



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2772/2  
JTK:cjs:rs

## 2011 ASSEMBLY BILL 310

October 6, 2011 – Introduced by Representative BALLWEG, cosponsored by Senator WANGGAARD. Referred to Committee on Labor and Workforce Development.

1     **AN ACT** *to repeal* 108.04 (8) (b), 108.04 (13) (cm), 108.05 (3) (b) and 108.09 (4r);  
2           *to renumber* 108.065 (1) and 108.065 (1m) and (2); *to renumber and amend*  
3           108.05 (3) (c); *to amend* 20.445 (1) (gd), 20.445 (1) (gg), 108.04 (2) (a) 3. (intro.),  
4           108.04 (11) (a) and (b), 108.04 (11) (bm), 108.05 (3) (a), 108.09 (2) (b), 108.09 (3)  
5           (a) 1., 108.09 (8) (b), 108.16 (6) (f), 108.16 (6) (L), 108.16 (6) (m), 108.16 (6m) (g),  
6           108.16 (8) (h), 108.16 (10), 108.19 (title), 108.19 (1m), 108.22 (1m), 108.22 (8)  
7           (b) 1. d., 108.225 (1) (b), 108.225 (16) (am) 1. (intro.), 108.225 (17) and 108.24  
8           (1); *to repeal and recreate* 108.04 (11) (be); and *to create* 20.445 (1) (u),  
9           20.445 (1) (v), 25.17 (1) (xe), 25.17 (1) (xf), 108.04 (2) (bm), 108.04 (11) (bh),  
10          108.05 (3) (c) 1. to 3., 108.05 (3) (dm), 108.065 (1e), 108.065 (3), 108.19 (1q),  
11          108.19 (1s) and 108.22 (8) (bh) of the statutes; **relating to:** various changes in

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1 the unemployment insurance law, providing a penalty, and making  
2 appropriations.

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

This bill makes various changes in the unemployment insurance (UI) law. Significant provisions include:

**BENEFIT CHANGES*****Concealment and program integrity***

Currently, if a claimant conceals any material fact relating to his or her eligibility for benefits or conceals any wages earned in or paid or payable for a given week, the claimant is subject to graduated monetary penalties that increase in severity with the number of determinations of concealment by the claimant. In addition, if a claimant conceals any wages for a given week, the claimant is ineligible to receive any benefits for that week.

This bill provides instead that a claimant who conceals any material fact relating to his or her eligibility for benefits or conceals any wages is subject to a graduated forfeiture of benefit amounts equivalent to specified weeks of benefit eligibility that increases in severity with the number of determinations of concealment by the claimant. In addition, a claimant who is found guilty of concealment is subject to a penalty equal to 15 percent of the benefit payments paid to the claimant.

The bill also creates a segregated fund called the unemployment program integrity fund for deposit of all penalties collected under the above described penalty provision created by the bill. Under the bill, moneys in the fund are to be used for the payment of costs associated with program integrity (fraud detection and prevention) activities.

***Partial unemployment***

Currently, with certain exceptions, if an employee earns wages or certain other amounts treated as wages in a given week, the first \$30 of the wages or other amounts are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount earned, but no employee is eligible to receive benefits for any week if the benefits would be less than \$5, and any wages that the employee would have earned in any week for work performed for his or her employer had the claimant accepted available work from that employer are treated as wages earned for that week.

This bill provides that an employee is ineligible to receive any benefits for a week if the employee receives from one or more employers 1) wages earned for work performed in that week of more than \$500; or 2) sick pay, holiday pay, vacation pay, or termination pay which, by itself or in combination with wages earned for work performed in that week, is equivalent to more than \$500.

**ASSEMBLY BILL 310*****Eligibility of claimants who engage in full-time work***

Currently, if a claimant receives wages or certain other amounts treated as wages from an employer who paid at least 80 percent of the claimant's wages in his or her base period (period preceding a claim during which benefit rights accrue) for any week, the claimant is not eligible to receive benefits for that week if the claimant works for at least 32 hours for that employer in that week and receives pay at not less than the rate of pay that the claimant received during the calendar quarter in his or her base period in which the claimant received his or her highest wages, or the claimant receives certain other payments from that employer for that week that alone or in combination with any paid wages equal at least the pay the claimant would have received for 32 hours per week.

This bill substitutes a rule which provides that a claimant is ineligible to receive any benefits for a week in which one or more of the following applies to the claimant for 32 or more hours in that week: 1) The claimant performs work; 2) The claimant receives certain amounts treated as wages for that week; or 3) The claimant receives holiday pay, vacation pay, termination pay, or sick pay that is treated as wages under current law.

***Failure or refusal to take a test for illegal drugs***

Currently, unless federal law otherwise provides, with certain exceptions, if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible to receive benefits until four weeks have elapsed since the end of the week in which the failure occurs and the employee earns wages, or certain other amounts treated as wages, equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. An employee's failure to accept an offer of work includes either a) the employee's refusal without good cause to take a test for illegal drugs conducted in a manner approved by the Department of Workforce Development (DWD) that is given on behalf of the employer as a condition of employment; or b) the employer's withdrawal of or failure to extend an offer of work due to a positive test result on such a test.

This bill deletes an employee's refusal to take a test for illegal drugs or a withdrawal or failure to extend an offer of employment due to a positive test result as an element of failure to accept suitable work.

***Ineligibility for failure to perform work searches***

Currently, a claimant must conduct a reasonable search for suitable work during each week that the claimant receives benefits unless DWD waives the work search requirement by general rule under stated conditions. This bill provides that a claimant is ineligible to receive benefits for any week for which there is a determination that the claimant failed to conduct a reasonable search for suitable work and DWD has not waived the work search requirement. If benefits have been paid to a claimant for such a week, the bill permits DWD to recover the benefits in the same manner as other overpayments are recovered.

**ASSEMBLY BILL 310****TAX CHANGES*****Contribution liability of successor employers***

Currently, when a business is transferred from one employer to another employer, DWD must treat the transferee as the successor employer to the transferor if the the transferee and the transferor are owned, controlled, or managed by the same interests. DWD redetermines the contribution (tax) rate of a successor employer as of the first quarter beginning after the effective date of the transfer. This bill provides instead that DWD shall redetermine the contribution rate of a successor employer as of the beginning of the first calendar year beginning after the effective date of the transfer.

**OTHER CHANGES*****Determining who is the employer of certain employees***

Currently, when an employee has some relationship with more than one employer in the course of performing a job, DWD must determines which employer is considered to be the employee's employer for purposes of the UI law. Except in certain limited circumstances, current statutes do not address the issue of how employment status and employer responsibility for a particular employee is determined. This bill provides that, except with respect to providers of home health care and personal care services for medical assistance recipients, DWD must consider nine factors concerning an employer's relationship to an employee and three other factors concerning the beneficiary of an employee's services, maintenance of a staff of employees to perform the employee's services, and responsibility for employee compliance with regulatory laws in determining who is the employer of a particular employee. The bill also provides that notwithstanding these factors, a provider of home health care and personal care services for medical assistance recipients may elect to be the employer of employees providing those services, if the provider notifies in writing the recipient of the services of its election and the provider is treated by the federal Internal Revenue Service as an employer for purposes of compliance with federal unemployment tax laws.

***Treatment of interest assessments and assessment-related revenue***

Currently, when there are insufficient moneys in the unemployment reserve fund to make full payment of benefit claims, DWD is authorized to borrow moneys from the federal government sufficient to make full payment of claims. DWD then levies an annual assessment against employers that engage employees in employment covered by the UI law sufficient to pay the interest due on the federal advances to the fund. Any interest earned on the assessments pending transfer to the federal government is credited to the state general fund, and any amount remaining after an interest payment is made is retained for the purpose of making future interest payments or for certain other authorized uses relating to the UI program. This bill creates a segregated fund called the unemployment interest payment fund for deposit of all unencumbered moneys collected on interest assessments and all moneys to be collected on assessments previously made. Under the bill, any interest earned on the assessments pending transfer to the federal government and any interest or penalties collected from employers who are

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delinquent in paying their assessments is credited to this segregated fund. The bill provides that DWD shall use the moneys in the fund to make interest payments due to the federal government on advances made to the unemployment reserve fund. The bill directs DWD to use excess moneys in the fund to pay interest due in future years, or if DWD determines that additional interest obligations are unlikely, the bill directs DWD to use the excess moneys to pay benefits. The bill also makes delinquent assessments subject to a simplified collection procedure that is currently used by DWD for collection of other UI liabilities.

***Recovery of UI liabilities resulting from incorrect earnings reports***

Currently, DWD may utilize procedures available under state and federal laws to set off adjudicated UI liabilities against refunds or other payments that may be payable to a liable individual under state law or to offset adjudicated UI liabilities for fraudulent practices against refunds that may be payable to a liable individual under federal tax laws. This bill permits DWD to offset adjudicated UI liabilities for failure to report earnings in the same manner.

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.** 20.445 (1) (gd) of the statutes is amended to read:  
2           20.445 (1) (gd) *Unemployment interest and penalty payments.* All moneys  
3 received as interest and penalties collected under ss. 108.04 (11) (c) and (cm) and (13)  
4 (c) and 108.22, ~~assessments under s. 108.19 (1m)~~ except interest and penalties  
5 deposited under s. 108.19 (1q), and forfeitures under s. 103.05 (5), all moneys not  
6 appropriated under par. (gg) and all moneys transferred to this appropriation  
7 account from the appropriation account under par. (gh) for the payment of benefits  
8 specified in s. 108.07 (5) and 1987 Wisconsin Act 38, section 132 (1) (c), for the  
9 payment of interest to employers under s. 108.17 (3m), for research relating to the  
10 condition of the unemployment reserve fund under s. 108.14 (6), for administration  
11 of the unemployment insurance program and federal or state unemployment  
12 insurance programs authorized by the governor under s. 16.54, for satisfaction of any

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1 federal audit exception concerning a payment from the unemployment reserve fund  
2 or any federal aid disallowance concerning the unemployment insurance program,  
3 for assistance to the department of justice in the enforcement of ch. 108, for the  
4 payment of interest due on advances from the federal unemployment account under  
5 title XII of the social security act to the unemployment reserve fund, and for  
6 payments made to the unemployment reserve fund to obtain a lower interest rate or  
7 deferral of interest payments on these advances, except as otherwise provided in s.  
8 108.20.

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

10 20.445 (1) (gg) *Unemployment information technology systems; interest and*  
11 *penalties.* From the moneys received as interest and penalties collected under ss.  
12 108.04 (11) (c) and (cm) and (13) (c) and 108.22 except interest and penalties  
13 deposited under s. 108.19 (1q), as a continuing appropriation, the amounts in the  
14 schedule for the purpose specified in s. 108.19 (1e) (d).

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

16 20.445 (1) (u) *Unemployment interest payments and transfers.* From the  
17 unemployment interest payment fund, a sum sufficient to make the payments and  
18 transfers authorized under s. 108.19 (1m).

19 **SECTION 4.** 20.445 (1) (v) of the statutes is created to read:

20 20.445 (1) (v) *Unemployment program integrity.* From the unemployment  
21 program integrity fund, a sum sufficient to make the payments authorized under s.  
22 108.19 (1s).

23 **SECTION 5.** 25.17 (1) (xe) of the statutes is created to read:

24 25.17 (1) (xe) Unemployment interest payment fund (s. 108.19 (1q));

25 **SECTION 6.** 25.17 (1) (xf) of the statutes is created to read:

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1           25.17 (1) (xf) Unemployment program integrity fund (s. 108.19 (1s));

2           **SECTION 7.** 108.04 (2) (a) 3. (intro.) of the statutes is amended to read:

3           108.04 (2) (a) 3. (intro.) The individual conducts a reasonable search for  
4           suitable work during that week, unless the search requirement is waived under par.  
5           (b). The search for suitable work must include 2 actions that constitute a reasonable  
6           search as prescribed by rule of the department. This subdivision does not apply to  
7           an individual if the department determines that the individual is currently laid off  
8           from employment with an employer but there is a reasonable expectation of  
9           reemployment of the individual by that employer. In determining whether the  
10          individual has a reasonable expectation of reemployment by an employer, the  
11          department shall request the employer to verify the individual's employment status  
12          and shall also consider other factors, including:

13          **SECTION 8.** 108.04 (2) (bm) of the statutes is created 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 conduct a reasonable  
16          search for suitable work and the department has not waived the search requirement  
17          under par. (b). If the department has paid benefits to a claimant for any such week,  
18          the department may recover the overpayment under s. 108.22 (8).

19          **SECTION 9.** 108.04 (8) (b) of the statutes, as created by 2011 Wisconsin Act 32,  
20          is repealed.

21          **SECTION 10.** 108.04 (11) (a) and (b) of the statutes are amended to read:

22          108.04 (11) (a) If a claimant, in filing his or her application for benefits or claim  
23          for any week, conceals any material fact relating to his or her eligibility for benefits,  
24          the claimant ~~shall forfeit benefits in accordance with~~ is ineligible for benefits as  
25          provided in par. (be).

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1 (b) If a claimant, in filing a claim for any week, conceals any of his or her wages  
2 earned in or paid or payable for that week, the claimant ~~shall forfeit benefits in~~  
3 ~~accordance with par. (be). In addition, the claimant shall be denied benefits for that~~  
4 ~~week is ineligible for benefits as provided in par. (be).~~

5 **SECTION 11.** 108.04 (11) (be) of the statutes is repealed and recreated to read:

6 108.04 (11) (be) A claimant is ineligible for benefits for acts of concealment  
7 described in pars. (a) and (b) as follows:

8 1. For each single act of concealment occurring before the date of the first  
9 determination of concealment under par. (a) or (b), the claimant is ineligible for  
10 benefits for which he or she would otherwise be eligible in an amount equivalent to  
11 2 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which  
12 the claim is made.

13 2. For each single act of concealment occurring after the date of the first  
14 determination of concealment under par. (a) or (b), the claimant is ineligible for  
15 benefits for which he or she would otherwise be eligible in an amount equivalent to  
16 4 times the claimant's weekly benefit rate under s. 108.05 (1) for the week in which  
17 the claim is made.

18 3. For each single act of concealment occurring after the date of a 2nd or  
19 subsequent determination of concealment under par. (a) or (b), the claimant is  
20 ineligible for benefits for which he or she would otherwise be eligible in an amount  
21 equivalent to 8 times the claimant's weekly benefit rate under s. 108.05 (1) for the  
22 week in which the claim is made.

23 **SECTION 12.** 108.04 (11) (bh) of the statutes is created to read:

24 108.04 (11) (bh) In addition to ineligibility for benefits resulting from  
25 concealment as provided in par. (be), the department shall assess a penalty against



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1 the claimant in an amount equal to 15 percent of the benefit payments paid to the  
2 claimant as a result of one or more acts of concealment described in pars. (a) and (b).

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

4 108.04 (11) (bm) ~~The forfeiture established~~ The department shall apply any  
5 ineligibility under par. (be) ~~may be applied~~ against benefits and weeks of eligibility  
6 for which the claimant would otherwise become payable to the claimant for weeks  
7 of unemployment occurring be eligible after the week of concealment and within 6  
8 years after the date of an initial determination issued under s. 108.09 finding that  
9 a concealment occurred. The claimant shall not receive waiting period credit under  
10 s. 108.04 (3) for the period of ineligibility applied under par. (be). If no benefit rate  
11 applies to the week for which the claim is made, the department shall use the  
12 claimant's benefit rate for the claimant's next benefit year beginning after the week  
13 of concealment to determine the forfeiture amount. ~~If the benefits forfeited would~~  
14 ~~otherwise be chargeable to an employer's account, the department shall charge the~~  
15 ~~amount of benefits forfeited to the employer's account and shall credit the fund's~~  
16 ~~balancing account for that amount~~ of the benefit reduction.

17 **SECTION 14.** 108.04 (13) (cm) of the statutes, as created by 2011 Wisconsin Act  
18 32, is repealed.

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

20 108.05 (3) (a) Except as provided in pars. ~~(b), (c), and (d),~~ and (dm) if an eligible  
21 employee earns wages in a given week, the first \$30 of the wages shall be disregarded  
22 and the employee's applicable weekly benefit payment shall be reduced by 67% of the  
23 remaining amount, except that no such employee is eligible for benefits if the  
24 employee's benefit payment would be less than \$5 for any week. For purposes of this  
25 paragraph, "wages" includes any salary reduction amounts earned that are not

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1 wages and that are deducted from the salary of a claimant by an employer pursuant  
2 to a salary reduction agreement under a cafeteria plan, within the meaning of 26  
3 USC 125, and any amount that a claimant would have earned in available work  
4 under s. 108.04 (1) (a) which is treated as wages under s. 108.04 (1) (bm), but excludes  
5 any amount that a claimant earns for services performed as a volunteer fire fighter,  
6 volunteer emergency medical technician, or volunteer first responder. In applying  
7 this paragraph, the department shall disregard discrepancies of less than \$2  
8 between wages reported by employees and employers.

9 **SECTION 16.** 108.05 (3) (b) of the statutes is repealed.

10 **SECTION 17.** 108.05 (3) (c) of the statutes is renumbered 108.05 (3) (c) (intro.)  
11 and amended to read:

12 108.05 (3) (c) (intro.) A claimant is ineligible to receive any benefits for a week  
13 in which ~~the claimant works a total of 40 or more hours for one or more employing~~  
14 ~~units.~~ one or more of the following applies to the claimant for 32 or more hours in that  
15 week:

16 **SECTION 18.** 108.05 (3) (c) 1. to 3. of the statutes are created to read:

17 108.05 (3) (c) 1. The claimant performs works; or

18 2. The claimant has wages ascribed under s. 108.04 (1) (bm); or

19 3. The claimant receives holiday pay, vacation pay, termination pay, or sick pay  
20 under circumstances satisfying the requirements of subs. (4), (5), or (5m) for  
21 treatment as wages in that week.

22 **SECTION 19.** 108.05 (3) (dm) of the statutes is created to read:

23 108.05 (3) (dm) A claimant is ineligible to receive any benefits for a week if the  
24 claimant receives from one or more employers: 1. Wages earned for work performed  
25 in that week of more than \$500; or

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1           2. Sick pay, holiday pay, vacation pay, or termination pay which, by itself or in  
2 combination with wages earned for work performed in that week, is equivalent to  
3 more than \$500.

4           **SECTION 20.** 108.065 (1) of the statutes is renumbered 108.065 (2) (a) 1.

5           **SECTION 21.** 108.065 (1e) of the statutes is created to read:

6           108.065 (1e) Except as provided in subs. (2) and (3), if there is more than one  
7 employing unit that has a relationship to an employee, the department shall  
8 determine which of the employing units is the employer of the employee by  
9 considering the following:

10          (a) An employing unit's right by contract and in fact to:

11           1. Determine a prospective employee's qualifications to perform the services in  
12 question and to hire or discharge the employee.

13           2. Determine the details of the employee's pay including the amount of, method  
14 of, and frequency of changes in that pay.

15           3. Train the employee and exercise direction and control over the performance  
16 of services by the employee and when and how they are to be performed.

17           4. Impose discipline upon the employee for rule or policy infractions or  
18 unsatisfactory performance.

19           5. Remove the employee from one job or assign the employee to a different job.

20           6. Require oral or written reports from the employee.

21           7. Evaluate the quantity and quality of the services provided by the employee.

22           8. Assign a substitute employee to perform the services of an employee if the  
23 employee is unavailable for work or is terminated from work.

24           9. Assign alternative work to the employee if the employee is removed from a  
25 particular job.

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1 (b) Which employing unit:

2 1. Benefits directly or indirectly from the services performed by the employee.

3 2. Maintains a pool of workers who are available to perform the services in  
4 question.

5 3. Is responsible for employee compliance with applicable regulatory laws and  
6 for enforcement of such compliance.

7 **SECTION 22.** 108.065 (1m) and (2) of the statutes are renumbered 108.065 (2)  
8 (b) and (c).

9 **SECTION 23.** 108.065 (3) of the statutes is created to read:

10 108.065 (3) A provider of home health care and personal care services for  
11 medical assistance recipients under ch. 49 may elect to be the employer of one or more  
12 employees providing those services. As a condition of eligibility for election to be the  
13 employer of one or more employees providing those services, the provider shall notify  
14 in writing the recipient of any such services of its election, for purposes of the  
15 unemployment insurance law, to be the employer of any worker providing such  
16 services to the recipient, and must be treated as the employer by the federal internal  
17 revenue service for purposes of federal unemployment taxes on the worker's services.

18 **SECTION 24.** 108.09 (2) (b) of the statutes is amended to read:

19 108.09 (2) (b) The department shall issue determinations whenever necessary  
20 to resolve any matters ~~which~~ that may bar, suspend, terminate or otherwise affect  
21 the employee's eligibility for benefits or to resolve any liability for penalties under  
22 s. 108.04 (11) (bh).

23 **SECTION 25.** 108.09 (3) (a) 1. of the statutes is amended to read:

24 108.09 (3) (a) 1. To hear and decide disputed claims or to resolve liabilities  
25 under sub. (2) (b), the department shall establish appeal tribunals. Except as

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1 authorized in this paragraph, each tribunal shall consist of an individual who is a  
2 permanent employee of the department.

3 **SECTION 26.** 108.09 (4r) of the statutes, as created by 2011 Wisconsin Act 32,  
4 is repealed.

5 **SECTION 27.** 108.09 (8) (b) of the statutes is amended to read:

6 108.09 (8) (b) Any party in a dispute concerning benefit eligibility or liability  
7 for overpayment of benefits or a penalty imposed under s. 108.04 (11) (bh), or in any  
8 administrative proceeding under this chapter concerning such a dispute, may be  
9 represented by counsel or another agent; but no such counsel or agent may together  
10 charge or receive from an employee for all such representation in connection with  
11 such a dispute a fee which, in the aggregate, exceeds 10% of the maximum benefits  
12 at issue unless the department has first approved a specified higher fee. This  
13 paragraph does not apply to any fee charged for representation before a court of law.

14 **SECTION 28.** 108.16 (6) (f) of the statutes is amended to read:

15 108.16 (6) (f) Any amount available for such crediting under s. 108.04 (11) (be),  
16 108.14 (8n) (e) or 108.141.

17 **SECTION 29.** 108.16 (6) (L) of the statutes is amended to read:

18 108.16 (6) (L) The amount of any overpayments that are recovered by the  
19 department by setoff pursuant to s. 71.93 or the amount of any overpayments  
20 resulting from fraud or failure to report earnings that are recovered by the  
21 department by offset pursuant to section 6402 (f) of the federal Internal Revenue  
22 Code in effect on June 1, 2009, ~~or a similar federal program.~~

23 **SECTION 30.** 108.16 (6) (m) of the statutes is amended to read:

24 108.16 (6) (m) Any amounts collected from assessments levied under s. 108.19  
25 ~~(1m) exceeding the amounts needed to pay interest due on advances from the federal~~

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1 ~~unemployment account under title XII of the Social Security Act (42 USC 1321 to~~  
2 ~~1324) transferred to the balancing account from the unemployment interest~~  
3 ~~payment fund.~~

4 **SECTION 31.** 108.16 (6m) (g) of the statutes is amended to read:

5 108.16 **(6m)** (g) Any payments of fees or expenses assessed by the U.S.  
6 secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code  
7 in effect on June 1, 2009, ~~or a similar federal program.~~

8 **SECTION 32.** 108.16 (8) (h) of the statutes is amended to read:

9 108.16 **(8)** (h) The department shall ~~determine or~~ redetermine the contribution  
10 rate ~~for the~~ of a successor effective that is subject to this chapter immediately prior  
11 to the effective date of a transfer as of the applicable computation date effective for  
12 contributions payable beginning of in the first quarter calendar year following the  
13 date of the transfer of the business. The department shall thereafter redetermine  
14 the contribution rate whenever required by s. 108.18. For the purposes of s. 108.18,  
15 the department shall determine the experience under this chapter of the successor's  
16 account by allocating to the successor's account for each period in question the  
17 respective proportions of the transferor's payroll and benefits which the department  
18 determines to be properly assignable to the business transferred.

19 **SECTION 33.** 108.16 (10) of the statutes is amended to read:

20 108.16 **(10)** All money withdrawn from the fund shall be used solely in the  
21 payment of benefits, exclusive of expenses of administration, and for refunds of sums  
22 erroneously paid into the fund, for refund of a positive net balance in an employer's  
23 reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the  
24 employer, for expenditures made pursuant to s. 108.161 and consistently with the  
25 federal limitations applicable to s. 108.161, and for payment of fees and expenses for

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1 collection of overpayments resulting from fraud or failure to report earnings that are  
2 assessed by the U.S. secretary of the treasury under section 6402 (f) of the federal  
3 Internal Revenue Code in effect on June 1, 2009, ~~or a similar federal program.~~

4 **SECTION 34.** 108.19 (title) of the statutes is amended to read:

5 **108.19** (title) **Contributions to the administrative account and the**  
6 **unemployment interest payment fund.**

7 **SECTION 35.** 108.19 (1m) of the statutes is amended to read:

8 108.19 (1m) Each employer subject to this chapter as of the date a rate is  
9 established under this subsection shall pay an assessment to the administrative  
10 ~~account~~ unemployment interest payment fund at a rate established by the  
11 department sufficient to pay interest due on advances from the federal  
12 unemployment account under title XII of the social security act (42 USC 1321 to  
13 1324). The rate established by the department for employers who finance benefits  
14 under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall be 75% of the rate established  
15 for other employers. The amount of any employer's assessment shall be the product  
16 of the rate established for that employer multiplied by the employer's payroll of the  
17 previous calendar year as taken from quarterly employment and wage reports filed  
18 by the employer under s. 108.205 (1) or, in the absence of the filing of such reports,  
19 estimates made by the department. Each assessment made under this subsection  
20 is due on the 30th day commencing after the date on which notice of the assessment  
21 is mailed by the department. If the amounts collected under this subsection are in  
22 excess of the amounts needed to pay interest due, the department shall use any  
23 excess shall be credited to pay interest owed in subsequent years on advances from  
24 the federal unemployment account. If the department determines that additional

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1 interest obligations are unlikely, the department shall transfer the excess to the  
2 balancing account of the fund.

3 **SECTION 36.** 108.19 (1q) of the statutes is created to read:

4 108.19 (1q) There is created a separate, nonlapsible trust fund designated as  
5 the unemployment interest payment fund consisting of all amounts collected under  
6 sub. (1m) and all interest and penalties on those amounts collected under s. 108.22.

7 **SECTION 37.** 108.19 (1s) of the statutes is created to read:

8 108.19 (1s) (a) There is created a separate, nonlapsible trust fund designated  
9 as the unemployment program integrity fund consisting of all amounts collected  
10 under s. 108.04 (11) (bh).

11 (b) The department shall use the moneys in the unemployment program  
12 integrity fund for payment of costs associated with program integrity activities.

13 **SECTION 38.** 108.22 (1m) of the statutes is amended to read:

14 108.22 (1m) If an employer owes any contributions, reimbursements or  
15 assessments under s. 108.15 or, 108.151, or 108.19 (1m), interest, fees, or payments  
16 for forfeitures or other penalties to the department under this chapter and fails to  
17 pay the amount owed, the department has a perfected lien upon the employer's right,  
18 title, and interest in all of its real and personal property located in this state in the  
19 amount finally determined to be owed, plus costs. Except where creation of a lien is  
20 barred or stayed by bankruptcy or other insolvency law, the lien is effective when the  
21 department issues a determination of the amount owed under s. 108.10 (1) and shall  
22 continue until the amount owed, plus costs and interest to the date of payment, is  
23 paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it  
24 shall become effective immediately upon expiration or removal of such bar or stay.  
25 The perfected lien does not give the department priority over lienholders,



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1 mortgagees, purchasers for value, judgment creditors, and pledges whose interests  
2 have been recorded before the department's lien is recorded.

3 **SECTION 39.** 108.22 (8) (b) 1. d. of the statutes is amended to read:

4 108.22 (8) (b) 1. d. If the overpayment results from fraud or failure to report  
5 earnings, offsetting the amount of the overpayment against a federal tax refund as  
6 provided in section 6402 (f) of the federal Internal Revenue Code in effect on June  
7 1, 2009, ~~or a similar federal program.~~

8 **SECTION 40.** 108.22 (8) (bh) of the statutes is created to read:

9 108.22 (8) (bh) To recover any penalty under s. 108.04 (11) (bh), the department  
10 may recoup the amount of the penalty by filing a warrant against the liable  
11 individual in the same manner as is provided in this section for collecting delinquent  
12 payments from employers.

13 **SECTION 41.** 108.225 (1) (b) of the statutes is amended to read:

14 108.225 (1) (b) "Debt" means a delinquent contribution or repayment of a  
15 benefit overpayment, an a delinquent assessment under s. 108.04 (11) (cm) or 108.19  
16 (1m), a liability incurred under s. 108.04 (11) (bh), or any liability of a 3rd party for  
17 failure to surrender to the department property or rights to property subject to levy  
18 after proceedings under sub. (4) (b) and s. 108.10 to determine that liability.

19 **SECTION 42.** 108.225 (16) (am) 1. (intro.) of the statutes is amended to read:

20 108.225 (16) (am) 1. (intro.) In the case of benefit overpayments or a penalty  
21 imposed under s. 108.04 (11) (bh), an individual debtor is entitled to an exemption  
22 from levy of 80% of the debtor's disposable earnings, except that:

23 **SECTION 43.** 108.225 (17) of the statutes is amended to read:

24 108.225 (17) EXEMPTIONS. The first \$1,000 of an account in a depository  
25 institution is exempt from any levy to recover a benefit overpayment or penalty

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1 imposed under s. 108.04 (11) (bh). No other property is exempt from levy except as  
2 provided in sub. (16).

3 **SECTION 44.** 108.24 (1) of the statutes is amended to read:

4 108.24 (1) Any person who knowingly makes a false statement or  
5 representation to obtain any benefit payment under this chapter, either for himself  
6 or herself or for any other person, shall be fined not less than \$100 nor more than  
7 \$500 or imprisoned not more than 90 days, or both; and each such false statement  
8 or representation constitutes a separate offense. This penalty is in addition to any  
9 penalty imposed under s. 108.04 (11) (bh).

10 **SECTION 45. Fiscal changes.**

11 (1) There is transferred from the appropriation under section 20.445 (1) (gd)  
12 of the statutes, as affected by this act, to the unemployment interest payment fund,  
13 as created by this act, all unencumbered moneys paid to the department of workforce  
14 development under section 108.19 (1m) of the statutes for assessments made prior  
15 to the effective date of this subsection and all interest and penalties on those moneys  
16 collected under section 108.22 of the statutes.

17 (2) Notwithstanding section 20.445 (1) (gd) of the statutes, as affected by this  
18 act, there shall be deposited into the unemployment interest payment fund, as  
19 created by this act, all moneys payable to the department of workforce development  
20 under section 108.19 (1m) of the statutes for assessments made prior to the effective  
21 date of this subsection and all interest and penalties on those moneys collected under  
22 section 108.22 of the statutes.

23 **SECTION 46. Initial applicability.**

24 (1) The treatment of sections 20.445 (1) (v), 25.17 (1) (xf), 108.04 (11) (a), (b),  
25 (be), (bh), and (bm), 108.09 (2) (b), (3) (a) 1., and (8) (b), 108.16 (6) (f), 108.19 (1s),

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1 108.22 (8) (bh), 108.225 (1) (b) (with respect to liabilities incurred under section  
2 108.04 (11) (bh) of the statutes), (16) (am) 1. (intro.), and (17) and 108.24 (1) of the  
3 statutes first applies with respect to weeks of employment beginning with the first  
4 Sunday that follows the 180th day beginning after the effective date of this  
5 subsection.

6 (2) The treatment of section 108.04 (2) (a) 3. (intro.) and (bm) of the statutes  
7 first applies with respect to determinations issued under section 108.09 of the  
8 statutes in the first week beginning after the effective date of this subsection or, in  
9 relation to determinations that are appealed, to decisions issued under section  
10 108.09 of the statutes in the first week beginning after the effective date of this  
11 subsection.

12 (3) The treatment of sections 108.04 (8) (b) and (13) (cm) and 108.09 (4r) of the  
13 statutes first applies with respect to weeks of unemployment beginning after the  
14 effective date of this subsection.

15 (4) The treatment of section 108.05 (3) (a) (with respect to the reference to  
16 section 108.05 (3) (b) of the statutes) and (b) of the statutes, the renumbering and  
17 amendment of section 108.05 (3) (c) of the statutes, and the creation of section 108.05  
18 (3) (c) 1. to 3. of the statutes first apply with respect to weeks of unemployment  
19 beginning on the first Sunday that follows the 180th day beginning after the effective  
20 date of this subsection.

21 (5) The treatment of section 108.05 (3) (a) (with respect to the reference to  
22 section 108.05 (3) (dm) of the statutes) and (dm) of the statutes first applies with  
23 respect to weeks of unemployment beginning on the first Sunday that follows the  
24 180th day beginning after the effective date of this subsection.

