.* All moneys received as interest and penalties collected under ss. 108.04  
16 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties deposited under  
17 s. 108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not appropriated under  
18 par. (gg) and all moneys transferred to this appropriation account from the  
19 appropriation account under par. (gh) for the payment of benefits specified in s.  
20 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the payment of interest  
21 to employers under s. 108.17 (3m), for research relating to the condition of the

**ASSEMBLY BILL 883****SECTION 3**

1 unemployment reserve fund under s. 108.14 (6), for administration of the  
2 ~~unemployment insurance~~ reemployment assistance program and federal or state  
3 ~~unemployment insurance~~ reemployment assistance programs authorized by the  
4 governor under s. 16.54, for satisfaction of any federal audit exception concerning a  
5 payment from the unemployment reserve fund or any federal aid disallowance  
6 concerning the ~~unemployment insurance~~ reemployment assistance program, for  
7 assistance to the department of justice in the enforcement of ch. 108, for the payment  
8 of interest due on advances from the federal unemployment account under title XII  
9 of the social security act to the unemployment reserve fund, and for payments made  
10 to the unemployment reserve fund to obtain a lower interest rate or deferral of  
11 interest payments on these advances, except as otherwise provided in s. 108.20.

12 **SECTION 4.** 20.445 (1) (nd) of the statutes is amended to read:

13 20.445 (1) (nd) *Unemployment Reemployment assistance administration;*  
14 *apprenticeship and other employment services.* From the moneys received from the  
15 federal government under section 903 (d) of the federal Social Security Act, as  
16 amended, the amounts in the schedule, as authorized by the governor under s. 16.54,  
17 to be used for administration by the department of apprenticeship programs under  
18 subch. I of ch. 106 and for administration and service delivery of employment and  
19 workforce information services, including the delivery of reemployment assistance  
20 services to ~~unemployment insurance~~ reemployment assistance claimants. All  
21 moneys transferred from par. (n) for this purpose shall be credited to this  
22 appropriation account. No moneys may be expended from this appropriation unless  
23 the treasurer of the unemployment reserve fund determines that such expenditure  
24 is currently needed for the purposes specified in this paragraph.

25 **SECTION 5.** 40.02 (22) (b) 3. of the statutes is amended to read:

**ASSEMBLY BILL 883**

1           40.02 **(22)** (b) 3. Unemployment insurance or reemployment assistance  
2           benefits.

3           **SECTION 6.** 40.65 (5) (b) 2. of the statutes is amended to read:

4           40.65 **(5)** (b) 2. Any unemployment insurance or reemployment assistance  
5           benefit payable to the participant because of his or her work record.

6           **SECTION 7.** 49.147 (3) (ac) 2. of the statutes is amended to read:

7           49.147 **(3)** (ac) 2. State ~~and federal unemployment~~ reemployment assistance  
8           contributions or federal unemployment taxes.

9           **SECTION 8.** 49.163 (3) (a) 3. c. of the statutes is amended to read:

10          49.163 **(3)** (a) 3. c. State reemployment assistance contributions and federal  
11          unemployment insurance ~~contributions or taxes~~, if any.

12          **SECTION 9.** 71.67 (7) (title) of the statutes is amended to read:

13          71.67 **(7)** (title) ~~WITHHOLDING FROM UNEMPLOYMENT COMPENSATION INSURANCE~~  
14          REEMPLOYMENT ASSISTANCE.

15          **SECTION 10.** 105.01 (1) (b) 1. of the statutes is amended to read:

16          105.01 **(1)** (b) 1. The person employing the individuals in addition to wages or  
17          salaries pays federal social security taxes, state reemployment assistance  
18          contributions, and federal unemployment ~~contributions or taxes~~, carries worker's  
19          compensation insurance as required by state law, and maintains liability insurance  
20          covering the acts of its employees while rendering services to, for or under the  
21          direction of a 3rd person; and

22          **SECTION 11.** 105.115 (2) (b) of the statutes is amended to read:

23          105.115 **(2)** (b) A statement of the employment status of the home care worker,  
24          specifically, whether the home care worker is an employee of the home care  
25          placement agency or of the home care consumer or is an independent contractor and

**ASSEMBLY BILL 883**

1 a statement identifying which party is responsible for paying the wages or salary of  
2 the home care worker, paying federal social security taxes and state reemployment  
3 assistance contributions and federal unemployment ~~contributions~~ or taxes with  
4 respect to the home care worker, and procuring worker's compensation or liability  
5 insurance covering injury to the home care worker.

6 **SECTION 12.** 105.115 (2) (c) of the statutes is amended to read:

7 105.115 (2) (c) A statement that, notwithstanding the employment status of the  
8 home care worker specified in the notice, the home care consumer may be determined  
9 to be the employer of the home care worker for purposes of certain state and federal  
10 labor laws and that, if that is the case, the home care consumer may be held  
11 responsible for paying the wages or salary of the home care worker, paying federal  
12 social security taxes and state reemployment assistance contributions and federal  
13 unemployment ~~contributions~~ or taxes with respect to the home care worker,  
14 procuring worker's compensation or liability insurance covering injury to the home  
15 care worker, and complying with various other state and federal labor laws.

16 **SECTION 13.** 105.115 (3) (a) 1. of the statutes is amended to read:

17 105.115 (3) (a) 1. A statement identifying which party is responsible for paying  
18 the wages or salary of the home care worker, paying federal social security taxes and  
19 state reemployment assistance contributions and federal unemployment  
20 ~~contributions~~ or taxes with respect to the home care worker, and procuring worker's  
21 compensation or liability insurance covering injury to the home care worker.

22 **SECTION 14.** 105.115 (4) (b) 1. of the statutes is amended to read:

23 105.115 (4) (b) 1. If the department finds that a home care placement agency  
24 has failed to provide a home care consumer with the notice required under sub. (2)  
25 and that the home care consumer is liable for the payment of federal social security

**ASSEMBLY BILL 883**

1 taxes or state reemployment assistance contributions or federal unemployment  
2 ~~contributions or~~ taxes with respect to the home care worker, for the provision of  
3 worker's compensation or liability insurance covering injury to the home care  
4 worker, for the payment of any fine or penalty imposed on the home care consumer  
5 for noncompliance with any state or federal labor law with respect to the home care  
6 worker, or for any injury to the home care worker, the department may recover from  
7 the home care placement agency, on behalf of the home care consumer, an amount  
8 equal to the total cost of those liabilities.

9 **SECTION 15.** 105.115 (4) (b) 3. of the statutes is amended to read:

10 105.115 (4) (b) 3. In the case of a home care consumer who commences an action  
11 in circuit court under par. (a), if the circuit court finds that the home care placement  
12 agency has failed to provide the home care consumer with the notice required under  
13 sub. (2) and that the home care consumer is liable for the payment of federal social  
14 security taxes or state reemployment assistance contributions or federal  
15 unemployment ~~contributions or~~ taxes with respect to the home care worker, for the  
16 provision of worker's compensation or liability insurance covering injury to the home  
17 care worker, for the payment of any fine or penalty imposed on the home care  
18 consumer for noncompliance with any state or federal labor law with respect to the  
19 home care worker, or for any injury to the home care worker, the court may order the  
20 home care placement agency to pay to the home care consumer an amount equal to  
21 the total cost of those liabilities, together with costs under ch. 814 and,  
22 notwithstanding s. 814.04 (1), reasonable attorney fees.

23 **SECTION 16.** 106.11 of the statutes is amended to read:

24 **106.11 Workforce investment programs.** The department shall cooperate  
25 with the federal government in carrying out the purposes of the federal Workforce

**ASSEMBLY BILL 883****SECTION 16**

1 ~~Investment Act of 1998, 29 USC 2801 to 2945~~ Innovation and Opportunity Act of  
2 2014, 29 USC 3101 to 3361. In administering the programs authorized by that act  
3 the department shall, in cooperation with other state agencies, with the council on  
4 workforce investment established under 29 USC 3111, and with local workforce  
5 development boards established under 29 USC ~~2832~~ 3122, establish a statewide  
6 workforce investment system to meet the employment, training, and educational  
7 needs of persons in this state. If a local workforce development board anticipates  
8 that there may be a business closing or mass layoff under s. 109.07 in the area served  
9 by that board, the board may prepare a list of resources available in that area that  
10 provide career planning, job search, job skills training, and other support services for  
11 affected employees, as defined in s. 109.07 (1) (a), including contact information for  
12 those resources, for distribution to those employees under s. 109.07 (1m) (a).

13 **SECTION 17.** 106.113 of the statutes is created to read:

14 **106.113 Workforce innovation plan.** The department shall submit a  
15 combined state plan under 29 USC 3113 that includes the programs listed under 29  
16 USC 3113 (a) (2) (G).

17 **SECTION 18.** 106.13 (2) of the statutes is amended to read:

18 106.13 (2) The council on workforce investment established under 29 USC  
19 ~~2821~~ 3111, the technical college system board, and the department of public  
20 instruction shall assist the department in providing the youth apprenticeship  
21 program under sub. (1).

22 **SECTION 19.** 106.28 of the statutes is created to read:

23 **106.28 Grant program for employers who hire long-term unemployed.**

24 (1) In this section:

**ASSEMBLY BILL 883**

1 (a) "Period of qualifying employment" means employment at 30 or more hours  
2 per week for 8 weeks, each of which begins on or after September 5, 2021, and ends  
3 on or before December 28, 2024.

4 (b) "Qualifying employee" means an employee who satisfies all of the following:

5 1. The individual was a qualified long-term unemployment recipient, as  
6 defined in 26 USC 51 (d) (15).

7 2. The individual became unemployed due to the COVID-19 pandemic, as  
8 determined by the department.

9 **(2)** The department shall develop and administer a grant program to provide  
10 payments to employing units in this state for hiring qualifying employees, to  
11 compensate those employing units for wages, training, benefits, and other  
12 employment costs, subject to all of the following:

13 (a) 1. An employing unit shall be entitled to a first payment under this section  
14 for one period of qualifying employment by the employing unit of a qualifying  
15 employee.

16 2. An employing unit shall be entitled to a 2nd payment under this section for  
17 2 nonoverlapping periods of qualifying employment by the employing unit of a  
18 qualifying employee.

19 (b) In order to receive a payment under par. (a) 1. or 2., an employing unit shall  
20 submit documentation of the employment of the employee, as required by the  
21 department by rule.

22 (c) Each payment under par. (a) 1. or 2. shall be limited to \$1,000.

23 (d) An employing unit may receive no more than 2 payments under par. (a) per  
24 qualifying employee.

**ASSEMBLY BILL 883****SECTION 19**

1 (e) There is no limit to the number of qualifying employees for which an  
2 employing unit may receive payments under this subsection, except that no more  
3 than one employing unit may receive payments for employing a given qualifying  
4 employee.

5 (3) Of the moneys the governor accepts from the federal government under s.  
6 16.54 pursuant to section 602 of the federal Social Security Act as amended by the  
7 federal American Rescue Plan Act of 2021, P.L. 117-2, the governor shall allocate  
8 sufficient moneys for costs associated with the grant program under this section.

9 (4) The department may use the procedure under s. 227.24 to promulgate rules  
10 for the grant program under this section. Notwithstanding s. 227.24 (1) (a) and (3),  
11 the department is not required to provide evidence that promulgating a rule under  
12 this subsection as an emergency rule is necessary for the preservation of the public  
13 peace, health, safety, or welfare and is not required to provide a finding of emergency  
14 for a rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and  
15 (2), rules under this subsection may remain in effect until December 31, 2024.

16 **SECTION 20.** 106.38 (3) (c) 3. of the statutes is amended to read:

17 106.38 (3) (c) 3. State reemployment assistance contributions and federal  
18 unemployment insurance ~~contributions or taxes~~, if any.

19 **SECTION 21.** Chapter 108 (title) of the statutes is repealed and recreated to  
20 read:

**CHAPTER 108****REEMPLOYMENT ASSISTANCE**

23 **SECTION 22.** 108.01 (2m) of the statutes is created to read:

24 108.01 (2m) The Social Security Act requires that, in order for an individual  
25 to be eligible for reemployment assistance benefits, the individual must be able to

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1 work, available to work, and actively seeking work. The reemployment assistance  
2 program in Wisconsin should enact and focus on policies that complement  
3 individuals' efforts to find employment.

4 **SECTION 23.** 108.013 of the statutes is created to read:

5 **108.013 Name of program.** The program established under this chapter and  
6 administered by the department shall be referred to as the "Reemployment  
7 Assistance Program," and the benefits available under this chapter shall be referred  
8 to as "reemployment assistance benefits."

9 **SECTION 24.** 108.02 (21r) of the statutes is created to read:

10 108.02 (21r) REEMPLOYMENT ASSISTANCE. "Reemployment assistance," when  
11 used in reference to the law of another state or jurisdiction or the federal government,  
12 includes an unemployment insurance law of that state or jurisdiction or the federal  
13 government.

14 **SECTION 25.** 108.04 (2) (a) 3. of the statutes is amended to read:

15 108.04 (2) (a) 3. The claimant conducts a reasonable search for suitable work  
16 during that week and provides verification of that search to the department. The  
17 search for suitable work must include at least 4 actions per week that constitute a  
18 reasonable search as prescribed by rule of the department. The department shall  
19 require, for the 3rd or subsequent week of the claimant's benefit year, that at least  
20 2 actions per week be direct contacts with potential employing units, as prescribed  
21 by rule of the department. In addition, the department may, by rule, require a  
22 claimant to take more than 4 reasonable work search actions in any week. The  
23 department shall require a uniform number of reasonable work search actions for  
24 similar types of claimants. The department may require a claimant to apply for one  
25 or more of the potential opportunities provided to the claimant under sub. (15) (a) 1.

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1 and may refer a claimant to opportunities with a temporary help company as part  
2 of the required search for suitable work under this subdivision.

3 **SECTION 26.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.  
4 (intro.) and amended to read:

5 108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other  
6 than an initial week, the claimant provides does all of the following:

7 a. Provides information or job application materials that are requested by the  
8 department and ~~participates~~.

9 b. Participates in a public employment office workshop or training program or  
10 in similar reemployment services that are required by the department under sub.  
11 (15) (a) 2.

12 **SECTION 27.** 108.04 (2) (a) 4. c. of the statutes is created to read:

13 108.04 (2) (a) 4. c. Submits and keeps posted on the department's job center  
14 website a current resume, if the claimant resides in this state.

15 **SECTION 28.** 108.04 (2) (a) 5. of the statutes is created to read:

16 108.04 (2) (a) 5. The claimant completes any reemployment counseling session  
17 required of the claimant under sub. (15) (ao) 1.

18 **SECTION 29.** 108.04 (12) (b) of the statutes is amended to read:

19 108.04 (12) (b) Any individual who receives, through the department, any other  
20 type of unemployment or reemployment assistance benefit or allowance for a given  
21 week is ineligible for benefits for that same week under this chapter, except as  
22 specifically required for conformity with the federal trade act of 1974 (P.L. 93-618).

23 **SECTION 30.** 108.04 (15) (a) (intro.) and 1. of the statutes are consolidated,  
24 renumbered 108.04 (15) (a) 1. and amended to read:

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1           108.04 (15) (a) 1. Except as provided in par. (b), the department ~~may do any of~~  
2           the following shall, for the purpose of assisting claimants to find or obtain work: ~~1.~~  
3           ~~Use, use the information or, materials, and resume~~ provided under sub. (2) (a) 4. to  
4           assess a claimant's efforts, skills, and ability to find or obtain work and to develop  
5           a list of potential opportunities for ~~a~~ the claimant to obtain suitable work. A  
6           ~~claimant who otherwise satisfies the requirement under sub. (2) (a) 3. is not required~~  
7           ~~to apply for any specific positions on the list in order to satisfy that requirement~~ The  
8           department shall provide each claimant, prior to the claimant filing a weekly claim  
9           for benefits, with at least 4 such potential opportunities each week, one or more of  
10          which may be opportunities with a temporary help company.

11           **SECTION 31.** 108.04 (15) (a) 2. of the statutes is renumbered 108.04 (15) (a) 2.  
12          a. and amended to read:

13           108.04 (15) (a) 2. a. ~~Require~~ Except as provided in par. (b), the department shall  
14          require a claimant whom the department identifies as likely to exhaust regular  
15          benefits to participate in a public employment office workshop or training program  
16          or in similar reemployment services that do not charge the claimant a participation  
17          fee and that offer instruction to improve the claimant's ability to obtain suitable  
18          work.

19           **SECTION 32.** 108.04 (15) (a) 2. b. of the statutes is created to read:

20           108.04 (15) (a) 2. b. Except as provided in par. (b), in addition to the claimants  
21          described in subd. 2. a., the department may require other claimants to participate  
22          in the reemployment services described in subd. 2. a., but the department shall  
23          prioritize claimants who are more likely to have difficulty obtaining reemployment.

24           **SECTION 33.** 108.04 (15) (am), (an) and (ao) of the statutes are created to read:

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1           108.04 (15) (am) In carrying out this state's program of reemployment services  
2 and eligibility assessments using grant funds awarded under 42 USC 506, the  
3 department shall, except as provided in par. (b), provide reemployment services to  
4 all claimants identified by the department as likely to exhaust regular benefits,  
5 including by requiring the claimant to complete an online assessment aimed at  
6 identifying the claimant's skills, abilities, and career aptitude.

7           (an) 1. Notwithstanding par. (am), in carrying out this state's program of  
8 reemployment services and eligibility assessments using grant funds awarded  
9 under 42 USC 506, the department shall, except as provided in par. (b), provide  
10 reemployment services to all claimants receiving benefits, including benefits under  
11 ss. 108.141 and 108.142, including by doing all of the following for each such  
12 claimant:

13           a. Requiring the claimant to complete an online assessment aimed at  
14 identifying the claimant's skills, abilities, and career aptitude.

15           b. Coordinating with the claimant to develop an individualized employment  
16 plan for the claimant.

17           c. Requiring the claimant to participate in the services described under par. (a)  
18 2. a. as needed pursuant to the individualized employment plan described in subd.  
19 1. b.

20           2. Of the moneys the governor accepts from the federal government under s.  
21 16.54 pursuant to section 602 of the federal Social Security Act as amended by the  
22 federal American Rescue Plan Act of 2021, P.L. 117-2, the governor shall allocate  
23 sufficient moneys so that, when such moneys are combined with grant moneys  
24 received and allocated under 42 USC 506, sufficient moneys are allocated to provide  
25 the services required under subd. 1.

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1           3. This paragraph does not apply after December 31, 2024.

2           (ao) Except as provided in par. (b), the department shall, when a claimant's  
3 remaining benefit entitlement under s. 108.06 (1) is 3 or less times the claimant's  
4 weekly benefit rate under s. 108.05 (1), do all of the following:

5           1. Require the claimant to participate in a live, one-on-one reemployment  
6 counseling session between the claimant and an employee of the department.

7           2. Provide the claimant information about services and benefits that are  
8 available to the claimant pursuant to the federal Workforce Innovation and  
9 Opportunity Act of 2014, 29 USC 3101 to 3361, once the claimant exhausts his or her  
10 benefit entitlement.

11           **SECTION 34.** 108.05 (3) (a) of the statutes is renumbered 108.05 (3) (a) 2. and  
12 amended to read:

13           108.05 (3) (a) 2. Except as provided in pars. (c), (d) and (dm) and s. 108.062, if  
14 an eligible employee earns wages in a given week, the ~~first \$30 of the wages~~ up to the  
15 amount specified in subd. 3. shall be disregarded and the employee's applicable  
16 weekly benefit payment shall be reduced by 67 percent of the remaining amount,  
17 except that no such employee is eligible for benefits if the employee's benefit payment  
18 would be less than \$5 for any week.

19           1. For purposes of this paragraph, "wages" includes any salary reduction  
20 amounts earned that are not wages and that are deducted from the salary of a  
21 claimant by an employer pursuant to a salary reduction agreement under a cafeteria  
22 plan, within the meaning of 26 USC 125, and any amount that a claimant would have  
23 earned in available work under s. 108.04 (1) (a) which is treated as wages under s.  
24 108.04 (1) (bm), but excludes any amount that a claimant earns for services

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1 performed as a volunteer fire fighter, volunteer emergency medical services  
2 practitioner, or volunteer emergency medical responder.

3 4. In applying this paragraph, the department shall disregard discrepancies  
4 of less than \$2 between wages reported by employees and employers.

5 **SECTION 35.** 108.05 (3) (a) 3. of the statutes is created to read:

6 108.05 (3) (a) 3. For purposes of subd. 2., the maximum amount of wages that  
7 may be disregarded in a given week shall be an amount equal to 40 percent of the  
8 employee's weekly benefit rate or \$30, whichever is greater.

9 **SECTION 36.** 108.13 (4) (a) 4. of the statutes is renumbered 108.13 (4) (a) 2m.  
10 and amended to read:

11 108.13 (4) (a) 2m. "~~Unemployment insurance~~" "Reemployment assistance"  
12 means any compensation payable under this chapter, including amounts payable by  
13 the department pursuant to an agreement under any federal law providing for  
14 compensation, assistance or allowances with respect to unemployment.

15 **SECTION 37.** 108.133 (2) (a) (intro.) of the statutes is amended to read:

16 108.133 (2) (a) (intro.) ~~Promulgate~~ Immediately promulgate rules to establish  
17 the program. The department shall do all of the following in the rules promulgated  
18 under this paragraph:

19 **SECTION 38.** 108.133 (2) (am) of the statutes is amended to read:

20 108.133 (2) (am) ~~Promulgate~~ Immediately promulgate rules identifying  
21 occupations for which drug testing is regularly conducted in this state. The  
22 department shall notify the U.S. department of labor of any rules promulgated under  
23 this paragraph.

24 **SECTION 39.** 108.14 (1) of the statutes is amended to read:

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1           108.14 (1) This chapter shall be administered by the department through its  
2 division of reemployment assistance.

3           **SECTION 40.** 108.14 (8o) of the statutes is created to read:

4           108.14 (8o) The department shall act to continue to receive grants for  
5 reemployment services and eligibility assessments under 42 USC 506.

6           **SECTION 41.** 108.14 (30) of the statutes is created to read:

7           108.14 (30) (a) 1. The department shall semiannually compile data and prepare  
8 a report to provide information on and analysis of the employment outcomes of  
9 claimants after receiving benefits under this chapter.

10           2. a. Each report under subd. 1. shall be prepared using data obtained from  
11 quarterly wage reports filed under s. 108.205 pertaining to all claimants whose data  
12 is included in that report as provided in subd. 3.

13           b. Each report under subd. 1. shall cover the 2 most recent quarters for which  
14 data are available, with each of the 2 quarters reported on separately in the report.

15           3. A claimant's data shall be used under subd. 2. for each of the 12 quarters  
16 following the claimant's first benefit payment in the claimant's benefit year.

17           4. The department shall break out the data in each report under subd. 1. by all  
18 of the following:

19           a. The number of weeks of benefits received. The department may group  
20 together claimants who received comparable numbers of weeks of benefits.

21           b. Regions of the state, using the regions corresponding to those for local  
22 workforce development boards established under 29 USC 3122.

23           (b) The department shall, by March 1 and September 1 of each year, submit the  
24 most recent report prepared under par. (a) to the appropriate standing committees  
25 of the legislature under s. 13.172 (3).

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1           **SECTION 42.** 108.141 (1) (b) 3. of the statutes is amended to read:

2           108.141 (1) (b) 3. Has no right to ~~unemployment~~ reemployment assistance  
3 benefits or allowances, as the case may be, under the railroad unemployment  
4 insurance act or such other federal laws as are specified in regulations issued by the  
5 U.S. secretary of labor, and has not received and is not seeking ~~unemployment~~  
6 reemployment assistance benefits under the ~~unemployment—insurance~~  
7 reemployment assistance law of Canada, but if the individual is seeking such  
8 benefits and the appropriate agency finally determines that he or she is not entitled  
9 to benefits under such law he or she is an exhaustee.

10           **SECTION 43.** 108.142 (1) (h) 3. of the statutes is amended to read:

11           108.142 (1) (h) 3. Has no right to ~~unemployment~~ reemployment assistance  
12 benefits or allowances under the railroad unemployment insurance act or such other  
13 federal laws as are specified in regulations issued by the U.S. secretary of labor, and  
14 has not received and is not seeking ~~unemployment~~ reemployment assistance  
15 benefits under the ~~unemployment—insurance~~ reemployment assistance law of  
16 Canada, but if the individual is seeking such benefits and the appropriate agency  
17 finally determines that he or she is not entitled to benefits under that law, the  
18 individual is an “exhaustee”.

19           **SECTION 44.** 108.19 (1m) of the statutes is amended to read:

20           108.19 (1m) Each employer subject to this chapter as of the date a rate is  
21 established under this subsection shall pay an assessment to the ~~unemployment~~  
22 reemployment assistance interest payment fund at a rate established by the  
23 department sufficient to pay interest due on advances from the federal  
24 unemployment account under Title XII of the federal social security act, 42 USC 1321  
25 to 1324. The rate established by the department for employers who finance benefits

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1 under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75 percent of the rate  
2 established for other employers. The amount of any employer's assessment shall be  
3 the product of the rate established for that employer multiplied by the employer's  
4 payroll of the previous calendar year as taken from quarterly employment and wage  
5 reports filed by the employer under s. 108.205 (1) or, in the absence of the filing of  
6 such reports, estimates made by the department. Each assessment made under this  
7 subsection is due within 30 days after the date the department issues the  
8 assessment. If the amounts collected from employers under this subsection exceed  
9 the amounts needed to pay interest due, the department shall use any excess to pay  
10 interest owed in subsequent years on advances from the federal unemployment  
11 account. If the department determines that additional interest obligations are  
12 unlikely, the department shall transfer the excess to the balancing account of the  
13 fund, the ~~unemployment~~ reemployment assistance program integrity fund, or both  
14 in amounts determined by the department.

15 **SECTION 45.** 111.39 (4) (c) of the statutes is amended to read:

16 111.39 (4) (c) If, after hearing, the examiner finds that the respondent has  
17 engaged in discrimination, unfair honesty testing or unfair genetic testing, the  
18 examiner shall make written findings and order such action by the respondent as  
19 will effectuate the purpose of this subchapter, with or without back pay. If the  
20 examiner awards any payment to an employee because of a violation of s. 111.321 by  
21 an individual employed by the employer, under s. 111.32 (6), the employer of that  
22 individual is liable for the payment. If the examiner finds a respondent violated s.  
23 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if  
24 requested by all parties and may award compensation in lieu of reinstatement if  
25 requested by any party. Compensation in lieu of reinstatement for a violation of s.

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1 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly  
2 wage of the person discriminated against when the violation occurred. Back pay  
3 liability may not accrue from a date more than 2 years prior to the filing of a  
4 complaint with the department. Interim earnings or amounts earnable with  
5 reasonable diligence by the person discriminated against or subjected to unfair  
6 honesty testing or unfair genetic testing shall operate to reduce back pay otherwise  
7 allowable. Amounts received by the person discriminated against or subject to the  
8 unfair honesty testing or unfair genetic testing as ~~unemployment~~ reemployment  
9 assistance benefits or welfare payments shall not reduce the back pay otherwise  
10 allowable, but shall be withheld from the person discriminated against or subject to  
11 unfair honesty testing or unfair genetic testing and immediately paid to the  
12 unemployment reserve fund or, in the case of a welfare payment, to the welfare  
13 agency making the payment.

14 **SECTION 46.** 230.43 (4) of the statutes is amended to read:

15 230.43 (4) RIGHTS OF EMPLOYEE. If an employee has been removed, demoted or  
16 reclassified, from or in any position or employment in contravention or violation of  
17 this subchapter, and has been restored to such position or employment by order of  
18 the commission or any court upon review, the employee shall be entitled to  
19 compensation therefor from the date of such unlawful removal, demotion or  
20 reclassification at the rate to which he or she would have been entitled by law but  
21 for such unlawful removal, demotion or reclassification. Interim earnings or  
22 amounts earnable with reasonable diligence by the employee shall operate to reduce  
23 back pay otherwise allowable. Amounts received by the employee as ~~unemployment~~  
24 reemployment assistance benefits or welfare payments shall not reduce the back pay  
25 otherwise allowable, but shall be withheld from the employee and immediately paid

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1 to the unemployment reserve fund or, in the case of a welfare payment, to the welfare  
2 agency making such payment. The employee shall be entitled to an order of  
3 mandamus to enforce the payment or other provisions of such order.

4 **SECTION 47.** 230.85 (3) (d) of the statutes is amended to read:

5 230.85 (3) (d) Interim earnings or amounts earnable with reasonable diligence  
6 by the person subjected to the retaliatory action or threat shall reduce back pay  
7 otherwise allowable. Amounts received by the person subjected to the retaliatory  
8 action or threat as ~~unemployment~~ reemployment assistance benefits or welfare  
9 payments do not reduce the back pay otherwise allowable, but shall be withheld from  
10 the person subjected to the retaliatory action or threat and immediately paid to the  
11 unemployment reserve fund or to the welfare agency making the payment.

12 **SECTION 48.** 779.01 (2) (am) of the statutes is amended to read:

13 779.01 (2) (am) “Labor” includes any wages and related contributions for state  
14 employment taxes, worker’s compensation and ~~unemployment—compensation~~  
15 insurance reemployment assistance, and other fringe benefits.

16 **SECTION 49. Terminology changes.**

17 (1) UNEMPLOYMENT INSURANCE; TERMINOLOGY CHANGES.

18 (a) Wherever “unemployment insurance” appears in the following, as affected  
19 by the acts of 2021, “reemployment assistance” is substituted: ss. 6.10 (9), 13.63 (1)  
20 (b), 15.227 (3), 16.48 (1) (a) (intro.), 1., 2., and 6. and (b), (2), and (3), 19.85 (1) (ee),  
21 20.002 (11) (a), 20.445 (1) (gm), (n), and (ne), 29.024 (2r) (title) and (d) 1., 46.272 (7)  
22 (e), 47.035 (1), 48.715 (7), 49.163 (2) (am) 5., 49.19 (4) (dm) 4., 50.498 (title) and (4)  
23 (b), 51.032 (title) and (4), 59.40 (2) (e), 59.57 (2) (b), 66.1103 (1) (a), 71.01 (10) (b),  
24 71.05 (6) (b) 47m., 71.26 (1) (h), 71.45 (1) (c), 71.52 (6), 71.67 (7) (a) and (b) 2., 71.80  
25 (16) (a) and (b), 73.0301 (2) (c) 2., 73.09 (8), 93.135 (title) and (4), 101.654 (2) (c),

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1 102.17 (1) (c) 2., 102.28 (7) (b) 2., 102.315 (2m) (d), 103.34 (10) (title), 103.92 (3) and  
2 (8) (title), 105.13 (1), 108.02 (15) (c) 1., (dm) 1., (e), (i) 2., (k) 9., 10., and 19. b., (21)  
3 (a) 2. and (b), (21e) (e), 108.04 (2) (ae), (4) (c), (5) (intro.), (5g) (a), (7) (a) and (L), (8)  
4 (a) and (c), (11) (g) 2. d., (12) (c) and (d), and (13) (g) 2., 108.06 (5) (a), 108.065 (3),  
5 108.068 (6), 108.07 (3m) and (5m), 108.13 (2) and (4) (b), (c), (e), and (f), 108.135 (1)  
6 (intro.) and (a), 108.14 (5) (a), (ag), and (ar), (6), (7) (a), (8) (a), (8m) (a), (8n) (a) and  
7 (b), (8s) (a) and (b), (8t), (9), (13), (14), (18), (19), (23) (b) 1., and (24), 108.141 (1) (h)  
8 and (3g) (a) 2., (c), and (d), 108.142 (1) (i), 108.155 (6), 108.16 (5) (b), 108.161 (3) and  
9 (3e), 108.162 (1), 108.19 (1e) (d), (1f) (b), (3), and (4), 108.20 (2m), 108.227 (title) and  
10 (2) (c) 2., 115.31 (6m), 116.03 (4), 118.19 (1m) (b), 120.25 (2) (a) and (6), 138.09 (3) (am)  
11 2. and (4) (c), 138.12 (4) (b) 5m. and (5) (am) 1. b. and 3., 138.14 (5) (b) 2m. and (9)  
12 (cm), 146.40 (4d) (d), 165.066 (title), 169.35 (title) and (3), 170.12 (8) (b) 1. bm. and  
13 4., 175.46 (5) (a), 202.021 (4) (a) 6., 202.06 (2) (g), 202.23 (2), 217.06 (5m), 217.09 (1t),  
14 218.0116 (1g) (b) and (1m) (a) 2m. and (d), 218.02 (3) (dm), (6) (d), and (9) (a) 1m.,  
15 218.04 (4) (am) 2m. and (5) (at), 218.05 (4) (c) 2m., (11) (bm), and (12) (at), 218.11 (6m)  
16 (c), 218.12 (3m) (c), 218.22 (3m) (c), 218.32 (3m) (c), 218.41 (3m) (b) 3., 218.51 (4m)  
17 (b) 3., 224.44 (title), 224.72 (7m) (bm), 224.725 (6) (bm), 224.77 (2m) (e), 224.95 (1)  
18 (bm), 230.26 (4), 238.31 (1) (e) 4. c., 238.397 (2) (a) 4. c., 254.115 (title) and (5), 254.176  
19 (5), 254.20 (7), 256.18 (title) and (4m), 299.07 (title) and (3), 303.08 (3), (4), and (5)  
20 (intro.), 341.51 (4m) (c), 343.305 (6) (e) 6., 343.66 (3m), 440.12 (title) and (2), 463.14  
21 (title) and (5), 551.412 (4g) (a) 2m. and (d), 562.05 (5) (a) 11. and (8) (f), 563.285 (title)  
22 and (1m), 628.097 (title) and (2m), 628.10 (2) (cm), 628.93 (2), 632.69 (2) (d) 2. and  
23 (4) (d), 633.14 (2m) (b), 633.15 (2) (d), 751.155 (title) and (3), 815.18 (13) (j), 859.02  
24 (2) (a), and 949.06 (3) (b).

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1 (b) Wherever “unemployment compensation” appears in the following, as  
2 affected by the acts of 2021, “reemployment assistance” is substituted: ss. 49.45 (23b)  
3 (a) 2. f., 71.07 (6n) (c) 3., 71.28 (6n) (c) 3., 71.47 (6n) (c) 3., 108.04 (13) (g) 1. b., 108.11  
4 (2), 701.0508 (1) (b) 1., 756.04 (2) (c) 4., and 767.75 (3m) (title).

5 (c) Wherever “unemployment” appears in the following, as affected by the acts  
6 of 2021, “reemployment assistance” is substituted: ss. 20.427 (1) (k) (title), 20.445 (1)  
7 (gc) (title), (gg) (title), (gh) (title), (nb) (title), (u), and (v), 25.17 (1) (xe) and (xf), 108.04  
8 (2) (bb) 5., 108.16 (6) (i) and (m) and (6m) (b), 108.19 (title), (1f) (a), (1q), and (1s) (a)  
9 (intro.) and 2. and (b), 108.221 (3), 108.225 (4) (b), and 111.15.

**SECTION 50. Nonstatutory provisions.**

10  
11 (1) The department of workforce development shall submit a notice to the  
12 legislative reference bureau for publication in the Wisconsin Administrative  
13 Register when the department determines that the department has any rules in  
14 place that are necessary to implement the treatment of s. 108.04 (2) (a) 3. by this act.

**SECTION 51. Initial applicability.**

15  
16 (1) The treatment of s. 108.04 (2) (a) 3. first applies with respect to weeks of  
17 unemployment beginning on the effective date of this subsection.

18 (2) The renumbering and amendment of s. 108.04 (2) (a) 4. and (15) (a) 2., the  
19 consolidation, renumbering, and amendment of s. 108.04 (15) (a) (intro.) and 1., and  
20 the creation of s. 108.04 (2) (a) 4. c. and 5. and (15) (a) 2. b., (am), (an), and (ao) first  
21 apply with respect to weeks of unemployment beginning on the effective date of this  
22 subsection.

23 (3) The renumbering and amendment of s. 108.05 (3) (a) and the creation of s.  
24 108.05 (3) (a) 3. first apply to weeks of unemployment beginning on the effective date  
25 of this subsection.





## Fiscal Estimate Narratives

DWD 2/8/2022

LRB Number	<b>21-4768/1</b>	Introduction Number	<b>AB-0883</b>	Estimate Type	<b>Original</b>
<b>Description</b> various changes to the unemployment insurance law, a grant program for hiring qualified long-term unemployment recipients, allocation of federal American Rescue Plan Act of 2021 funding for certain purposes, the state plan under the federal Workforce Innovation and Opportunity Act of 2014, federal Reemployment Services and Eligibility Assessment grants, employment outcome data reporting, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority					

### Assumptions Used in Arriving at Fiscal Estimate

This bill makes various changes to Wisconsin's Unemployment Insurance (UI) program, establishes new requirements for how the Department of Workforce Development (DWD) Divisions of Employment and Training (DET) delivers the federal Re-employment Services and Eligibility Assessment Grants (RESEA) program, establishes a new grant program for employers, updates federal references, and modifies reporting requirements for the department.

The department estimates that proposed changes under the bill will have a fiscal effect on operations costs totaling \$9,572,400 all funds, consisting of \$6.4 million for one-time implementation steps and \$3.2 million for on-going operations. Under the bill approximately \$5,991,000 of ARPA funding is provided to DWD through December 31, 2024, assuming the bill outlines an eligible use under Treasury guidance and sufficient funds remain available for allocation. The net impact of this bill on DWD fund sources is \$3,581,400 which consist of \$419,400 in one-time costs and \$3,162,000 in ongoing costs.

Certain provisions in the bill are anticipated to have a fiscal effect on UI Trust Fund revenues and payments, but the annual net effect for all provisions in the bill is indeterminate.

The UI program fiscal effects related to operations costs and the UI Trust Fund are:

#### Program Name Change:

Costs to establish a Division of Reemployment Assistance and change all statutory references to "unemployment insurance" to "reemployment assistance" is estimated to have one-time IT changes estimated to take 454 hours, at \$89 per hour, for a cost of \$40,406.

Additional one-time administrative costs are estimated to total \$168,184 consisting of \$156,062 in contracted staff costs for 2,545 hours and an additional \$12,122 in supplies and services costs. This staff effort is to mitigate confusion for stakeholders as a quality control measure to minimize adverse impacts for employers making UI Trust Fund contributions and eligible claimants applying for benefits.

This provision is not estimated to impact to the UI Trust Fund.

#### General Qualifying Requirements:

The department has reviewed all five changes related to new qualifying requirements for claimants and has determined a total need for 1,250 hours of IT programming for a total cost of \$111,250. There are additional administrative cost to implement changes and update public facing program materials that are estimated to be \$88,900. The ongoing impact of these changes is uncertain. It is possible that the new requirements increase the number of redetermination and appeal requests, which would increase the administrative burden.

It is unknown what effect the new qualifying requirements will have on eligibility determinations, and therefore the impact on the UI Trust Fund is indeterminate.

#### Drug Testing:

The bill requires DWD to immediately promulgate rules related to the occupational drug testing program. There is not an anticipated IT cost. The one-time administrative impact is estimated at 170 hours of UI staff time for a

total cost of \$14,340.

There will be revenue and payment impact on the UI Trust Fund, but the effect is indeterminate.

Reemployment Services and Eligibility Assessment (RESEA) Grants – use of Federal grant funds and providing services to claimants about to exhaust regular UI benefits:

In UI these provisions have a one-time IT programming need estimated at 40 hours at \$89 per hour for a total cost of \$3,560. There is an administrative one-time cost of \$14,114 for implementation and development of a model to identify when UI claimants are likely to exhaust their eligibility for regular UI benefits.

There is an additional annual administrative impact of 3,421 hours of UI staff time at a cost of \$181,428. This staff time will be used to coordinate services between UI and DET programs for applicable UI claimants.

There will be revenue and payment impact on the UI Trust Fund, but the effect is indeterminate.

These provisions expand outreach requirements for DET's current RESEA program and establish new participation requirements related to claimants about to exhaust their regular UI benefits. The department anticipates these provisions will need 4,500 hours of IT programming at \$89 per hour for a one-time cost of \$400,500. Ongoing IT maintenance needs are estimated to be \$80,100 per year. The department is assuming approximately 11,400 additional UI claimants per year will be served in the RESEA program which, based on experience with the current RESEA program effort, will require an allocation of funding equivalent to 11 FTE for the effort needed to serve the increased demand. This cost has a one-time component for the program requirements ending on December 31, 2024 that is estimated to be \$1,590,400. The ongoing annualized staffing costs are anticipated to be \$2,895,400.

Wage Threshold for Receipt of Benefits:

There is a one-time IT programming need estimated at 320 hours for a total cost of \$28,480 based on an \$89 per hour rate. There is an additional \$9,098 in expected administrative costs to implement the changes and update program materials. This brings the total one-time cost of administrative and IT changes to \$37,578. There is no expected annual administrative cost.

Based on relevant partial payment data from 2018 and 2019, the wage threshold provision is estimated to annually affect approximately 232,180 benefit weeks, increasing benefits paid by \$13.9 million and increasing UI taxes collected by \$4.3 million, for an annual cost to the UI Trust Fund of \$8.7 million.

Grant Program for Hiring Long-term Unemployment Recipients:

The department estimates 2,000 grants will be awarded each year for a total of \$2,000,000 per year for a two-year period ending on December 28, 2024. The grand total grants awarded is projected to be \$4,000,000.

An allocation of funding equivalent to 1 FTE is needed to contract for the staff effort needed to process employer applications and approve grant payments. This one-time staffing cost is anticipated to be \$93,900.

WIOA State Plan:

No additional costs for preparation and submission of the WIOA State Plan are anticipated.

Data Reporting:

The bill requires DWD to use data from quarterly wage reports, perform analysis of employment outcomes for UI claimants, and submit a report to the legislature by March 1 and September 1 of each year. The IT programming need is estimated at 242 hours at \$89 per hour for a total cost of \$21,538. There is an additional expected administrative one-time cost of \$11,518. This work will build and implement a process for compiling quarterly wage data and employment outcomes of UI claimants who received benefits during the reporting period. There will be an on-going annual administrative cost of \$5,120 for 80 hours of staff time to complete and submit the report.

This is not expected to have any UI Trust Fund impact.

## Long-Range Fiscal Implications

## Fiscal Estimate Worksheet - 2021 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>21-4768/1</b>	<b>Introduction Number</b> <b>AB-0883</b>
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**Description**  
 various changes to the unemployment insurance law, a grant program for hiring qualified long-term unemployment recipients, allocation of federal American Rescue Plan Act of 2021 funding for certain purposes, the state plan under the federal Workforce Innovation and Opportunity Act of 2014, federal Reemployment Services and Eligibility Assessment grants, employment outcome data reporting, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, and granting rule-making authority

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

The net impact of this bill on DWD fund sources is \$419,400 in one-time costs.

<b>II. Annualized Costs:</b>	<b>Annualized Fiscal Impact on funds from:</b>	
	Increased Costs	Decreased Costs

<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs	3,162,000	
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$3,162,000</b>	<b>\$</b>

<b>B. State Costs by Source of Funds</b>		
GPR		
FED	3,162,000	
PRO/PRS		
SEG/SEG-S		

**III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)**

	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>

<b>NET ANNUALIZED FISCAL IMPACT</b>		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$3,162,000	\$
NET CHANGE IN REVENUE	\$	\$

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	2/8/2022



## 2021 ASSEMBLY BILL 937

January 31, 2022 - Introduced by Representatives DALLMAN, VORPAGEL, WITTKE, ALLEN, ARMSTRONG, AUGUST, BRANDTJEN, CABRAL-GUEVARA, CALLAHAN, DITTRICH, DUCHOW, EDMING, JAMES, KATZMA, KITCHENS, KNODL, KRUG, KUGLITSCH, MAGNAFICI, MOSES, PENTERMAN, PETERSEN, PLUMER, SCHRAA, SNYDER, SORTWELL, STEFFEN, TUSLER, ZIMMERMAN and BORN, cosponsored by Senators FEYEN, BERNIER, FELZKOWSKI, MARKLEIN and STROEBEL. Referred to Committee on Workforce Development.

1     **AN ACT** *to amend* 108.06 (1) and 108.142 (4); and *to create* 108.06 (1m) and  
2           227.01 (13) (yL) of the statutes; **relating to:** the amount of benefits received  
3           under the unemployment insurance law.

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### *Analysis by the Legislative Reference Bureau*

This bill changes the maximum number of weeks of regular unemployment insurance (UI) benefits payable to an eligible claimant who is totally unemployed to an amount that varies depending upon the seasonally adjusted statewide average unemployment rate for the first or third calendar quarter immediately preceding the beginning of the claimant's benefit year.

Currently, the maximum number of weeks of regular UI benefits payable to an eligible claimant who is totally unemployed and who earns sufficient wages to qualify for those benefits is fixed at 26 weeks.

Under the bill, the maximum number of weeks for claimants whose benefit years begin during the first half of a given year is based upon the unemployment rate for the third quarter of the preceding year, and the maximum number of weeks for claimants whose benefit years begin during the second half of a given year is based upon the unemployment rate for the first quarter of that year. Once a claimant begins a benefit year, the claimant's maximum number of weeks of regular benefits is fixed for that benefit year. Because the maximum number of weeks of state supplemental benefits payable to a claimant is calculated in part based upon the maximum number of weeks of regular benefits payable to a claimant, the change also affects the maximum number of weeks of state supplemental benefits payable to a

**ASSEMBLY BILL 937**

claimant. Under the bill, the maximum number of weeks of regular benefits for total unemployment is determined as follows:

<u>Statewide unemployment rate</u>	<u>Maximum weeks of benefits</u>
Greater than 9.0 percent	26
Greater than 8.5 percent but less than or equal to 9.0 percent	25
Greater than 8.0 percent but less than or equal to 8.5 percent	24
Greater than 7.5 percent but less than or equal to 8.0 percent	23
Greater than 7.0 percent but less than or equal to 7.5 percent	22
Greater than 6.5 percent but less than or equal to 7.0 percent	21
Greater than 6.0 percent but less than or equal to 6.5 percent	20
Greater than 5.5 percent but less than or equal to 6.0 percent	19
Greater than 5.0 percent but less than or equal to 5.5 percent	18
Greater than 4.5 percent but less than or equal to 5.0 percent	17
Greater than 4.0 percent but less than or equal to 4.5 percent	16
Greater than 3.5 percent but less than or equal to 4.0 percent	15
Less than or equal to 3.5 percent	14

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

2           108.06 (1) Except as provided in sub. (6) and ss. 108.141 and 108.142, no

3 claimant may receive total benefits based on employment in a base period greater

4 than ~~26 times~~ the number of weeks determined under sub. (1m) multiplied by the

5 claimant's weekly benefit rate under s. 108.05 (1) or 40 percent of the claimant's base

6 period wages, whichever is lower. Except as provided in sub. (6) and ss. 108.141 and

**ASSEMBLY BILL 937**

1 108.142, if a claimant's base period wages are reduced or canceled under s. 108.04  
 2 (5) or (18), or suspended under s. 108.04 (1) (f), (10) (a), or (17), the claimant may not  
 3 receive total benefits based on employment in a base period greater than ~~26 times~~  
 4 the number of weeks determined under sub. (1m) multiplied by the claimant's  
 5 weekly benefit rate under s. 108.05 (1) or 40 percent of the base period wages not  
 6 reduced, canceled or suspended which were paid or payable to the claimant,  
 7 whichever is lower.

8 **SECTION 2.** 108.06 (1m) of the statutes is created to read:

9 108.06 (1m) (a) The department shall determine the maximum number of  
 10 weeks of regular benefits under sub. (1) by calculating for the first and 3rd quarter  
 11 of each year the average of the seasonally adjusted statewide unemployment rates  
 12 for the months in the quarter, as determined by the bureau of labor statistics for the  
 13 U.S. department of labor. For claimants whose benefit years begin on or after  
 14 January 1 and before July 1 of any year, the department shall make the  
 15 determination by using the 3rd calendar quarter of the preceding year. For  
 16 claimants whose benefit years begin after June 30 and on or before December 31 of  
 17 any year, the department shall make the determination by using the first calendar  
 18 quarter of that year. For benefit years to which each determination applies, the  
 19 maximum number of weeks of regular benefits is as follows: [See Figure 108.06 (1m)  
 20 (a) following]

21 **Figure 108.06 (1m) (a):**

<u>Statewide average unemployment rate</u>	<u>Maximum weeks of benefits</u>
Greater than 9.0 percent	26
Greater than 8.5 percent but less than or equal to 9.0 percent	25

**ASSEMBLY BILL 937**

Greater than 8.0 percent but less than or equal to 8.5 percent	24
Greater than 7.5 percent but less than or equal to 8.0 percent	23
Greater than 7.0 percent but less than or equal to 7.5 percent	22
Greater than 6.5 percent but less than or equal to 7.0 percent	21
Greater than 6.0 percent but less than or equal to 6.5 percent	20
Greater than 5.5 percent but less than or equal to 6.0 percent	19
Greater than 5.0 percent but less than or equal to 5.5 percent	18
Greater than 4.5 percent but less than or equal to 5.0 percent	17
Greater than 4.0 percent but less than or equal to 4.5 percent	16
Greater than 3.5 percent but less than 4.0 percent	15
Less than or equal to 3.5 percent	14

1           (b) The maximum number of weeks of regular benefits payable to a claimant  
2 under sub. (1) in the first week of the claimant's benefit year remains the same  
3 regardless of the maximum number of weeks of regular benefits in effect in any  
4 subsequent week that benefits become payable to the claimant.

5           (c) The department shall publish on its Internet site a notice about the  
6 maximum number of weeks of regular benefits available as calculated in accordance  
7 with this subsection.

8           **SECTION 3.** 108.142 (4) of the statutes is amended to read:

9           108.142 (4) DURATION OF WISCONSIN SUPPLEMENTAL BENEFITS. During a  
10 Wisconsin supplemental benefit period, no claimant may receive total benefits based

**ASSEMBLY BILL 937**

1 on employment in a base period greater than ~~34 times~~ the sum of the number of  
2 weeks determined under s. 108.06 (1m) and 8, multiplied by the claimant's weekly  
3 benefit rate under s. 108.05 (1) or 40 percent of wages paid or payable to the claimant  
4 in his or her base period under s. 108.04 (4) (a), whichever is lower.

5 **SECTION 4.** 227.01 (13) (yL) of the statutes is created to read:

6 227.01 (13) (yL) Determines, under s. 108.06 (1m), the maximum number of  
7 weeks of regular unemployment insurance benefits available under s. 108.06 (1).

8 **SECTION 5. Initial applicability.**

9 (1) This act first applies with respect to benefit years established on the  
10 effective date of this subsection.

11 **SECTION 6. Effective date.**

12 (1) This act takes effect on July 3, 2022.

13 (END)

### Fiscal Estimate - 2021 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> 21-2943/1	<b>Introduction Number</b> AB-0937
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**Description**  
 the amount of benefits received under the unemployment insurance law

**Fiscal Effect**

**State:**

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

**Local:**

<input checked="" type="checkbox"/> No Local Government Costs		
<input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	<b>5. Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.445 (1) (n)

<b>Agency/Prepared By</b> DWD/ Andrew Evenson (608) 266-1756	<b>Authorized Signature</b> Danielle Williams (608) 266-2284	<b>Date</b> 2/9/2022
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## Fiscal Estimate Narratives

DWD 2/9/2022

LRB Number	21-2943/1	Introduction Number	AB-0937	Estimate Type	Original
<b>Description</b> the amount of benefits received under the unemployment insurance law					

### Assumptions Used in Arriving at Fiscal Estimate

The fiscal effect of this bill is comprised of \$185,120 in a one-time cost, \$3.0 million in reduced annual revenues into 20.445 (1)(n), and a \$58.8 million net annual increase to the UI Trust fund balance, which is not a state appropriation.

This bill proposes a formula be used, based on seasonally adjusted unemployment rates, to determine the maximum number of weeks of regular unemployment insurance (UI) benefits payable to an eligible claimant.

The department estimates that proposed changes under the bill will have a fiscal effect on operations totaling \$3,185,120 all funds, consisting of \$185,120 in new costs for one-time implementation steps and \$3.0 million annually in lost federal revenue for Unemployment Insurance (UI) operations.

The assumptions used to determine the UI operations fiscal effect are as follows:

To implement a formula based maximum week schedule for claimants based on unemployment rates in prior quarters and the claimants' initial claim dates, the department estimates IT work of 1,600 hours, at \$89 per hour, for a cost of \$142,400 and \$42,720 in administrative costs.

However, the federal administrative base and 'above base' funding formulas are directly affected by the number of claims weeks (for example, the number of ongoing claims) when calculating award amounts. The decline in UI claims weeks is estimated to result in decreased federal administrative grant revenue of approximately \$3.0 million annually.

The assumptions used to determine the UI Trust Fund impact are as follows:

The bill's proposed changes would result in significantly fewer paid weeks of UI benefits. In a review of historical unemployment rate data, the highest unemployment rate, as calculated under this bill, was 9.2% in October of 2009. Under this proposal, claimants would have received a maximum of 20 weeks of unemployment benefits at that time.

In March 2020, the unemployment rate was 3.2% and the April 2020 unemployment rate was 14.8%. Had the bill been in effect at the start of the COVID-19 pandemic, individuals filing for UI in April 2020 would have had their maximum number of benefit weeks calculated based on the average unemployment rate for third quarter 2019 (3.1 percent). Under this scenario, individuals who lost their job through no fault of their own in April 2020 would have been eligible for a maximum of 14 weeks of benefits. In July 2020 (14 weeks from April 2020), the unemployment rate was still at 7%.

Using the average over the 2018 and 2019 benefit years to project future benefit payments, the estimated annual reduction to UI benefits paid is \$93.35 million. Of this amount, \$87.75 million would be charged to the UI Trust Fund with the remainder paid for by reimbursable employers. Accounting for reimbursable employers, UI tax revenue would be reduced by \$28.95 million annually. When the benefit years are reconciled to calendar years, the net effect to the UI Trust Fund is a savings projected to be \$58.8 million annually.

### Long-Range Fiscal Implications

## Fiscal Estimate Worksheet - 2021 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> 21-2943/1	<b>Introduction Number</b> AB-0937
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**Description**  
 the amount of benefits received under the unemployment insurance law

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

This is expected to have a one-time IT cost of \$142,400 representing 1,600 hours of work. There is a one-time administrative cost of \$42,720 for a one-time total implementation cost of \$185,120.

<b>II. Annualized Costs:</b>	<b>Annualized Fiscal Impact on funds from:</b>	
	Increased Costs	Decreased Costs

**A. State Costs by Category**

State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$</b>

**B. State Costs by Source of Funds**

GPR		
FED		
PRO/PRS		
SEG/SEG-S		

**III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)**

	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		-3,000,000
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$-3,000,000</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUE	\$-3,000,000	\$

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	2/9/2022



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-4346/1  
MED&EAW:cjs&cde

## 2021 ASSEMBLY BILL 938

January 31, 2022 - Introduced by Representatives ARMSTRONG, PETRYK, PENTERMAN, AUGUST, BRANDTJEN, CABRAL-GUEVARA, CALLAHAN, DITTRICH, EDMING, JAMES, KATSMA, KITCHENS, KNODL, KRUG, KUGLITSCH, LOUDENBECK, MACCO, MAGNAFICI, MOSES, OLDENBURG, PETERSEN, PLUMER, SCHRAA, SNYDER, SORTWELL, STEFFEN, TITTL, TUSLER, VORPAGEL, WICHGERS, ZIMMERMAN and BORN, cosponsored by Senators WIMBERGER, BERNIER, DARLING, FELZKOWSKI, FEYEN, MARKLEIN, NASS and STROEBEL. Referred to Committee on Workforce Development.

1     **AN ACT** *to renumber and amend* 108.04 (2) (a) 4. and 108.04 (5) (e); *to amend*  
2           16.54 (2) (a) 1., 108.04 (5) (b) and 108.14 (20); and *to create* 16.54 (14), 108.04  
3           (2) (a) 4. d., 108.04 (5) (e) (intro.), 108.04 (5) (e) 2., 108.04 (5) (h), 108.14 (10m),  
4           108.14 (23m), 108.14 (29) and 108.14 (30) of the statutes; **relating to:** various  
5           changes to the unemployment insurance law, requiring an audit to be  
6           conducted by the Legislative Audit Bureau, requiring approval by the Joint  
7           Committee on Finance of certain federally authorized unemployment benefits,  
8           and authorizing the secretary of administration to transfer employees from any  
9           executive branch agency to the Department of Workforce Development for  
10          certain purposes.

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*Analysis by the Legislative Reference Bureau*

UNEMPLOYMENT INSURANCE

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

**ASSEMBLY BILL 938*****Misconduct***

Currently, if an employee is discharged for misconduct connected with his or her employment, the employee is ineligible to receive benefits until certain requalification criteria are satisfied. In addition, all wages earned with the employer that discharges the employee are excluded in determining the amount of any future benefits to which the employee is entitled. Current law provides a general definition of misconduct and also specifies a number of specific actions that constitute misconduct. This bill does all of the following with respect to what is considered misconduct:

1. Current law specifically provides that misconduct includes theft of an employer's property or services with intent to deprive the employer of the property or services permanently, theft of currency of any value, felonious conduct connected with an employee's employment with his or her employer, or intentional or negligent conduct by an employee that causes substantial damage to his or her employer's property. This bill:

a. Deletes the requirement that the employee have the intent to deprive the employer of the property or services permanently.

b. Provides that intentional or negligent conduct by an employee that causes the destruction of an employer's records is also considered misconduct.

c. Adds unauthorized possession of an employer's property, theft or unauthorized distribution of an employer's confidential or proprietary information, and use of an employer's credit card or other financial instrument for an unauthorized or nonbusiness purpose without prior approval from the employer to the list of what is considered misconduct.

2. Current law specifically provides that misconduct includes absenteeism by an employee on more than two occasions within the 120-day period before the date of the employee's termination, unless otherwise specified by his or her employer in an employment manual of which the employee has acknowledged receipt with his or her signature, or excessive tardiness by an employee in violation of a policy of the employer that has been communicated to the employee, if the employee does not provide to his or her employer both notice and one or more valid reasons for the absenteeism or tardiness.

This bill instead provides that misconduct includes both of the following: 1) a violation of an employer's reasonable policy that covers employee absenteeism, tardiness, or both and that results in an employee's termination, if that termination is in accordance with that policy and the policy is specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature; and 2) if an employer does not have a policy covering absenteeism that meets the criteria just described, absenteeism on more than two occasions within the 120-day period preceding an employee's termination, if the employee does not provide to the employer both notice and one or more valid reasons for the absenteeism.

3. The bill specifically provides that misconduct includes a violation by an employee of an employer's reasonable employment policy that covers the use of social

**ASSEMBLY BILL 938**

media specified by the employer in an employment manual of which the employee has acknowledged receipt with his or her signature.

***General qualifying requirements***

Under current law, a claimant for UI benefits is generally required to 1) register for work, 2) be able to work and available for work, and 3) conduct a work search for each week in order to remain eligible. A claimant is required to conduct at least four work search actions each week, and DWD may require, by rule, that an individual conduct more than four work search actions per week. Finally, if a claimant is claiming benefits for a week other than an initial week, the claimant must provide information or job application materials that are requested by DWD and participate in a public employment office workshop or training program or in similar reemployment services required by DWD.

This bill does the following:

1. Requires a claimant who resides outside this state and who is claiming benefits for a week other than an initial week to register with his or her local job center website or labor market exchange and requires DWD to verify that each such claimant has complied with that requirement.

2. Requires DWD to conduct random audits for at least 50 percent of all work search actions reported to have been performed by claimants. Current law requires random audits of work search actions, but does not require a specific number or level of audits.

***Identity proofing***

The bill requires DWD to implement identity proofing measures for UI claimants who are engaging in benefit-related transactions with DWD that: 1) require a claimant to verify his or her identity prior to filing an initial claim for benefits and when engaging in other transactions with DWD, and 2) achieve the IAL2 and AAL2 standards adopted in the National Institute of Standards and Technology's Digital Identity Guidelines.

***Education and informational materials***

Current law requires DWD to compile and provide to employers certain information about how the UI system works, including a handbook on the UI system for employers and information concerning the financing of the UI system to be published on DWD's website. This bill requires DWD to also provide certain training materials for employers and claimants on the UI system. The bill requires DWD to publish prerecorded training videos on its website and also to provide quarterly, free, live training seminars for employing units.

***Assistance call center***

This bill requires DWD to operate a call center to assist claimants for UI benefits or similar federal payments. Under the bill, if the volume of calls has increased by 300 percent or more over the same week during the previous year or if there is a declared statewide emergency that causes or relates to an increase in UI claims, DWD is required to increase the hours for the call center to include evening hours after 5 p.m. and weekend hours.

**ASSEMBLY BILL 938*****Database comparisons***

This bill requires DWD to perform a comparison of state and national databases that track death records, employment records, and prison records against recipients of UI benefits for the purposes of detecting fraud or erroneous payments. The bill requires DWD to perform the comparison on at least a weekly basis. The bill provides that DWD may also make such comparisons with other databases.

**OTHER CHANGES*****UI benefit augmentations subject to review by Joint Committee on Finance***

This bill provides that whenever any UI benefit augmentation is provided for through an act of congress or by executive action of the president of the United States, the cochairpersons of the Joint Committee on Finance must be notified, in writing, of the proposed benefit augmentation. The bill defines “benefit augmentation” to mean any action whereby the governor or any other state agency or official would encumber or expend moneys received from, or accept reimbursement from, the federal government or whereby the governor or any other state agency or official would enter into any contract or agreement with the federal government or any federal agency to 1) increase the weekly UI benefit rate payable to claimants above what is provided under state law, or 2) increase the total amount of UI benefits to which a claimant is entitled above what is provided under state law. Under the bill, such a benefit augmentation is subject to a 14-day passive review by the Joint Committee on Finance.

In addition, the bill provides that no benefit augmentation may be effectuated unless it is subject to termination or cancellation by the Joint Committee on Finance.

***Worker’s compensation; misconduct***

Currently, under the worker’s compensation law, an employer is not liable for temporary disability benefits during an employee’s healing period if the employee is suspended or terminated from employment due to misconduct, as defined under the UI law. Under the bill, the changes to the UI law’s definition of misconduct described above apply under the worker’s compensation law as well.

***Audit of UI fraud detection and prevention efforts***

This bill requires the Legislative Audit Bureau to conduct an audit of DWD’s efforts to detect and prevent fraud and to recover fraud overpayments in the UI program, the federal pandemic unemployment assistance program, and the pandemic emergency unemployment compensation program.

***Transfer of employees to DWD***

The bill authorizes the secretary of administration to temporarily transfer employees from any executive branch agency to DWD to assist in deciding UI appeals. Under the bill, DWD must pay all salary and fringe benefit costs of that employee during the time the employee is at DWD.

**ASSEMBLY BILL 938**

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

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

1           **SECTION 1.** 16.54 (2) (a) 1. of the statutes is amended to read:

2           16.54 (2) (a) 1. Except as provided in subd. 2. and sub. (14), whenever funds  
3 shall be made available to this state through an act of congress and the funds are  
4 accepted as provided in sub. (1), the governor shall designate the state board,  
5 commission, or department to administer any of such funds, and the board,  
6 commission, or department so designated by the governor is authorized and directed  
7 to administer such funds for the purpose designated by the act of congress making  
8 an appropriation of such funds, or by the department of the United States  
9 government making such funds available to this state. Whenever a block grant is  
10 made to this state, no moneys received as a part of the block grant may be transferred  
11 from use as a part of one such grant to use as a part of another such grant, regardless  
12 of whether a transfer between appropriations is required, unless the joint committee  
13 on finance approves the transfer.

14           **SECTION 2.** 16.54 (14) of the statutes is created to read:

15           16.54 (14) (a) In this subsection, “benefit augmentation” means for any state  
16 agency or official, including the governor, to encumber or expend moneys received  
17 from, or accept reimbursement from, the federal government or for any state agency  
18 or official, including the governor, to enter into any contract or agreement with the  
19 federal government or any federal agency, to do any of the following:

20           1. Increase the weekly unemployment insurance benefit rate payable to  
21 claimants above what is provided under s. 108.05, including by providing any stipend

**ASSEMBLY BILL 938****SECTION 2**

1 or other benefit separately from unemployment insurance benefits, if eligibility for  
2 that stipend or benefit is determined, in whole or in part, based on an individual's  
3 receipt of, or eligibility for, unemployment insurance benefits.

4 2. Increase the total amount of unemployment insurance benefits to which a  
5 claimant is entitled above what is provided under s. 108.06 (2), including by  
6 providing an increased overall benefit entitlement or additional weeks of benefits.

7 (b) 1. Whenever any benefit augmentation is provided for through an act of  
8 congress or by executive action of the president of the United States, the governor  
9 or other state agency or official shall notify the cochairpersons of the joint committee  
10 on finance, in writing, of the proposed benefit augmentation. The notice shall  
11 contain a detailed description of the proposed benefit augmentation, an affirmative  
12 statement that the proposed benefit augmentation complies with subd. 2., and, if the  
13 proposed benefit augmentation requires any contract or agreement with the federal  
14 government or any federal agency, a copy of the proposed contract or agreement if  
15 available. If the cochairpersons of the committee do not notify the governor, agency,  
16 or official that the committee has scheduled a meeting for the purpose of reviewing  
17 the proposed benefit augmentation within 14 working days after the date of the  
18 governor's, agency's, or official's notification, the benefit augmentation may, subject  
19 to subd. 2., be effectuated as proposed by the governor, agency, or official. If, within  
20 14 working days after the date of the governor's, agency's, or official's notification,  
21 the cochairpersons of the committee notify the governor, agency, or official that the  
22 committee has scheduled a meeting for the purpose of reviewing the proposed benefit  
23 augmentation, the benefit augmentation may not be effectuated without the  
24 approval of the committee. The committee may not approve a proposed benefit  
25 augmentation unless it complies with subd. 2.

**ASSEMBLY BILL 938**

1           2. No benefit augmentation may be effectuated unless it is subject to  
2 termination or cancellation by the joint committee on finance.

3           (c) This subsection does not apply with respect to federal extended benefits  
4 under s. 108.141.

5           **SECTION 3.** 108.04 (2) (a) 4. of the statutes is renumbered 108.04 (2) (a) 4.  
6 (intro.) and amended to read:

7           108.04 (2) (a) 4. (intro.) If the claimant is claiming benefits for a week other  
8 than an initial week, the claimant ~~provides~~ does all of the following:

9           a. Provides information or job application materials that are requested by the  
10 department ~~and participates.~~

11           b. Participates in a public employment office workshop or training program or  
12 in similar reemployment services that are required by the department under sub.  
13 (15) (a) 2.

14           **SECTION 4.** 108.04 (2) (a) 4. d. of the statutes is created to read:

15           108.04 (2) (a) 4. d. Registers with his or her local job center website or labor  
16 market exchange, if the claimant resides outside of this state. The department shall  
17 verify that each such claimant has complied with this subd. 4. d.

18           **SECTION 5.** 108.04 (5) (b) of the statutes is amended to read:

19           108.04 (5) (b) Theft or unauthorized possession of an employer's property ~~or,~~  
20 theft of an employer's services with intent to deprive the employer of the property or  
21 services permanently, theft or unauthorized distribution of an employer's  
22 confidential or proprietary information, use of an employer's credit card or other  
23 financial instrument for an unauthorized or nonbusiness purpose without prior  
24 approval from the employer, theft of currency of any value, felonious conduct

**ASSEMBLY BILL 938****SECTION 5**

1 connected with an employee's employment with his or her employer, or intentional  
2 or negligent conduct by an employee that causes the destruction of an employer's  
3 records or substantial damage to ~~his or her~~ an employer's property.

4 **SECTION 6.** 108.04 (5) (e) (intro.) of the statutes is created to read:

5 108.04 (5) (e) (intro.) Any of the following:

6 **SECTION 7.** 108.04 (5) (e) of the statutes is renumbered 108.04 (5) (e) 1. and  
7 amended to read:

8 108.04 (5) (e) 1. Absenteeism by an employee on more than 2 occasions within  
9 the 120-day period before the date of the employee's termination, ~~unless otherwise~~  
10 ~~specified by his or her employer~~ if the employee does not provide to his or her  
11 employer both notice and one or more valid reasons for the absenteeism. This  
12 subdivision does not apply if the employer has a reasonable policy that covers  
13 absenteeism described in subd. 2. in an employment manual of which the employee  
14 has acknowledged receipt with his or her signature, ~~or excessive tardiness by an~~  
15 ~~employee in violation of a policy of the employer that has been communicated to the~~  
16 ~~employee, if the employee does not provide to his or her employer both notice and one~~  
17 ~~or more valid reasons for the absenteeism or tardiness.~~

18 **SECTION 8.** 108.04 (5) (e) 2. of the statutes is created to read:

19 108.04 (5) (e) 2. A violation of an employer's reasonable policy that covers  
20 employee absenteeism, tardiness, or both, and that results in an employee's  
21 termination, if that termination is in accordance with that policy and the policy is  
22 specified by the employer in an employment manual of which the employee has  
23 acknowledged receipt with his or her signature.

24 **SECTION 9.** 108.04 (5) (h) of the statutes is created to read:

**ASSEMBLY BILL 938**

1           108.04 (5) (h) A violation by an employee of an employer's reasonable policy  
2           that covers the use of social media and is substantially related to the employee's  
3           employment, if the violation results in an employee's termination and if that  
4           termination is in accordance with that policy and the policy is specified by the  
5           employer in an employment manual of which the employee has acknowledged receipt  
6           with his or her signature.

7           **SECTION 10.** 108.14 (10m) of the statutes is created to read:

8           108.14 (10m) The department shall implement identity proofing measures for  
9           claimants who are engaging in benefit-related transactions with the department  
10          that satisfy all of the following:

11          (a) The measures require a claimant to verify his or her identity prior to filing  
12          an initial claim for benefits and when engaging in other transactions with the  
13          department.

14          (b) The measures achieve the IAL2 and AAL2 standards adopted in the  
15          National Institute of Standards and Technology's Digital Identity Guidelines.

16          **SECTION 11.** 108.14 (20) of the statutes is amended to read:

17          108.14 (20) The department shall conduct random audits on claimants for  
18          benefits under this chapter to assess compliance with the work search requirements  
19          under s. 108.04 (2) (a) 3. The department shall conduct the audits required under  
20          this subsection at a level sufficient for the department to assess at least 50 percent  
21          of all work search actions reported to have been performed by claimants.

22          **SECTION 12.** 108.14 (23m) of the statutes is created to read:

23          108.14 (23m) The department shall provide training materials on the  
24          unemployment insurance system, including all of the following:

**ASSEMBLY BILL 938**

1 (a) Training videos for claimants and employing units published on the  
2 department's Internet site.

3 (b) Quarterly, free, live training seminars for employing units. The seminars  
4 may be in-person, online, or both.

5 **SECTION 13.** 108.14 (29) of the statutes is created to read:

6 108.14 (29) (a) The department shall maintain a call center to provide  
7 telephone assistance and support to claimants for benefits under this chapter or  
8 payments under federal assistance programs for unemployment.

9 (b) The department shall, during each of the following periods, extend the call  
10 center hours to include hours after 5 p.m. on weekdays and at least 16 hours on  
11 weekends:

12 1. During a declared statewide emergency that causes or relates to an increase  
13 in unemployment claims.

14 2. For 90 days after any week in which the call center experiences an increase  
15 of at least 300 percent in calls compared to the same week during the previous year,  
16 and for 90 days after each subsequent week in which such an increase occurs.

17 **SECTION 14.** 108.14 (30) of the statutes is created to read:

18 108.14 (30) (a) The department shall, on at least a weekly basis, perform a  
19 comparison of recipients of benefits under this chapter against all of the following for  
20 the purpose of detecting fraud or erroneous payments:

21 1. Nationally recognized databases that contain information on death records,  
22 including the federal social security administration's death master file.

23 2. The National Association of State Workforce Agencies' integrity data hub.

24 3. The national directory of new hires maintained by the office of child support  
25 enforcement in the U.S. department of health and human services.

**ASSEMBLY BILL 938**

1           4. Prisoner databases maintained by the department of justice, the department  
2 of corrections, and the U.S. department of justice.

3           (b) The department may perform comparisons of recipients of benefits under  
4 this chapter against public or private databases other than those specified in par. (a)  
5 1. to 4.

**SECTION 15. Nonstatutory provisions.**

6           (1) The department of workforce development shall submit a notice to the  
7 legislative reference bureau for publication in the Wisconsin Administrative  
8 Register when the department determines that the department has any rules in  
9 place that are necessary to implement the renumbering and amendment of s. 108.04  
10 (2) (a) 4. and the creation of s. 108.04 (2) (a) 4. d. by this act.

11           (2) The legislative audit bureau shall conduct an audit of the department of  
12 workforce development's efforts to detect and prevent fraud and to recover  
13 overpayments that occurred as a result of fraud in the unemployment insurance  
14 program under ch. 108, the federal pandemic unemployment assistance program  
15 under 15 USC 9021, and the federal pandemic emergency unemployment  
16 compensation program under 15 USC 9025. The legislative audit bureau shall file  
17 a report on the audit conducted under this subsection in the manner described under  
18 s. 13.94 (1) (b).

19           (3) (a) In this subsection, "allowable period" means the period described in par.  
20 (c).

21           (b) During the allowable period, the secretary of administration may transfer  
22 any employee to the department of workforce development from any other state  
23 agency to provide services for the department of workforce development that are  
24 needed to hear and decide appeals under s. 108.09 (4). Such an employee may,  
25

**ASSEMBLY BILL 938**

1 notwithstanding s. 108.09 (3) (a), serve as an appeal tribunal under ss. 108.09 to  
2 108.10, subject to approval of the secretary of workforce development. The  
3 department of workforce development shall pay all salary and fringe benefit costs of  
4 the employee during the time he or she is providing services for the department of  
5 workforce development. Any action by the secretary under this paragraph shall  
6 remain in effect until rescinded by the secretary or 90 days after the last day of the  
7 allowable period, whichever is earliest.

8 (c) A transfer under par. (b) may be made at any time during the period  
9 beginning on the effective date of this paragraph and ending on the 120th day after  
10 the effective date of this paragraph, except that the joint committee on finance may,  
11 upon request of the secretary of administration, extend the period by not more than  
12 an additional 120 days.

13 (d) If an employee is transferred under par. (b), the department of workforce  
14 development may not increase the employee's salary at the time of transfer or during  
15 the time he or she is providing services for the department of workforce development,  
16 and the agency from which the employee was transferred may not increase the  
17 employee's salary at the time the employee returns to the agency.

18 (e) The secretary of administration shall submit a report to the joint committee  
19 on finance, no later than the first day of the 2nd month beginning after the effective  
20 date of this paragraph and on the first day of each subsequent month during the  
21 allowable period, that provides information on all employee transfers under par. (b).  
22 Each report shall specify the number of employees transferred, the title of each  
23 employee transferred, the title the employee assumed at the department of  
24 workforce development, and the reasons for each employee transfer.

**SECTION 16. Initial applicability.**

**ASSEMBLY BILL 938**

1           (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of  
2           s. 108.04 (2) (a) 4. d. first apply with respect to weeks of unemployment beginning  
3           on the effective date of this subsection.

4           (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.  
5           108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) first apply  
6           with respect to determinations issued under s. 108.09 on the effective date of this  
7           subsection.

8           **SECTION 17. Effective dates.** This act takes effect on the Sunday after  
9           publication, except as follows:

10           (1) The renumbering and amendment of s. 108.04 (2) (a) 4. and the creation of  
11           s. 108.04 (2) (a) 4. d. and SECTION 16 (1) of this act take effect on the Sunday after the  
12           notice under SECTION 15 (1) of this act is published in the Wisconsin Administrative  
13           Register or on January 2, 2022, whichever occurs first.

14           (2) The renumbering and amendment of s. 108.04 (5) (e), the amendment of s.  
15           108.04 (5) (b), and the creation of s. 108.04 (5) (e) (intro.) and 2. and (h) and SECTION  
16           16 (2) of this act take effect on January 2, 2022, or on the first Sunday after the 180th  
17           day after publication, whichever occurs later.

18

(END)

### Fiscal Estimate - 2021 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>21-4346/1</b>	<b>Introduction Number</b> <b>AB-0938</b>
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**Description**  
 various changes to the unemployment insurance law, requiring an audit to be conducted by the Legislative Audit Bureau, requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits, and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes

**Fiscal Effect**

**State:**

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		

**Local:**

<input checked="" type="checkbox"/> No Local Government Costs		<b>5. Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.445 (1) (n)

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	2/10/2022

## Fiscal Estimate Narratives

DWD 2/10/2022

LRB Number	21-4346/1	Introduction Number	AB-0938	Estimate Type	Original
<b>Description</b> various changes to the unemployment insurance law, requiring an audit to be conducted by the Legislative Audit Bureau, requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits, and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes					

### Assumptions Used in Arriving at Fiscal Estimate

This bill makes various changes to the unemployment program and to unemployment insurance (UI) law. The UI program is administered by the Department of Workforce Development. The provisions related to absenteeism as misconduct, work search action audits, adoption of IAL2 and AAL2 identity verification standards, call center operations and federal benefit augmentation are estimated to have a fiscal effect on department's UI operations and the UI Trust Fund. Other proposed changes in the bill are not estimated to have a fiscal impact. In addition, the provisions related to misconduct that also apply to worker's compensation are not estimated to have a fiscal impact.

The fiscal effect of the bill on UI operations is estimated to total \$33,865,494 all funds, consisting of \$1,596,394 for one-time implementation steps and \$32,269,100 annually. The bill's fiscal effect to the UI Trust Fund is an estimated \$23,495,300 annual increase in the Trust Fund balance.

The proposed changes to absenteeism as misconduct are expected to increase the number of misconduct findings by 22% and save the UI Trust Fund \$5.4 million annually through the associated reduction of UI benefits paid after accounting for the reduction in UI taxes. Additionally, there is an estimated one-time administrative cost of \$1,254 to implement the change related to program operation revisions and updates.

The proposed changes to work search audits are estimated to greatly increase manual staff efforts and therefore UI operations costs. The department's current approach to work search audits utilizes automated technologies to target manual staff efforts. Under the proposal, UI would be required to manually audit approximately 870,000 work searches which is anticipated to require 761,400 hours of work based on current audit experience. This is the equivalent of to the effort from 423 FTE. Assuming the annual cost per staff is \$76,286, this provision carries an expected annual administrative cost of \$32,269,100.

The proposal to adopt IAL2 and AAL2 standards for identify verification is expected to require 400 hours of IT work to allow DWD to capture and store government issued IDs and biometric data and implement AAL2 multifactor authentication. This IT work is estimated to be a one-time cost of \$35,600. There is also an estimated \$10,680 one-time administrative cost to implement these standards.

The proposed changes to call center operations is estimated to have a fiscal impact, but only when the provisions in the bill require evening and weekend hours. When those circumstances arise, the fiscal effect will be comprised of costs to make IT modifications, one-time administrative changes, and costs for additional contract staff. The estimated IT impact is 800 hours of work costing \$71,200, and the one-time administrative cost associated with implementing these systems changes is \$21,360. These costs are related to rescheduling database computations and modifying internal applications to accommodate lengthened call center hours. The additional contracted staff need is estimated as 45 FTE, which would be approximately \$1,456,300. This contract staff estimate assumes UI call centers would be staffed until 7 PM on weekdays and would operate for sixteen hours on the weekend. For the purposes of this fiscal estimate, these costs are considered one-time.

The fiscal impacts related to Joint Committee on Finance approvals concerning federal UI benefit augmentation programs is indeterminant for UI operations costs and the UI Trust Fund at this time. The potential for delays in availability of federally funded benefits to UI claimants could lead to confusion for employees and employers, an increase in appeals related to eligibility determinations, and reduced federal revenues for the state.

## Long-Range Fiscal Implications

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## Fiscal Estimate Worksheet - 2021 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

**LRB Number 21-4346/1**      **Introduction Number AB-0938**

**Description**  
 various changes to the unemployment insurance law, requiring an audit to be conducted by the Legislative Audit Bureau, requiring approval by the Joint Committee on Finance of certain federally authorized unemployment benefits, and authorizing the secretary of administration to transfer employees from any executive branch agency to the Department of Workforce Development for certain purposes

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
 \$1,596,394

<b>II. Annualized Costs:</b>	<b>Annualized Fiscal Impact on funds from:</b>	
	Increased Costs	Decreased Costs

<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs	32,269,100	
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$32,269,100</b>	<b>\$</b>

<b>B. State Costs by Source of Funds</b>		
GPR		
FED	32,269,100	
PRO/PRS		
SEG/SEG-S		

**III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)**

	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>

<b>NET ANNUALIZED FISCAL IMPACT</b>		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$32,269,100	\$
NET CHANGE IN REVENUE	\$	\$

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Andrew Evenson (608) 266-1756	Danielle Williams (608) 266-2284	2/10/2022



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-3005/1  
MED:emw

## 2021 ASSEMBLY BILL 939

January 31, 2022 - Introduced by Representatives PLUMER, MOSES, PENTERMAN, ARMSTRONG, AUGUST, BRANDTJEN, CABRAL-GUEVARA, CALLAHAN, DALLMAN, DITTRICH, DUCHOW, EDMING, JAMES, KATZMA, KITCHENS, KNODL, KRUG, KUGLITSCH, KURTZ, LOUDENBECK, MACCO, MAGNAFICI, PETERSEN, PETRYK, SCHRAA, SNYDER, SORTWELL, STEFFEN, TITTL, TUSLER, VORPAGEL, WICHGERS, ZIMMERMAN and BORN, cosponsored by Senators FELZKOWSKI, BERNIER, DARLING, FEYEN, MARKLEIN and STROEBEL. Referred to Committee on Workforce Development.

1     **AN ACT** *to renumber* 108.04 (2) (ae); *to renumber and amend* 108.14 (19); *to*  
2           *amend* 108.04 (2) (bm), 108.04 (2) (g) 2., 108.04 (11) (cm), 108.04 (13) (c), 108.04  
3           (13) (e), 108.04 (13) (f), 108.09 (1), 108.14 (21) and 108.22 (8) (a); and *to create*  
4           108.04 (1) (hg), 108.04 (2) (ae) 1., 108.04 (2) (hL), 108.14 (19) (b) and 108.14 (28)  
5           of the statutes; **relating to:** various changes to the unemployment insurance  
6           law.

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### *Analysis by the Legislative Reference Bureau*

Current law requires each employer that is notified of a claim for unemployment insurance (UI) benefits to promptly inform the Department of Workforce Development in writing as to any eligibility question in objection to such a claim together with the reasons for the objection.

This bill requires an employer that is notified of a claim for UI benefits to fully and promptly respond to DWD as to any eligibility question that may be at issue with respect to the claim, regardless of any objection to the claim on the part of the employer. The bill also provides that an employer may report to DWD whenever 1) an individual declines a job interview or job offer; 2) an individual fails to respond to a job interview offer or job offer; 3) an individual fails to attend a scheduled job interview without attempting to reschedule the job interview; 4) a UI claimant is unavailable for, or unable to perform, work actually available within a given week; or 5) under certain circumstances, the employer recalls a former employee receiving

**ASSEMBLY BILL 939**

UI benefits who fails to return to work. The bill requires DWD to consider these reports in determining claimants' attachment to the labor market. The bill also provides that a UI claimant is not considered to have conducted a reasonable search for suitable work in a given week, and is therefore ineligible for benefits for that week, if the claimant had one or more credible reports without good cause of declining a job interview, failing to respond to a job interview offer, or failing to attend a job interview in that week. The bill, however, provides that the first such credible report is to be disregarded and allows subsequent reports to be disregarded upon certain showings by a claimant. The bill requires DWD to investigate each such report as needed to determine its effect on claimants' eligibility for benefits. DWD must include information on reports submitted by employing units under the bill in its annual UI fraud report made to the Council on Unemployment Insurance, including actions taken by DWD in response to the reports and their effect on claimants' eligibility for benefits. In addition, the bill requires that this annual fraud report be submitted to the appropriate standing committees of the legislature.

The bill requires DWD to have in effect methods to address any circumstances in which a claimant for UI benefits fails to return to work or to accept suitable work without good cause or is unavailable for work or unable to work, including reporting methods for employers and a notice from DWD to claimants about the laws governing such circumstances.

Finally, the bill requires, instead of allows, DWD to act to recover overpayments in certain circumstances and requires overpayments to be repaid in cases where an individual makes misrepresentations to obtain benefits in the name of another person.

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

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

- 1           **SECTION 1.** 108.04 (1) (hg) of the statutes is created to read:
- 2           108.04 (1) (hg) 1. An employing unit may report to the department whenever
- 3 any of the following occurs:
- 4           a. An individual declines a job interview or job offer with the employing unit.
- 5           b. An individual fails to respond to a job interview offer or job offer made by the
- 6 employing unit.
- 7           c. An individual fails to attend a scheduled job interview with the employing
- 8 unit, unless the individual attempts to reschedule the job interview.

**ASSEMBLY BILL 939**

1 d. An employee claiming benefits is unavailable for, or unable to perform, work  
2 actually available within a given week as described in par. (a).

3 e. The employing unit recalls an employee who fails to return to work as  
4 described in sub. (8) (c).

5 2. The department shall investigate each report submitted under subd. 1. as  
6 needed to determine whether the report affects a claimant's eligibility under sub. (2)  
7 (hL).

8 **SECTION 2.** 108.04 (2) (ae) of the statutes is renumbered 108.04 (2) (ae) 2.

9 **SECTION 3.** 108.04 (2) (ae) 1. of the statutes is created to read:

10 108.04 (2) (ae) 1. In determining whether a claimant is available for work  
11 under par. (a) 1. and has maintained an attachment to the labor market, the  
12 department shall consider reports made by employing units under sub. (1) (hg).

13 **SECTION 4.** 108.04 (2) (bm) of the statutes is amended to read:

14 108.04 (2) (bm) A claimant is ineligible to receive benefits for any week for  
15 which there is a determination that the claimant failed to comply with the  
16 registration for work and work search requirements under par. (a) 2. or 3. or failed  
17 to provide verification to the department that the claimant complied with those  
18 requirements, unless the department has waived those requirements under par. (b),  
19 (bb), or (bd) or s. 108.062 (10m). If the department has paid benefits to a claimant  
20 for any such week, the department ~~may~~ shall act to recover the overpayment under  
21 s. 108.22.

22 **SECTION 5.** 108.04 (2) (g) 2. of the statutes is amended to read:

23 108.04 (2) (g) 2. If a claimant's security credentials are used in the filing of an  
24 initial or continued claim for benefits or any other transaction, the individual using  
25 the security credentials is presumed to have been the claimant or the claimant's

**ASSEMBLY BILL 939****SECTION 5**

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

19 **SECTION 6.** 108.04 (2) (hL) of the statutes is created to read:

20 108.04 (2) (hL) 1. Subject to subd. 2., if a claimant is subject to the requirement  
21 under par. (a) 3. to conduct a reasonable search for suitable work for a given week  
22 and the department received one or more credible reports in that week that the  
23 claimant declined or failed to respond to a job interview offer or failed to attend a  
24 scheduled job interview, the claimant shall not be considered to have conducted a  
25 reasonable search for suitable work in that week under par. (a) 3.

**ASSEMBLY BILL 939**

1           2. a. A claimant may demonstrate to the department that a report described  
2 in subd. 1. was inaccurate, that an interview was for a job that the claimant was not  
3 required to accept under sub. (8) (d) to (em), or that the claimant had other good cause  
4 for the declination or failure reported. If the department so determines, the report  
5 shall be disregarded for purposes of subd. 1.

6           b. The first credible report described in subd. 1. received during a claimant's  
7 benefit year that is not otherwise disregarded under subd. 2. a. shall be disregarded  
8 for purposes of subd. 1.

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

10           108.04 **(11)** (cm) If any person makes a false statement or representation in  
11 order to obtain benefits in the name of another person, the benefits received by that  
12 person constitute a benefit overpayment. Such person may shall, by a determination  
13 or decision issued under s. 108.095, be required to repay the amount of the benefits  
14 obtained and be assessed an administrative assessment in an additional amount  
15 equal to the amount of benefits obtained.

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

17           108.04 **(13)** (c) If an employer, after notice of a benefit claim, fails to file an  
18 objection a response to the claim under s. 108.09 (1), any benefits allowable under  
19 any resulting benefit computation shall, unless the department applies a provision  
20 of this chapter to disqualify the claimant, be promptly paid. Except as otherwise  
21 provided in this paragraph, any ~~eligibility question in objection~~ response to the claim  
22 raised made by the employer after benefit payments to the claimant are commenced  
23 does not affect benefits paid before the end of the week in which a determination is  
24 issued as to the eligibility question unless the benefits are erroneously paid without  
25 fault on the part of the employer. Except as otherwise provided in this paragraph,

**ASSEMBLY BILL 939****SECTION 8**

1 if an employer fails to provide correct and complete information requested by the  
2 department during a fact-finding investigation, but later provides the requested  
3 information, benefits paid before the end of the week in which a redetermination is  
4 issued regarding the matter or, if no redetermination is issued, before the end of the  
5 week in which an appeal tribunal decision is issued regarding the matter, are not  
6 affected by the redetermination or decision, unless the benefits are erroneously paid  
7 without fault on the part of the employer as provided in par. (f). If benefits are  
8 erroneously paid because the employer and the employee are at fault, the  
9 department shall charge the employer for the benefits and proceed to create an  
10 overpayment under s. 108.22 (8) (a). If benefits are erroneously paid without fault  
11 on the part of the employer, regardless of whether the employee is at fault, the  
12 department shall charge the benefits as provided in par. (d), unless par. (e) applies,  
13 and proceed to create an overpayment under s. 108.22 (8) (a). If benefits are  
14 erroneously paid because an employer is at fault and the department recovers the  
15 benefits erroneously paid under s. 108.22, the recovery does not affect benefit  
16 charges made under this paragraph.

17 **SECTION 9.** 108.04 (13) (e) of the statutes is amended to read:

18 108.04 (13) (e) If the department erroneously pays benefits from one  
19 employer's account and a 2nd employer is at fault, the department shall credit the  
20 benefits paid to the first employer's account and charge the benefits paid to the 2nd  
21 employer's account. Filing of a tardy or corrected report or ~~objection~~ response does  
22 not affect the 2nd employer's liability for benefits paid before the end of the week in  
23 which the department makes a recomputation of the benefits allowable or before the  
24 end of the week in which the department issues a determination concerning any  
25 eligibility question raised by the report or by the 2nd employer. If the 2nd employer

**ASSEMBLY BILL 939**

1 fails to provide correct and complete information requested by the department  
2 during a fact-finding investigation, but later provides the requested information,  
3 the department shall charge to the account of the 2nd employer the cost of benefits  
4 paid before the end of the week in which a redetermination is issued regarding the  
5 matter or, if no redetermination is issued, before the end of the week in which an  
6 appeal tribunal decision is issued regarding the matter, unless the benefits  
7 erroneously are paid without fault on the part of the employer as provided in par. (f).  
8 If the department recovers the benefits erroneously paid under s. 108.22, the  
9 recovery does not affect benefit charges made under this paragraph.

10 **SECTION 10.** 108.04 (13) (f) of the statutes is amended to read:

11 108.04 (13) (f) If benefits are erroneously paid because the employer fails to file  
12 a report required by this chapter, the employer fails to provide correct and complete  
13 information on the report, the employer fails to ~~object~~ respond to the benefit claim  
14 under s. 108.09 (1), the employer fails to provide correct and complete information  
15 requested by the department during a fact-finding investigation, unless an appeal  
16 tribunal, the commission, or a court of competent jurisdiction finds that the employer  
17 had good cause for the failure to provide the information, or the employer aids and  
18 abets the claimant in an act of concealment as provided in sub. (11), the employer is  
19 at fault. If benefits are erroneously paid because an employee commits an act of  
20 concealment as provided in sub. (11) or fails to provide correct and complete  
21 information to the department, the employee is at fault.

22 **SECTION 11.** 108.09 (1) of the statutes is amended to read:

23 108.09 (1) FILING. Claims for benefits shall be filed pursuant to department  
24 rules. Each employer that is notified of a benefit claim shall ~~promptly inform~~ provide  
25 a full and prompt response to the department in writing as to any eligibility question

**ASSEMBLY BILL 939****SECTION 11**

1 ~~in objection to such claim together with the reasons for the objection that may be at~~  
2 ~~issue with respect to the claim, regardless of any objection to the claim on the part~~  
3 ~~of the employer.~~ The department may also obtain information from the employee  
4 concerning the employee's eligibility, employment or wages.

5 **SECTION 12.** 108.14 (19) of the statutes is renumbered 108.14 (19) (intro.) and  
6 amended to read:

7 108.14 (19) (intro.) No later than March 15 annually, the department shall  
8 prepare and furnish to the council on unemployment insurance and to the chief clerk  
9 of each house of the legislature, for distribution to the appropriate standing  
10 committees under s. 13.172 (3), a report summarizing the department's activities  
11 related to detection and prosecution of unemployment insurance fraud in the  
12 preceding year. The department shall include all of the following in the report  
13 information:

14 (a) Information about audits conducted by the department under sub. (20),  
15 including the number and results of audits performed, in the previous year.

16 **SECTION 13.** 108.14 (19) (b) of the statutes is created to read:

17 108.14 (19) (b) Information on reports submitted by employing units under s.  
18 108.04 (1) (hg) 1., including actions taken by the department in response to the  
19 reports as required under s. 108.04 (1) (hg) 2. and their effect on claimants' eligibility  
20 for benefits under s. 108.04 (2) (ae) 1. and (hL).

21 **SECTION 14.** 108.14 (21) of the statutes is amended to read:

22 108.14 (21) The department shall maintain a portal on the Internet that allows  
23 employers employing units to log in and file with the department complaints related  
24 to the administration of this chapter and reports under s. 108.04 (1) (hg).

25 **SECTION 15.** 108.14 (28) of the statutes is created to read:

**ASSEMBLY BILL 939**

1           108.14 (28) The department shall have in effect methods to address  
2 circumstances in which an employee fails to return to work or to accept suitable work  
3 without good cause as described in s. 108.04 (8) or in which the employee is  
4 unavailable for work or unable to perform work under s. 108.04 (1) (a). The methods  
5 shall include all of the following:

6           (a) Reporting methods, including a telephone line, an electronic mail address,  
7 and an online portal, for an employing unit to notify the department when an  
8 employee refuses an offer of work.

9           (b) A plain-language notice provided to employees by the department when  
10 applying for benefits about the application of s. 108.04 (8) (a) to (c), including what  
11 constitutes suitable work under s. 108.04 (8) (d) and (dm), and an employee's right  
12 to fail to accept suitable work for good cause under s. 108.04 (8) (em); about the  
13 application of s. 108.04 (1) (a); and including information on contesting the denial of  
14 a claim that has been denied due to a report by an employing unit that an employee  
15 failed to return to work, failed to accept suitable work, or was unavailable for work  
16 or unable to perform work.

17           **SECTION 16.** 108.22 (8) (a) of the statutes is amended to read:

18           108.22 (8) (a) If benefits are erroneously paid to an individual, the individual's  
19 liability to reimburse the fund for the overpayment ~~may~~ shall be set forth in a  
20 determination or decision issued under s. 108.09. Any determination ~~which~~ that  
21 establishes or increases an overpayment shall include a finding concerning whether  
22 waiver of benefit recovery is required under par. (c). If any decision of an appeal  
23 tribunal, the commission or any court establishes or increases an overpayment and  
24 the decision does not include a finding concerning whether waiver of benefit recovery

**ASSEMBLY BILL 939****SECTION 16**

1 is required under par. (c), the tribunal, commission or court shall remand the issue  
2 to the department for a determination.

3 **SECTION 17. Initial applicability.**

4 (1) The renumbering of s. 108.04 (2) (ae) and the creation of s. 108.04 (2) (ae)  
5 1. and (hL) first apply to weeks of unemployment beginning on the effective date of  
6 this subsection.

7 **SECTION 18. Effective dates.** This act takes effect on the Sunday after  
8 publication, except as follows:

9 (1) The treatment of s. 108.14 (28) takes effect on the first Sunday after the  
10 180th day after publication.

11 (END)

### Fiscal Estimate - 2021 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>21-3005/1</b>	<b>Introduction Number</b> <b>AB-0939</b>
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**Description**  
 various changes to the unemployment insurance law

**Fiscal Effect**

**State:**

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Increase Existing Appropriations	<input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		

**Local:**

<input checked="" type="checkbox"/> No Local Government Costs	<b>5. Types of Local Government Units Affected</b>	
<input type="checkbox"/> Indeterminate	1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
	4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.445 (1) (n)

<b>Agency/Prepared By</b> DWD/ Paul Farnum (608) 266-6496	<b>Authorized Signature</b> Danielle Williams (608) 266-2284	<b>Date</b> 2/9/2022
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## Fiscal Estimate Narratives

DWD 2/9/2022

LRB Number	21-3005/1	Introduction Number	AB-0939	Estimate Type	Original
<b>Description</b> various changes to the unemployment insurance law					

### Assumptions Used in Arriving at Fiscal Estimate

This bill requires an employer that is notified of a claim for UI benefits to fully and promptly respond to DWD regarding any eligibility question that may be at issue with respect to the claim, regardless of any objection to the claim on the part of the employer.

These provisions are assumed to increase the number of employer response forms received by UI by approximately fifty percent of pre-pandemic levels. To handle the increased volume of forms created by the additional requirements imposed on employers, five additional staff are needed. To fulfill this need, it is assumed that five contracted staff are hired at a cost of \$390,000 annually.

The bill also provides that an employer may report to DWD whenever: 1) an individual declines a job interview or job offer, 2) an individual fails to respond to a job interview offer or job offer, 3) an individual fails to attend a scheduled job interview without attempting to reschedule the job interview, 4) UI claimant is unavailable for, or unable to perform, work actually available within a given week, and 5) under certain circumstances when the employer recalls a former employee receiving UI benefits who fails to return to work. DWD will be required to consider these reports and investigate, as needed, to determine a claimant's eligibility for benefits.

To implement a process as specified under the bill to accept submitted employer responses, systems modifications are needed. The required IT work is estimated at 190 hours for a one-time cost of \$16,900. Administrative work to support the IT implementation is estimated to cost \$5,100. The costs for IT and related administrative support work are estimated to be one-time.

Additionally, this bill requires DWD to have in effect methods to address any circumstances in which a claimant for UI benefits fails to return to work or to accept suitable work without good cause or is unavailable for work or unable to work, including reporting methods for employers and a notice from DWD to claimants about the laws governing such circumstances. These provisions are not different from current UI business practices and thus are not expected to increase administrative costs or impact the UI Trust Fund.

Finally, the bill requires, instead of allows, DWD to act to recover overpayments in certain circumstances and requires overpayments to be repaid in cases where an individual makes misrepresentations to obtain benefits in the name of another person. These provisions are not different from current UI business practices and thus are not expected to increase administrative costs or impact the UI Trust Fund. This provision would not apply when waivers of federal overpayments have been authorized.

### Long-Range Fiscal Implications

## Fiscal Estimate Worksheet - 2021 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>21-3005/1</b>	<b>Introduction Number</b> <b>AB-0939</b>	
<b>Description</b> various changes to the unemployment insurance law		
<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>		
To implement this bill a total of \$22,000 in one-time costs will be required consisting of 190 hours of IT work costing \$16,900, and \$5,100 administrative costs for supporting the IT implementation.		
<b>II. Annualized Costs:</b>	<b>Annualized Fiscal Impact on funds from:</b>	
	Increased Costs      Decreased Costs	
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs	390,000	
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$390,000</b>	<b>\$</b>
<b>B. State Costs by Source of Funds</b>		
GPR		
FED	390,000	
PRO/PRS		
SEG/SEG-S		
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$390,000	\$
NET CHANGE IN REVENUE	\$	\$
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DWD/ Paul Farnum (608) 266-6496	Danielle Williams (608) 266-2284	2/9/2022

**State of Wisconsin  
Department of Workforce Development**

**NOTICE OF PUBLIC HEARING**

**Unemployment Insurance  
Chs. DWD 100 to 150, Wis. Admin. Code**

**Clearinghouse Rule Number CR 22-010**

The Wisconsin Department of Workforce Development (DWD) announces that it will hold a public hearing on a permanent rule relating to converting references from Standard Industrial Classification codes to the North American Industry Classification System codes and other minor technical changes to the unemployment insurance program.

**Hearing Information**

Date: February 24, 2022  
Time: 10:00 am  
Location: Webex meeting at the following link:

<https://dwdwi.webex.com/dwdwi/j.php?MTID=m23a4858a835f537a772e30880ed4a5bb>

Meeting number: 2597 649 5855  
Password: DWD1

The hearing can also be accessed with the following telephone numbers and access code:

+1-855-282-6330 US TOLL FREE  
+1-415-655-0003 US TOLL  
Access code: 2597 649 5855

**Accessibility**

If you have special needs or circumstances regarding communication or accessibility at the hearing, please contact Mark Kunkel, DWD Rules and Records Coordinator, at (608) 267-7713 or markd.kunkel@dwd.wisconsin.gov no later than noon, February 22, 2022. Accommodations or language interpretation will be made available on request to the fullest extent possible.

**Appearances at the Hearing and Submittal of Written Comments**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions.

Written comments may be submitted by email to [DWDAdminRules@dwd.wisconsin.gov](mailto:DWDAdminRules@dwd.wisconsin.gov) or through DWD's website: <https://dwd.wisconsin.gov/dwd/admin-rules/>. Written comments must

be received on or before February 24, 2022, to be included in the record of rulemaking proceedings.

### **Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined in s. 227.114 (1), Stats.

### **Agency Contact Person**

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Department of Workforce Development  
Division of Unemployment Insurance  
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### **Agency Small Business Regulatory Coordinator**

Jennifer Wakerhauser, Chief Legal Counsel  
Department of Workforce Development  
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E-Mail: [JenniferL.Wakerhauser@dwd.wisconsin.gov](mailto:JenniferL.Wakerhauser@dwd.wisconsin.gov)