



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2020/1
MED&AJM:all

2015 ASSEMBLY BILL 819

January 28, 2016 – Introduced by Representative KNODL, cosponsored by Senator NASS, by request of Unemployment Insurance Advisory Council. Referred to Committee on Jobs and the Economy.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to repeal** 102.07 (8) (d), 108.02 (24g), 108.04 (8) (e), 108.05 (1) (q), 108.05
2 (1) (r) (figure), 108.05 (2), 108.05 (2m), 108.09 (2) (cm), 108.14 (27) and 111.327;
3 **to renumber and amend** 108.04 (8) (d), 108.04 (11) (g), 108.04 (12) (f) 1.,
4 108.04 (12) (f) 2., 108.09 (7) (d), 108.151 (3) (b) and 108.19 (1s) (a); **to amend**
5 108.02 (13) (k), 108.02 (21) (b), 108.04 (1) (bm), 108.04 (2) (h), 108.04 (7) (c),
6 108.04 (7) (e), 108.04 (7) (h), 108.04 (8) (c), 108.04 (12) (e), 108.04 (13) (d) 3.
7 (intro.) and a., 108.04 (13) (d) 4. (intro.) and a., 108.04 (16) (b), 108.05 (1) (r),
8 108.09 (2) (a), 108.09 (2) (d), 108.09 (2r), 108.09 (4) (c), 108.09 (4) (d) 1. and 2.,
9 108.09 (4) (e), 108.09 (4) (f) 1., 108.09 (4) (f) 2. (intro.), 108.09 (4) (f) 3., 108.09
10 (4o), 108.09 (5) (b), 108.09 (5) (d), 108.09 (6) (a), 108.09 (6) (b), 108.09 (6) (c),
11 108.09 (6) (d), 108.09 (7) (a) and (b), 108.095 (2), 108.095 (3), 108.095 (7), 108.10
12 (1), 108.10 (2), 108.10 (4), 108.10 (6), 108.14 (8n) (e), 108.141 (3g) (a) 3. (intro.),
13 108.141 (4), 108.141 (7) (a), 108.151 (4) (b), 108.152 (6) (a) (intro.), 108.16 (6) (g),
14 108.16 (7m), 108.16 (10), 108.18 (7) (a) 1., 108.18 (7) (h), 108.18 (9c), 108.19

ASSEMBLY BILL 819

1 (1m), 108.22 (1) (b), 108.22 (1) (c), 108.22 (1m), 108.22 (9), 108.225 (1) (a) and
2 108.24 (2m); **to repeal and recreate** 108.04 (1) (b), 108.09 (4) (d) 3., 108.09 (5)
3 (c) and 108.19 (title); **to create** 108.04 (7) (cg), 108.04 (8) (d) 2., 108.04 (8) (dm),
4 108.04 (8) (em), 108.04 (11) (g) 2. and 3., 108.04 (12) (f) 1m., 108.04 (12) (f) 2m.,
5 108.04 (12) (f) 3. b. to d., 108.04 (13) (d) 4. c., 108.09 (7) (c) to (h), 108.151 (3) (b)
6 2., 108.155, 108.16 (6m) (i), 108.19 (1f), 108.19 (1s) (a) 2., 108.19 (1s) (a) 3.,
7 108.19 (1s) (a) 4. and 108.221 of the statutes; and **to affect** 2011 Wisconsin Act
8 198, section 4m, 2011 Wisconsin Act 198, section 6m, 2011 Wisconsin Act 198,
9 section 37m, 2011 Wisconsin Act 198, section 47m (1) and 2013 Wisconsin Act
10 36, section 236m; **relating to:** various changes to the unemployment insurance
11 law.

Analysis by the Legislative Reference Bureau

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

EMPLOYERS, CONTRIBUTIONS, AND FINANCE***Misclassification; assessments and penalties***

Under current law, an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who willfully provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law is subject to a criminal fine of \$25,000 for each violation. Similar penalties apply to such employers who so act with the intent to evade any requirement of the worker's compensation law or the fair employment law. DWD is required to promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of each of these provisions.

This bill does the following with respect to these provisions:

1. Repeals the prohibitions that apply with respect to the worker's compensation law and the fair employment law, as well as the requirement that DWD promulgate rules defining what constitutes a willful misclassification of an employee as a nonemployee for purposes of these provisions.

2. Requires DWD to assess an administrative penalty against such an employer who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an

ASSEMBLY BILL 819

employee of the employer as a nonemployee under the UI law. The bill provides for a penalty of \$500 for each employee who is misclassified, not to exceed \$7,500 per incident, and requires DWD to consider certain factors in determining whether an employer committed a violation.

3. Revises the current prohibition regarding such employers who provide false information to misclassify an individual under the UI law so that the bill 1) changes the standard from “willfully“ providing such false information to “knowingly and intentionally” doing so; 2) requires, as an element of the crime, that the employer was previously assessed a penalty by DWD for providing such false information; and 3) revises the penalty to be \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation.

In addition, the bill requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year.

Program integrity assessment

Currently, all employers that engage employees in work that is covered under UI, other than governmental, nonprofit, and Indian tribal employers that elect to pay directly for the cost of benefits, must pay taxes to finance UI benefits. An employer’s contributions are assessed based on the employer’s contribution rate and the employer’s solvency rate, each of which varies with the employment stability of the employer and the solvency of the state’s unemployment reserve fund. An employer’s contributions payable as a result of the employer’s contribution rate are credited to the employer’s account in the fund, while an employer’s contributions payable as a result of the employer’s solvency rate are credited to the fund’s balancing account, which is used to fund benefits not payable from any employer’s account.

In addition to these contributions, this bill levies an annual assessment on each employer that is currently subject to a contribution requirement in the amount of 0.01 percent (or a lower rate if prescribed by DWD) of an employer’s taxable payroll for each year, unless the employer is not required to pay a solvency contribution. An assessed employer’s solvency rate is then reduced by the amount of the assessment rate. The levy is not effective for any year unless DWD, no later than the November 30 preceding that year, publishes a class 1 notice giving notice that the levy is in effect for the ensuing year. DWD must consider the balance of the state’s unemployment reserve fund before prescribing the levy, and the secretary of workforce development must consult with the Council on Unemployment Insurance before DWD prescribes a levy. Under the bill, assessments are deposited in the unemployment program integrity fund and must therefore, as provided under current law, be used for payment of costs associated with program integrity activities.

Transfer of moneys from the unemployment interest payment fund

Under current law, an employer must pay an assessment to the state unemployment interest payment fund at a rate established by DWD that is sufficient to pay interest due on advances from the federal government from the federal unemployment account in the federal unemployment trust fund. Such advances are made when the state’s unemployment reserve fund is depleted. If the assessments

ASSEMBLY BILL 819

collected are in excess of the amounts needed to pay interest due, DWD must use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. However, if DWD determines that additional interest obligations are unlikely, DWD must transfer the excess to the unemployment reserve fund's balancing account.

This bill instead provides that DWD must transfer the excess in the state unemployment interest payment fund to the balancing account, the unemployment program integrity fund, or both in amounts determined by DWD.

Charging of benefits financed by reimbursable employers in cases of identity theft

Under current law, UI benefits are financed by employers in one of two ways:

1. Through contribution financing, under which an account in the state's unemployment reserve fund is maintained for an employer; the employer pays contributions, which are deposited into that account in the fund; and benefits for employees of the employer who file claims for UI benefits are generally financed by that employer's account in the fund. Such employers must additionally pay solvency contributions, which are credited to the fund's balancing account.

2. Through reimbursement financing, under which an employer reimburses the fund directly for benefits for employees of the employer who file claims for UI benefits. Reimbursable financing is available only to public employers, nonprofit organizations, and Indian tribes. In the case of reimbursement financing, DWD maintains a reimbursement "employer account" for each employer as a "subaccount" of the fund's balancing account.

Current law provides that if benefits charged to the account of an employer subject to contribution financing have been erroneously paid to an employee without fault by the employer, DWD must, to correct the payment if not otherwise adjusted, restore the proper amount to the employer's account in the fund and charge that amount to the fund's balancing account. With respect to employers subject to reimbursement financing, however, current law does provide for restoring the proper amount to the employer's account and charging that amount to the fund's balancing account. These provisions in current law do not distinguish between instances in which benefit payments are erroneously paid to an employee who received the payments and instances in which the erroneous payment resulted from a false statement or representation about an individual's identity (i.e., cases of identity theft in which a third party, and not the employee, receives the benefit payments).

This bill provides that, with respect to UI benefits financed by an employer subject to reimbursement financing, if an erroneous payment of UI benefits results from a false statement or representation about an individual's identity and the employer was not at fault for the erroneous payment, DWD must restore the proper amount to the employer's account in the balancing account.

In addition, the bill requires DWD to do all of the following:

1. Set aside \$2,000,000 in the fund's balancing account for accounting purposes and, on an ongoing basis, tally the amounts restored to reimbursable employers' accounts as provided under the bill and deduct those amounts from the amount set aside plus any interest calculated thereon.

ASSEMBLY BILL 819

2. Annually determine the amount remaining of the amount set aside plus interest and the amount restored to reimbursable employers' accounts as provided under the bill in the preceding calendar year.

3. Once there is less than \$100,000 remaining of the amount set aside plus interest, begin proportionally assessing reimbursable employers for the total amount restored to reimbursable employers' accounts as provided under the bill in the preceding calendar year, subject to certain exceptions as specified in the bill. DWD may pursue recovery of unpaid assessments as with other amounts.

The bill requires DWD to annually report to the Council on Unemployment Insurance the amount remaining of the amount set aside and the amount restored to reimbursable employers' accounts as provided under the bill in the preceding calendar year.

Personal liability of partners in LLCs and others for UI contributions

Current law allows DWD, in certain circumstances, to hold an individual who is an officer, employee, member, or manager holding at least 20 percent of the ownership interest of a corporation or of a limited liability company personally liable for UI contributions and certain other amounts. This bill adds partners and other responsible persons to the list of persons who may be held personally liable, and allows such a person to be held liable if the person has a 20 percent ownership interest in other forms of business associations, as well as corporations and LLCs.

Repeal of program integrity fund sunset

2013 Wisconsin Act 36 provided for the sunset (repeal) of the establishment of the program integrity fund and related provisions, effective January 1, 2034.

This bill repeals the sunset of the program integrity fund and related provisions so that the program integrity fund and related provisions will continue to exist beyond January 1, 2034.

Fiscal agent for child not an employer

Under current law, a person receiving certain long-term support services through a county department or aging unit may be provided the services of a fiscal agent, either from the county department or aging unit or through a fiscal intermediary with which the county department or aging unit contracts. The fiscal agent is responsible for complying with the person's duties as an employer under the UI law. However, current law specifies that, for the purposes of the UI law, a county department or aging unit that serves as a fiscal agent or contracts with a fiscal intermediary is not considered an employer as to an individual performing services for the person receiving those long-term support services. 2015 Wisconsin Act 55 also provides for such fiscal agent services for a child or a child's parent if the child receives community support services through a county department under the children's community options program. This bill also excludes from the definition of employer under the UI law such a county department that serves as a fiscal agent or that contracts with a fiscal intermediary under the children's community options program.

ASSEMBLY BILL 819**BENEFITS AND BENEFIT CLAIMS*****Failure to accept suitable work when offered; good cause for such failure***

Under current law, if a claimant for UI benefits fails, without good cause, to accept suitable work when offered, the claimant is ineligible to receive benefits until he or she earns wages after the week in which the failure occurs equal to at least six times the claimant's weekly UI benefit rate in covered employment. Current law specifies, for purposes of this provision, that a claimant has good cause for such a failure to accept suitable work if DWD determines that the failure involved work at a lower grade of skill or a significantly lower rate of pay than applied to the claimant on one or more recent jobs, and that the claimant had not yet had a reasonable opportunity, in view of labor market conditions and the claimant's degree of skill, to seek a new job substantially in line with the claimant's prior job skill and rate of pay. This provision specifying what constitutes good cause, however, applies only with respect to six weeks after the claimant became unemployed. In addition current law requires DWD to define by rule what constitutes suitable work for claimants, with the rule specifying different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year.

The bill deletes the language in current law specifying what constitutes good cause and the provision requiring DWD to define by rule what constitutes suitable work for claimants and instead provides all of the following with respect to failures to accept suitable work when offered:

1. That with respect to the first six weeks after the claimant became unemployed, "suitable work" means work that 1) is not at a lower grade of skill than that which applied to the claimant on one or more of his or her most recent jobs; and 2) would have had an hourly wage that was 75 percent or more of what the claimant earned on the highest paying of his or her most recent jobs.

2. That with respect to the seventh week after the claimant became unemployed and any week thereafter, "suitable work" means any work that the claimant is capable of performing, regardless of whether the claimant has any relevant experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by DWD.

3. That a claimant has good cause for failing to accept suitable work if DWD determines that the failure related to the claimant's personal safety, the claimant's sincerely held religious beliefs, or an unreasonable commuting distance, or if the claimant had another compelling reason that would have made accepting the offer unreasonable.

Concealment by claimants

Under current law, if a claimant for UI benefits conceals any material fact relating to his or her eligibility for UI benefits or conceals any of his or her wages or hours worked, the claimant is ineligible for benefits in an amount ranging from two to eight times the claimant's weekly benefit rate, depending on the number of acts of concealment committed, for each single act of concealment, and is also liable for an additional administrative penalty. For purposes of these provisions, current law defines "conceal" to mean intentionally misleading or defrauding DWD by

ASSEMBLY BILL 819

withholding or hiding information or making a false statement or misrepresentation. This bill does the following with respect to acts of concealment by claimants for UI benefits:

1. Deletes the reference to defrauding DWD from the definition of “conceal,” so that “conceal” is defined as intentionally misleading DWD by withholding or hiding information or making a false statement or misrepresentation.

2. Provides that a claimant has a duty of care to provide an accurate and complete response to each inquiry made by DWD in connection with his or her receipt of UI benefits. In addition, the bill requires DWD, in determining whether a claimant intended to mislead DWD, to consider various factors specified in the bill as well as any other factor that may provide evidence of the claimant’s intent.

3. Specifically provides that, when making a finding of concealment, DWD is not required to determine or prove that a claimant had an intent or design to receive UI benefits to which the claimant knows he or she was not entitled.

Concurrent receipt of UI and SSDI

Current law provides that any individual who actually receives social security disability insurance (SSDI) benefits in a given week is ineligible for UI benefits paid or payable in that same week.

This bill modifies current law with respect to the concurrent receipt of UI and SSDI benefits. Specifically, the bill provides that an individual is ineligible for UI benefits for each week in a month in which an SSDI payment is issued to the individual, but subject to the following: 1) in the first month an SSDI payment is first issued to an individual, the individual is ineligible for UI benefits for each week beginning with the week the SSDI payment is issued to the individual and for all subsequent weeks in that month; 2) following a cessation of SSDI payments to an individual and upon the individual again being issued an SSDI payment, the individual is ineligible for UI benefits for each week beginning with the week the SSDI payment is issued to the individual and all subsequent weeks in that month; and 3) following cessation of SSDI payments, the individual may be eligible for UI benefits, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final SSDI payment.

The bill provides that the modifications take effect retroactively to January 5, 2014.

Eligibility for UI when receiving worker’s compensation payments

Under current law, an individual who receives a temporary total disability worker’s compensation payment for a whole week is ineligible for UI benefits for that same week, unless otherwise provided by federal law. The bill similarly provides that an individual who receives a permanent total disability worker’s compensation payment for a whole week is ineligible for UI benefits for that same week, unless otherwise provided by federal law.

Also under current law, a temporary total disability or temporary partial disability worker’s compensation payment for part of a week is treated as wages for purposes of eligibility for partial UI benefits. The bill similarly provides that a permanent total disability worker’s compensation payment for part of a week is treated as wages for purposes of eligibility for partial UI benefits.

ASSEMBLY BILL 819**ADMINISTRATION, ADMINISTRATIVE REVIEW, AND OTHER CHANGES*****Administrative and judicial review of UI decisions***

Under current law, initial determinations regarding UI matters are made by DWD. Those determinations may be appealed to appeal tribunals (ALJs), and a tribunal's decision may be appealed to the Labor and Industry Review Commission. A decision of LIRC may then be appealed to circuit court. Under current law, judicial review of UI decisions is largely governed by the judicial review provisions in the worker's compensation law. This bill makes a number of changes to the processes under current law for issuing and appealing decisions, determinations, and orders under the UI law, including the following:

1. If a party fails to appear at a hearing on the merits of a UI determination, current law provides for a hearing on the issue of whether a party had good cause for failing to appear at the hearing. The bill allows an ALJ to issue, without a hearing, a decision on the issue of whether a party to a determination had good cause for failing to appear at such a hearing. The bill allows the ALJ to make the decision based upon the party's explanation for failing to appear, as well as any response submitted to that explanation by the opposing party. The bill allows the opposing party seven days to submit such a response to the party's explanation for failing to appear.

2. The bill allows for the electronic delivery of UI determinations and decisions, in addition to or instead of mailing.

3. Under current law, all testimony at UI hearings before ALJs must be taken down by a stenographer, or recorded by a recording machine. The bill instead provides that all such testimony must be recorded by electronic means and allows LIRC to use the electronic recording in a review of an ALJ's decision. As under current law, the bill allows a party, for a fee, to request a transcript of the hearing.

4. The bill establishes distinct provisions for the judicial review of UI decisions, which are similar to the provisions under the worker's compensation law that currently apply but also include 1) that DWD or any party may commence an action for the judicial review of a LIRC UI decision, but that DWD is not required to exhaust its available remedies in order to commence an action; 2) expressly providing that DWD must be a party in all actions for judicial review of UI decisions, including benefit cases; 3) that, unless the parties agree otherwise, proceedings for the judicial review of a LIRC UI decision must be brought in the circuit court for the county where the plaintiff resides, except that if the plaintiff is DWD, the proceedings must be brought in the circuit court for the county where a defendant that is not LIRC resides; and 4) requiring LIRC to transmit the record of proceedings to the circuit court within 60 days after making an appearance.

Revisions to provisions concerning ability to work and availability for work

As a general qualifying requirement to receive UI benefits, current law provides that, subject to certain exceptions, a claimant is eligible for UI benefits as to any given week only if the claimant is able to work and available for work during that week. The bill eliminates other, duplicative language in the UI law that similarly provides that a claimant is ineligible for UI benefits while unable to work or unavailable for work.

ASSEMBLY BILL 819

Also under current law, unless an exemption applies, if a claimant voluntarily terminates his or her work with an employer, the claimant is generally ineligible to receive benefits until certain requalification requirements are satisfied. One such exemption applies if the claimant terminated his or her work but had no reasonable alternative because he or she was unable to do his or her work, or if the claimant terminated his or her work because of the verified illness or disability of an immediate family member that reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave. The exemption further provides that if the claimant is unable to work or unavailable for work, he or she is ineligible to receive benefits while such inability or unavailability continues. The bill 1) eliminates the duplicative language providing that the claimant is ineligible for UI benefits while unable to work or unavailable for work; and 2) divides the exemption into two separate exemptions, one of which applies if the claimant terminated his or her work but had no reasonable alternative because of the verified illness or disability of the employee, and another which applies if the claimant terminated his or her work because of the verified illness or disability of an immediate family member and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

Elimination of statutory benefit rate tables and adjustment language

Under current law, UI weekly benefit rate schedules are published in the statutes. The schedules illustrate the results of the formula for calculating weekly benefit amounts and establish minimum and maximum weekly benefit rates. Current law requires DWD to adjust the minimum and maximum weekly benefit rates, but a separate provision indefinitely suspends this adjustment requirement.

This bill repeals the UI benefit rate schedules contained in the statutes showing the results of the formula for calculating weekly benefit amounts and instead requires DWD to publish and maintain such schedules on its Internet site. The bill maintains the minimum and maximum weekly benefit rate amounts as currently established in the schedules. The bill repeals the provisions requiring adjustment of benefit amounts and the provision suspending those provisions.

For further information see the *state* 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.** 102.07 (8) (d) of the statutes is repealed.
- 2 **SECTION 2.** 108.02 (13) (k) of the statutes is amended to read:
- 3 108.02 (13) (k) "Employer" does not include a county department, an aging
- 4 unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts

ASSEMBLY BILL 819**SECTION 2**

1 with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7)
2 (e), or 47.035 as to any individual performing services for a person receiving
3 long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277,
4 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services
5 under s. 47.02 (6) (c).

6 **SECTION 3.** 108.02 (21) (b) of the statutes is amended to read:

7 108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s.~~ ss. 108.151
8 (7) (a) and 108.155 (1) (a), an employer's payroll for calendar years prior to 2009
9 includes only the first \$10,500 of wages paid by an employer to an individual during
10 each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000
11 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of
12 such wages, and for calendar years after 2012 includes only the first \$14,000 of such
13 wages, including any wages paid for any work covered by the unemployment
14 insurance law of any other state, except as authorized in s. 108.17 (5).

15 **SECTION 4.** 108.02 (24g) of the statutes, as created by 2015 Wisconsin Act 55,
16 is repealed.

17 **SECTION 5.** 108.04 (1) (b) of the statutes is repealed and recreated to read:

18 108.04 (1) (b) Except as provided in s. 108.062 (10), if an employee is absent
19 from work for 16 hours or less in the first week of his or her leave of absence or in the
20 week in which his or her employment is suspended or terminated due to the
21 employee's unavailability for work with the employer or inability to perform suitable
22 work otherwise available with the employer, the employee's eligibility for benefits for
23 that week shall be determined under par. (bm).

24 **SECTION 6.** 108.04 (1) (bm) of the statutes is amended to read:

ASSEMBLY BILL 819

1 108.04 (1) (bm) For purposes of ~~par. pars.~~ (a) 1. and (b) 2., the department shall
2 treat the amount that the employee would have earned as wages for a given week in
3 available work as wages earned by the employee and shall apply the method
4 specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The
5 department shall estimate wages that an employee would have earned if it is not
6 possible to compute the exact amount of wages that would have been earned by the
7 employee.

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

9 108.04 (2) (h) A claimant shall, when the claimant first files a claim for benefits
10 under this chapter and during each subsequent week the claimant files for benefits
11 under this chapter, inform the department whether he or she is receiving social
12 security disability insurance ~~benefits under 42 USC ch. 7 subch. II~~ payments, as
13 defined in sub. (12) (f) 2m.

14 **SECTION 8.** 108.04 (7) (c) of the statutes is amended to read:

15 108.04 (7) (c) Paragraph (a) does not apply if the department determines that
16 the employee terminated his or her work but had no reasonable alternative ~~because~~
17 ~~the employee was unable to do his or her work, or that the employee terminated his~~
18 ~~or her work~~ because of the verified illness or disability of a member of his or her
19 immediate family and the verified illness or disability reasonably necessitates the
20 care of the family member for a period of time that is longer than the employer is
21 willing to grant leave; but if the department determines that the employee is unable
22 to work or unavailable for work, the employee is ineligible to receive benefits while
23 such inability or unavailability continues the employee.

24 **SECTION 9.** 108.04 (7) (cg) of the statutes is created to read:

ASSEMBLY BILL 819**SECTION 9**

1 108.04 (7) (cg) Paragraph (a) does not apply if the department determines that
2 the employee terminated his or her work because of the verified illness or disability
3 of a member of his or her immediate family and the verified illness or disability
4 reasonably necessitates the care of the family member for a period of time that is
5 longer than the employer is willing to grant leave.

6 **SECTION 10.** 108.04 (7) (e) of the statutes is amended to read:

7 108.04 (7) (e) Paragraph (a) does not apply if the department determines that
8 the employee accepted work which the employee could have failed to accept with good
9 cause under sub. (8) and terminated such work with the same good cause on the same
10 grounds and within the first 30 calendar days after starting the work, or that the
11 employee accepted work which the employee could have refused under sub. (9) and
12 terminated such work within the first 30 calendar days after starting the work. For
13 purposes of this paragraph, an employee has the same good cause grounds for
14 voluntarily terminating work if the employee could have failed to accept the work
15 under sub. (8) (d) when it was offered, regardless of the reason articulated by the
16 employee for the termination.

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

18 108.04 (7) (h) The department shall charge to the fund's balancing account
19 benefits paid to an employee that are otherwise chargeable to the account of an
20 employer that is subject to the contribution requirements of ss. 108.17 and 108.18
21 if the employee voluntarily terminates employment with that employer and par. (a),
22 (c), ~~(cg)~~, (e), (L), (q), (s), or (t) applies.

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

24 108.04 (8) (c) If an employee fails, without good cause, to return to work with
25 a former employer that recalls the employee within 52 weeks after the employee last

ASSEMBLY BILL 819

1 worked for that employer, the employee is ineligible to receive benefits until the
2 employee earns wages after the week in which the failure occurs equal to at least 6
3 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other
4 work covered by the unemployment insurance law of any state or the federal
5 government. For purposes of requalification, the employee's weekly benefit rate
6 shall be that rate which would have been paid had the failure not occurred. This
7 paragraph does not preclude an employee from establishing a benefit year during a
8 period in which the employee is ineligible to receive benefits under this paragraph
9 if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). The
10 department shall charge to the fund's balancing account any benefits otherwise
11 chargeable to the account of any employer that is subject to the contribution
12 requirements under ss. 108.17 and 108.18 whenever an employee of that employer
13 fails, without good cause, to return to work with that employer. This paragraph does
14 not apply to an employee who fails to return to work with a former employer if the
15 work offered would not be considered suitable work under par. (d) or (dm), whichever
16 is applicable. If an employee receives actual notice of a recall to work, par. (a) applies
17 in lieu of this paragraph.

18 **SECTION 13.** 108.04 (8) (d) of the statutes is renumbered 108.04 (8) (d) (intro.)
19 and amended to read:

20 108.04 (8) (d) (intro.) ~~An employee shall have good cause under par. (a) or (c),~~
21 ~~regardless of the reason articulated by the employee for the failure, if the department~~
22 ~~determines that the failure involved work at~~ With respect to the first 6 weeks after
23 the employee became unemployed, "suitable work," for purposes of par. (a), means
24 work to which all of the following apply:

ASSEMBLY BILL 819**SECTION 13**

1 1. The work does not involve a lower grade of skill ~~or significantly lower rate~~
2 of pay than that which applied to the employee on one or more of his or her most
3 recent jobs, ~~and that the employee had not yet had a reasonable opportunity, in view~~
4 of labor market conditions and the employee's degree of skill, ~~but not to exceed 6~~
5 weeks after the employee became unemployed, to seek a new job substantially in line
6 with the employee's prior job skill and rate of pay.

7 **SECTION 14.** 108.04 (8) (d) 2. of the statutes is created to read:

8 108.04 (8) (d) 2. The hourly wage for the work is 75 percent or more of what the
9 employee earned on the highest paying of his or her most recent jobs.

10 **SECTION 15.** 108.04 (8) (dm) of the statutes is created to read:

11 108.04 (8) (dm) With respect to the 7th week after the employee became
12 unemployed and any week thereafter, "suitable work," for purposes of par. (a), means
13 any work that the employee is capable of performing, regardless of whether the
14 employee has any relevant experience or training, that pays wages that are above
15 the lowest quartile of wages for similar work in the labor market area in which the
16 work is located, as determined by the department.

17 **SECTION 16.** 108.04 (8) (e) of the statutes is repealed.

18 **SECTION 17.** 108.04 (8) (em) of the statutes is created to read:

19 108.04 (8) (em) An employee shall have good cause under this subsection only
20 if the department determines that the failure related to the employee's personal
21 safety, the employee's sincerely held religious beliefs, or an unreasonable commuting
22 distance, or if the employee had another compelling reason that would have made
23 accepting the offer unreasonable.

24 **SECTION 18.** 108.04 (11) (g) of the statutes is renumbered 108.04 (11) (g) 1. and
25 amended to read:

ASSEMBLY BILL 819

1 108.04 (11) (g) 1. ~~For purposes of~~ In this subsection, “conceal” means to
2 intentionally mislead ~~or defraud~~ the department by withholding or hiding
3 information or making a false statement or misrepresentation.

4 **SECTION 19.** 108.04 (11) (g) 2. and 3. of the statutes are created to read:

5 108.04 (11) (g) 2. A claimant has a duty of care to provide an accurate and
6 complete response to each inquiry made by the department in connection with his
7 or her receipt of benefits. The department shall consider the following factors in
8 determining whether a claimant intended to mislead the department as described
9 in subd. 1.:

10 a. Whether the claimant failed to read or follow instructions or other
11 communications of the department related to a claim for benefits.

12 b. Whether the claimant relied on the statements or representations of persons
13 other than an employee of the department who is authorized to provide advice
14 regarding the claimant’s claim for benefits.

15 c. Whether the claimant has a limitation or disability and, if so, whether the
16 claimant provided evidence to the department of that limitation or disability.

17 d. The claimant’s unemployment insurance claims filing experience.

18 e. Any instructions or previous determinations of concealment issued or
19 provided to the claimant.

20 f. Any other factor that may provide evidence of the claimant’s intent.

21 3. Nothing in this subsection requires the department, when making a finding
22 of concealment, to determine or prove that a claimant had an intent or design to
23 receive benefits to which the claimant knows he or she was not entitled.

24 **SECTION 20.** 108.04 (12) (e) of the statutes is amended to read:

ASSEMBLY BILL 819

1 108.04 (12) (e) Any individual who receives a temporary total disability
2 payment or a permanent total disability payment for a whole week under ch. 102 or
3 under any federal law which provides for payments on account of a work-related
4 injury or illness analogous to those provided under ch. 102 shall be ineligible for
5 benefits paid or payable for that same week under this chapter unless otherwise
6 provided by federal law. A temporary total disability payment ~~or~~, a temporary partial
7 disability payment, or a permanent total disability payment under those provisions
8 received by an individual for part of a week shall be treated as wages for purposes
9 of eligibility for benefits for partial unemployment under s. 108.05 (3).

10 **SECTION 21.** 108.04 (12) (f) 1. of the statutes is renumbered 108.04 (12) (f) 3.

11 a. and amended to read:

12 108.04 (12) (f) 3. a. Any Except as provided in subd. 3. b. to d., an individual
13 ~~who actually receives social security disability insurance benefits under 42 USC ch.~~
14 ~~7 subch. II in a given week is ineligible for benefits paid or payable in that same week~~
15 under this chapter for each week in the entire month in which a social security
16 disability insurance payment is issued to the individual.

17 **SECTION 22.** 108.04 (12) (f) 1m. of the statutes is created to read:

18 108.04 (12) (f) 1m. The intent of the legislature in enacting this paragraph is
19 to prevent the payment of duplicative government benefits for the replacement of lost
20 earnings or income, regardless of an individual's ability to work.

21 **SECTION 23.** 108.04 (12) (f) 2. of the statutes is renumbered 108.04 (12) (f) 4.

22 and amended to read:

23 108.04 (12) (f) 4. Information that the department receives or acquires from the
24 federal social security administration ~~that an individual is receiving regarding the~~
25 issuance of social security disability insurance benefits under 42 USC ch. 7 subch.

ASSEMBLY BILL 819

1 ~~II in a given week~~ payments is considered conclusive, absent clear and convincing
2 evidence that the information was erroneous.

3 **SECTION 24.** 108.04 (12) (f) 2m. of the statutes is created to read:

4 108.04 **(12)** (f) 2m. In this paragraph, “social security disability insurance
5 payment” means a payment of social security disability insurance benefits under 42
6 USC ch. 7 subch. II.

7 **SECTION 25.** 108.04 (12) (f) 3. b. to d. of the statutes are created to read:

8 108.04 **(12)** (f) 3. b. In the first month a social security disability insurance
9 payment is first issued to an individual, the individual is ineligible for benefits under
10 this chapter for each week beginning with the week the social security disability
11 insurance payment is issued to the individual and all subsequent weeks in that
12 month.

13 c. Following a cessation of social security disability insurance payments to an
14 individual and upon the individual again being issued a social security disability
15 insurance payment, the individual is ineligible for benefits under this chapter for
16 each week beginning with the week the social security disability insurance payment
17 is issued to the individual and all subsequent weeks in that month.

18 d. Following cessation of social security disability insurance payments, an
19 individual may be eligible for benefits under this chapter, if otherwise qualified,
20 beginning with the week following the last Saturday of the month in which the
21 individual is issued his or her final social security disability insurance payment.

22 **SECTION 26.** 108.04 (13) (d) 3. (intro.) and a. of the statutes are amended to read:

23 108.04 **(13)** (d) 3. (intro.) To correct any erroneous payment not so adjusted that
24 was charged to the account of an employer that is subject to the contribution
25 requirements of ss. 108.17 and 108.18, the department shall do one of the following:

ASSEMBLY BILL 819

1 a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), restore the
2 proper amount to the employer's account and charge that amount to the fund's
3 balancing account, and shall thereafter reimburse the balancing account by
4 crediting to it benefits which would otherwise be payable to, or cash recovered from,
5 the employee; ~~or,~~

6 **SECTION 27.** 108.04 (13) (d) 4. (intro.) and a. of the statutes are amended to read:

7 108.04 (13) (d) 4. (intro.) To correct any erroneous payment not so adjusted from
8 the account of an employer which is a government unit, an Indian tribe, or a nonprofit
9 organization and which has elected that is subject to reimbursement financing, the
10 department shall do one of the following:

11 a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit to
12 the account benefits which would otherwise be payable to, or cash received from, the
13 employee; ~~or,~~ unless subd. 4. c. applies.

14 **SECTION 28.** 108.04 (13) (d) 4. c. of the statutes is created to read:

15 108.04 (13) (d) 4. c. If the erroneous payment resulted from a false statement
16 or representation about an individual's identity and the employer was not at fault
17 for the erroneous payment, restore the proper amount to the employer's account and
18 reimburse the balancing account by crediting to it benefits that would otherwise be
19 payable to, or cash recovered from, the individual who caused the erroneous
20 payment.

21 **SECTION 29.** 108.04 (16) (b) of the statutes is amended to read:

22 108.04 (16) (b) The department shall not apply any benefit reduction or
23 disqualification under sub. (1) (b), (2) (a), or (7) (c), ~~or (8) (e) (cg)~~ or s. 108.141 (3g) (d)
24 that is not the result of approved training while an individual is enrolled in approved
25 training.

ASSEMBLY BILL 819

1 **SECTION 30.** 108.05 (1) (q) of the statutes is repealed.

2 **SECTION 31.** 108.05 (1) (r) of the statutes is amended to read:

3 108.05 (1) (r) Except as provided in s. 108.062 (6) (a), each eligible employee
4 shall be paid benefits for each week of total unemployment that commences on or
5 after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless
6 sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base
7 period wages that were paid during that quarter of the employee's base period in
8 which the employee was paid the highest total wages, rounded down to the nearest
9 whole dollar, except that, if that amount is less than ~~the minimum amount shown~~
10 ~~in the following schedule \$54~~, no benefits are payable to the employee and, if that
11 amount is more than ~~the maximum amount shown in the following schedule \$370~~,
12 the employee's weekly benefit rate shall be ~~the maximum amount shown in the~~
13 ~~following schedule \$370~~ and except that, if the employee's benefits are exhausted
14 during any week under s. 108.06 (1), the employee shall be paid the remaining
15 amount of benefits payable to the employee ~~in lieu of the amount shown in the~~
16 ~~following schedule: [See Figure 108.05 (1) (r) following]~~ under s. 108.06 (1). The
17 department shall publish on its Internet site a weekly benefit rate schedule of
18 quarterly wages and the corresponding weekly benefit rates as calculated in
19 accordance with this paragraph.

20 **SECTION 32.** 108.05 (1) (r) (figure) of the statutes is repealed.

21 **SECTION 33.** 108.05 (2) of the statutes is repealed.

22 **SECTION 34.** 108.05 (2m) of the statutes is repealed.

23 **SECTION 35.** 108.09 (2) (a) of the statutes is amended to read:

24 108.09 (2) (a) The department shall promptly issue a computation setting forth
25 the employee's potential benefit rights based on reports filed by an employer or

ASSEMBLY BILL 819

1 employers under s. 108.205, or on the employee's statement and any other
2 information then available. The results of the computation, a recomputation, or
3 pertinent portion of either, shall be delivered electronically to, or mailed to the
4 last-known address of, each party. The department may recompute an employee's
5 potential benefit rights at any time on the basis of subsequent information or to
6 correct a mistake, including an error of law, except that a party's failure to make
7 specific written objection, received by the department within 14 days after the ~~above~~
8 electronic delivery or mailing, as to a computation or recomputation is a waiver by
9 such party of any objection thereto. Any objections to a computation ~~which~~ that are
10 not satisfactorily resolved by recomputation shall be resolved by a determination
11 under par. (b).

12 **SECTION 36.** 108.09 (2) (cm) of the statutes is repealed.

13 **SECTION 37.** 108.09 (2) (d) of the statutes is amended to read:

14 108.09 (2) (d) A copy of each determination shall be delivered electronically to,
15 or mailed to the last-known address of, ~~each of the parties~~ party, except that a party's
16 copy of any determination may be given to such party instead of being electronically
17 delivered or mailed.

18 **SECTION 38.** 108.09 (2r) of the statutes is amended to read:

19 108.09 (2r) HEARING REQUEST. Any party to a determination may request a
20 hearing as to any matter in that determination if ~~such~~ the request is made in
21 accordance with the procedure prescribed by the department and is received by the
22 ~~department~~ an appeal tribunal or postmarked within 14 days after a copy of the
23 determination was delivered electronically, mailed, or given to ~~such~~ the party,
24 whichever first occurs.

25 **SECTION 39.** 108.09 (4) (c) of the statutes is amended to read:

ASSEMBLY BILL 819

1 108.09 (4) (c) *Late appeal.* If a party files an appeal ~~which~~ that is not timely,
2 an appeal tribunal shall review the appellant's written reasons for filing the late
3 appeal. If those reasons, when taken as true and construed most favorably to the
4 appellant, do not constitute a reason beyond the appellant's control, the appeal
5 tribunal may dismiss the appeal without a hearing and issue a decision accordingly.
6 Otherwise, the department may schedule a hearing concerning the question of
7 whether the appeal was filed late for a reason that was beyond the appellant's
8 control. The department may also provisionally schedule a hearing concerning any
9 matter in the determination being appealed. After hearing testimony on the late
10 appeal question, the appeal tribunal shall issue a decision ~~which~~ that makes
11 ultimate findings of fact and conclusions of law concerning whether the appellant's
12 appeal was filed late for a reason that was beyond the appellant's control and ~~which~~
13 that, in accordance with those findings and conclusions, either dismisses the appeal
14 or determines that the appeal was filed late for a reason that was beyond the
15 appellant's control. If the appeal is not dismissed, the same or another appeal
16 tribunal established by the department for this purpose, after conducting a hearing,
17 shall then issue a decision under sub. (3) (b) concerning any matter in the
18 determination.

19 **SECTION 40.** 108.09 (4) (d) 1. and 2. of the statutes are amended to read:

20 108.09 (4) (d) 1. If the appellant fails to appear at a hearing held under this
21 section and due notice of the hearing was electronically delivered to the appellant or
22 mailed to the appellant's last-known address, the appeal tribunal shall issue a
23 decision dismissing the request for hearing unless subd. 2. applies.

24 2. If the appellant ~~delivers or transmits~~ submits to the appeal tribunal a
25 written explanation for ~~nonappearance to the department which~~ failing to appear at

ASSEMBLY BILL 819**SECTION 40**

1 the hearing that is received before a decision under subd. 1. is electronically
2 delivered or mailed, the department may so notify each party and schedule a hearing
3 concerning whether there was good cause for under subd. 1., an appeal tribunal shall
4 review the appellant's nonappearance. The department may also provisionally
5 schedule a hearing concerning any matter in the determination. If, after hearing
6 testimony, explanation. The appeal tribunal shall electronically deliver or mail to
7 the respondent a copy of the appellant's explanation. The respondent may, within
8 7 days after the appeal tribunal electronically delivers or mails the appellant's
9 explanation to the respondent, submit to the appeal tribunal a written response to
10 the appellant's explanation. If the appeal tribunal finds that the appellant's
11 explanation does not establish good cause for nonappearance failing to appear, the
12 appeal tribunal shall issue a decision containing this finding and dismissing the
13 appeal such a decision may be issued without a hearing. If, after hearing testimony,
14 the appeal tribunal finds that the appellant's explanation establishes good cause for
15 nonappearance failing to appear, the appeal tribunal shall issue a decision
16 containing this finding, and such a decision may be issued without a hearing. The
17 same or another appeal tribunal established by the department for this purpose shall
18 then issue a decision under sub. (3) (b) after conducting a hearing concerning any
19 matter in the determination. If such a hearing is held concerning any matter in the
20 determination, the appeal tribunal shall only consider testimony and other evidence
21 admitted at that hearing in making a decision.

22 **SECTION 41.** 108.09 (4) (d) 3. of the statutes is repealed and recreated to read:

23 108.09 (4) (d) 3. If the appellant submits to the appeal tribunal a written
24 explanation for failing to appear at the hearing that is received within 21 days after
25 a decision is electronically delivered or mailed under subd. 1., an appeal tribunal

ASSEMBLY BILL 819

1 shall review the appellant's explanation. The appeal tribunal shall electronically
2 deliver or mail to the respondent a copy of the appellant's explanation. The
3 respondent may, within 7 days after the appeal tribunal electronically delivers or
4 mails the appellant's explanation to the respondent, submit to the appeal tribunal
5 a written response to the appellant's explanation. If the appeal tribunal finds that
6 the appellant's explanation does not establish good cause for failing to appear, the
7 appeal tribunal shall issue a decision containing this finding, and such a decision
8 may be issued without a hearing. If the appeal tribunal finds that the appellant's
9 explanation establishes good cause for failing to appear, the appeal tribunal shall
10 issue a decision containing this finding, and the decision may be issued without a
11 hearing. The appeal tribunal shall then set aside the original decision and schedule
12 a hearing concerning any matter in the determination. The same or another appeal
13 tribunal established by the department for this purpose shall then issue a decision
14 under sub. (3) (b) after conducting a hearing concerning any matter in the
15 determination. If such a hearing is held concerning any matter in the determination,
16 the appeal tribunal shall only consider the testimony and other evidence admitted
17 at that hearing in making a decision.

18 **SECTION 42.** 108.09 (4) (e) of the statutes is amended to read:

19 108.09 (4) (e) *Respondent's failure to appear.* 1. If the respondent fails to appear
20 at a hearing held under this section but the appellant is present, and due notice of
21 the hearing was electronically delivered to the respondent or mailed to the
22 respondent's last-known address, the appeal tribunal shall hold the hearing. The
23 appeal tribunal shall consider records and information already submitted to the
24 department by the appellant and the respondent regarding the determination or the

ASSEMBLY BILL 819

1 appeal, take the testimony of the appellant and any witnesses, and shall issue a
2 decision under sub. (3) (b) unless subd. 2. applies.

3 2. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
4 written explanation for nonappearance to the department which failing to appear at
5 the hearing that is received before a decision favorable to the respondent is
6 electronically delivered or mailed under subd. 1., the appeal tribunal shall
7 acknowledge receipt of the explanation in its decision but shall take no further action
8 concerning the explanation at that time. If the respondent ~~delivers or transmits~~
9 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~
10 ~~department which failing to appear that~~ is received before a decision unfavorable to
11 the respondent is electronically delivered or mailed under subd. 1., ~~the department~~
12 ~~may so notify each party and may schedule a hearing concerning whether there was~~
13 ~~good cause for the respondent's nonappearance. The department may also~~
14 ~~provisionally schedule a hearing for further testimony concerning any matter in the~~
15 ~~determination. If, after hearing testimony, the appeal tribunal finds that the~~
16 ~~respondent's explanation does not establish good cause for nonappearance, the~~
17 ~~appeal tribunal shall issue a decision containing this finding. The same or another~~
18 ~~appeal tribunal established by the department for this purpose shall also issue a~~
19 ~~decision based on the testimony and other evidence presented at the hearing at~~
20 ~~which the respondent failed to appear. If, after hearing testimony, the appeal~~
21 ~~tribunal finds that the respondent's explanation~~ an appeal tribunal shall review the
22 respondent's explanation. The appeal tribunal shall electronically deliver or mail to
23 the appellant a copy of the respondent's explanation. The appellant may, within 7
24 days after the appeal tribunal electronically delivers or mails the respondent's
25 explanation to the appellant, submit to the appeal tribunal a written response to the

ASSEMBLY BILL 819

1 respondent's explanation. If the appeal tribunal finds that the respondent's
2 explanation does not establish good cause for failing to appear, the appeal tribunal
3 shall issue a decision containing this finding, and such a decision may be issued
4 without a hearing. If the appeal tribunal finds that the respondent's explanation
5 establishes good cause for ~~nonappearance~~ failing to appear, the appeal tribunal shall
6 issue a decision containing this finding, and such a decision may be issued without
7 a hearing. The same or another appeal tribunal established by the department for
8 this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing
9 concerning any matter in the determination. If such a 2nd hearing is held concerning
10 any matter in the determination, the appeal tribunal shall only consider testimony
11 and other evidence admitted at that hearing in making a decision.

12 3. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
13 written explanation for ~~nonappearance to the department which failing to appear at~~
14 the hearing that is received within 21 days after a decision favorable to the
15 respondent is electronically delivered or mailed under subd. 1., the department
16 appeal tribunal shall notify the respondent of receipt of the explanation and that
17 since the decision was favorable to the respondent no further action concerning the
18 explanation will be taken at that time. If the respondent ~~delivers or transmits~~
19 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~
20 department which failing to appear that is received within 21 days after a decision
21 unfavorable to the respondent is electronically delivered or mailed under subd. 1.,
22 the an appeal tribunal shall review the respondent's explanation. The appeal
23 tribunal shall electronically deliver or mail to the appellant a copy of the respondent's
24 explanation. The appellant may, within 7 days after the appeal tribunal
25 electronically delivers or mails the respondent's explanation to the appellant, submit

ASSEMBLY BILL 819**SECTION 42**

1 to the appeal tribunal a written response to the respondent's explanation. If the
2 appeal tribunal finds that the respondent's explanation does not establish good cause
3 for failing to appear, the appeal tribunal shall issue a decision containing this
4 finding, and such a decision may be issued without a hearing. If the appeal tribunal
5 finds that the respondent's explanation establishes good cause for failing to appear,
6 the appeal tribunal shall issue a decision containing this finding, and such a decision
7 may be issued without a hearing. The appeal tribunal may shall then set aside the
8 original decision and the department may schedule a hearing concerning whether
9 there was good cause for the respondent's nonappearance. The department may also
10 provisionally schedule a hearing concerning any matter in the determination. If the
11 original decision is not set aside, the appeal tribunal may, on its own motion amend
12 or set aside that decision within 21 days after the decision concerning whether there
13 was good cause for the respondent's nonappearance is mailed under subd. 1. If, after
14 hearing testimony, the appeal tribunal finds that the respondent's explanation does
15 not establish good cause for nonappearance, the appeal tribunal shall issue a
16 decision containing this finding and, if necessary, reinstating the decision which was
17 set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's
18 explanation establishes good cause for nonappearance, the same or another appeal
19 tribunal established by the department for this purpose shall issue a decision
20 containing this finding. The same or another appeal tribunal established by the
21 department for this purpose shall then issue a decision under sub. (3) (b) after
22 conducting a hearing concerning any matter in the determination. If such a 2nd
23 hearing is held concerning any matter in the determination, the appeal tribunal
24 shall only consider the testimony and other evidence admitted at that hearing in
25 making a decision.

ASSEMBLY BILL 819

1 **SECTION 43.** 108.09 (4) (f) 1. of the statutes is amended to read:

2 108.09 (4) (f) 1. ~~Except as provided in par. (e) 3., within~~ Within 21 days after
3 its decision was electronically delivered or mailed to the parties, the appeal tribunal
4 may, on its own motion, amend or set aside its decision and may thereafter make new
5 findings and issue a decision on the basis of evidence previously submitted in such
6 case, or the same or another appeal tribunal may make new findings and issue a
7 decision after taking additional testimony.

8 **SECTION 44.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

9 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely
10 petition for review of the appeal tribunal decision by the commission, the appeal
11 tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at
12 any time if the appeal tribunal finds that:

13 **SECTION 45.** 108.09 (4) (f) 3. of the statutes is amended to read:

14 108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for
15 review of the appeal tribunal decision by the commission, the appeal tribunal may,
16 within 2 years after the date of the decision, reopen its decision if it has reason to
17 believe that a party offered false evidence or a witness gave false testimony on an
18 issue material to its decision. Thereafter, and after receiving additional evidence or
19 taking additional testimony, the same or another appeal tribunal may set aside its
20 original decision, make new findings, and issue a decision.

21 **SECTION 46.** 108.09 (4o) of the statutes is amended to read:

22 108.09 (4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing
23 before an appeal tribunal under this section, a departmental record relating to a
24 claim for benefits, other than a report specified in sub. (4m), constitutes prima facie
25 evidence, and shall be admissible to prove, that an employer provided or failed to

ASSEMBLY BILL 819

1 provide to the department complete and correct information in a fact-finding
2 investigation of the claim, notwithstanding that the record or a statement contained
3 in the record may be uncorroborated hearsay and may constitute the sole basis upon
4 which issue of the employer's failure is decided, if the parties appearing at the
5 hearing have been given an opportunity to review the record at or before the hearing
6 and to rebut the information contained in the record. A record of the department that
7 is admissible under this subsection shall be regarded as self authenticating and shall
8 require no foundational or other testimony for its admissibility, unless the
9 circumstances affirmatively indicate a lack of trustworthiness in the record. If such
10 a record is admitted and made the basis of a decision, the record may constitute
11 substantial evidence under s. ~~102.23 (6)~~ sub. (7) (f). For purposes of this subsection,
12 "departmental record" means a memorandum, report, record, document, or data
13 compilation that has been made or maintained by employees of the department in
14 the regular course of the department's fact-finding investigation of a benefit claim,
15 is contained in the department's paper or electronic files of the benefit claim, and
16 relates to the department's investigative inquiries to an employer or statements or
17 other matters submitted by the employer or its agent in connection with the
18 fact-finding investigation of a benefit claim. A departmental record may not be
19 admitted into evidence under this subsection or otherwise used under this
20 subsection for any purpose other than to prove whether an employer provided or
21 failed to provide to the department complete and correct information in a
22 fact-finding investigation of a claim.

23 **SECTION 47.** 108.09 (5) (b) of the statutes is amended to read:

24 108.09 (5) (b) All testimony at any hearing under this section shall be taken
25 ~~down by a stenographer, or recorded by a recording machine~~ electronic means, but

ASSEMBLY BILL 819

1 need not be transcribed unless either of the parties requests a transcript ~~prior to~~
2 before expiration of that party's right to further appeal under this section and pays
3 a fee to the commission in advance, the amount of which shall be established by rule
4 of the commission. When the commission provides a transcript is thus furnished to
5 one of the parties upon request, the commission shall also provide a copy of the
6 transcript ~~shall be furnished the~~ to all other party parties free of charge. The
7 transcript fee ~~thus~~ collected shall be paid to the administrative account.

8 **SECTION 48.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

9 108.09 (5) (c) The department shall furnish a copy of the electronic recording
10 to the parties upon payment of any fee required by the department by rule.

11 **SECTION 49.** 108.09 (5) (d) of the statutes is amended to read:

12 108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission
13 shall use the electronic recording of the hearing or a written synopsis of the
14 testimony ~~and other evidence taken at a hearing or~~ shall use a transcript of the
15 hearing prepared, under the direction of the department or commission, ~~by an~~
16 ~~employee of the department, an employee of the commission or a contractor. If a~~
17 ~~party shows to the commission that a synopsis is not sufficiently complete and~~
18 ~~accurate to fairly reflect the relevant and material testimony and other evidence~~
19 ~~taken, the commission shall direct the preparation of a transcript. If a transcript is~~
20 ~~prepared, the transcript shall indicate the transcriber's name and whether the~~
21 ~~transcriber is an employee of the department, an employee of the commission, or a~~
22 ~~contractor~~ and shall also use any other evidence taken at the hearing.

23 **SECTION 50.** 108.09 (6) (a) of the statutes is amended to read:

24 108.09 (6) (a) The department or any party may petition the commission for
25 review of an appeal tribunal decision, pursuant to ~~commission~~ rules promulgated by

ASSEMBLY BILL 819

1 ~~the commission~~, if such ~~the~~ petition is received by the ~~department or~~ commission or
2 postmarked within 21 days after the appeal tribunal decision was electronically
3 delivered to the party or mailed to the party's last-known address. The commission
4 shall dismiss any petition if not timely filed unless the petitioner shows ~~probable~~
5 good cause that the reason for having failed to file the petition timely was beyond the
6 control of the petitioner. If the petition is not dismissed, the commission may take
7 action under par. (d).

8 **SECTION 51.** 108.09 (6) (b) of the statutes is amended to read:

9 108.09 (6) (b) Within 28 days after a decision of the commission is electronically
10 delivered or mailed to the parties, the commission may, on its own motion, set aside
11 the decision for further consideration and take action under par. (d).

12 **SECTION 52.** 108.09 (6) (c) of the statutes is amended to read:

13 108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission
14 may set aside any final determination of the department or appeal tribunal or
15 commission decision within 2 years ~~from~~ after the date thereof upon grounds of
16 mistake or newly discovered evidence, and take action under par. (d). The
17 commission may set aside any final determination of the department or any decision
18 of an appeal tribunal or of the commission at any time, and take action under par.
19 (d), if the benefits paid or payable to a claimant have been affected by wages earned
20 by the claimant ~~which~~ that have not been paid, and the commission is provided with
21 notice from the appropriate state or federal court or agency that a wage claim for
22 those wages will not be paid in whole or in part.

23 **SECTION 53.** 108.09 (6) (d) of the statutes is amended to read:

24 108.09 (6) (d) In any case before the commission for action under this
25 subsection, the commission may affirm, reverse, modify, or set aside the decision on

ASSEMBLY BILL 819

1 the basis of the evidence previously submitted, ~~may;~~ order the taking of additional
2 evidence as to such matters as it may direct, ~~or it may;~~ or remand the matter to the
3 department for further proceedings.

4 **SECTION 54.** 108.09 (7) (a) and (b) of the statutes are amended to read:

5 108.09 (7) (a) ~~The department or either~~ Any party that is not the department
6 may commence an action for the judicial review of a decision of the commission under
7 this chapter after exhausting the remedies provided under this section if ~~the party~~
8 ~~or the department has commenced such action in accordance with s. 102.23 within~~
9 ~~30 days after a decision of the commission is mailed to a party's last-known address.~~
10 The department may commence an action for the judicial review of a commission
11 decision under this section, but the department is not required to have been a party
12 to the proceedings before the commission or to have exhausted the remedies provided
13 under this section. In an action commenced under this section by a party that is not
14 the department, the department shall be a defendant and shall be named as a party
15 in the complaint commencing the action. If a plaintiff fails to name either the
16 department or the commission as defendants and serve the commission as required
17 by this subsection, the court shall dismiss the action.

18 (b) Any judicial review under this chapter shall be confined to questions of law,
19 ~~and the provisions of ch. 102 with respect to judicial review of orders and awards~~
20 ~~shall likewise apply to any decision of the commission reviewed under this section~~
21 and shall be in accordance with this subsection. In any such judicial action, the
22 commission may appear by any licensed attorney who is a salaried employee of the
23 commission and has been designated by it for ~~this~~ that purpose, or, at the
24 commission's request, by the department of justice. In any such judicial action, the

ASSEMBLY BILL 819**SECTION 54**

1 department may appear by any licensed attorney who is a salaried employee of the
2 department and has been designated by it for that purpose.

3 **SECTION 55.** 108.09 (7) (c) to (h) of the statutes are created to read:

4 108.09 (7) (c) 1. The findings of fact made by the commission acting within its
5 powers shall, in the absence of fraud, be conclusive. The order of the commission is
6 subject to review only as provided in this subsection and not under ch. 227 or s.
7 801.02. Within 30 days after the date of an order made by the commission, any party
8 or the department may, by serving a complaint as provided in subd. 3. and filing the
9 summons and complaint with the clerk of the circuit court, commence an action
10 against the commission for judicial review of the order. In an action for judicial
11 review of a commission order, every other party to the proceedings before the
12 commission shall be made a defendant. The department shall also be made a
13 defendant if the department is not the plaintiff. If the circuit court is satisfied that
14 a party in interest has been prejudiced because of an exceptional delay in the receipt
15 of a copy of any order, the circuit court may extend the time in which an action may
16 be commenced by an additional 30 days.

17 2. Except as provided in this subdivision, the proceedings shall be in the circuit
18 court of the county where the plaintiff resides, except that if the plaintiff is the
19 department, the proceedings shall be in the circuit court of the county where a
20 defendant other than the commission resides. The proceedings may be brought in
21 any circuit court if all parties appearing in the case agree or if the court, after notice
22 and a hearing, so orders. Commencing an action in a county in which no defendant
23 resides does not deprive the court of competency to proceed to judgment on the merits
24 of the case.

ASSEMBLY BILL 819

1 3. In such an action, a complaint shall be served with an authenticated copy
2 of the summons. The complaint need not be verified, but shall state the grounds upon
3 which a review is sought. Service upon the commission or an agent authorized by
4 the commission to accept service constitutes complete service on all parties, but there
5 shall be left with the person so served as many copies of the summons and complaint
6 as there are defendants, and the commission shall mail one copy to each other
7 defendant.

8 4. Each defendant shall serve its answer within 20 days after the service upon
9 the commission under subd. 3., which answer may, by way of counterclaim or cross
10 complaint, ask for the review of the order referred to in the complaint, with the same
11 effect as if the defendant had commenced a separate action for the review of the order.

12 5. Within 60 days after appearing in an action for judicial review, the
13 commission shall make return to the court of all documents and materials on file in
14 the matter, all testimony that has been taken, and the commission's order and
15 findings. Such return of the commission, when filed in the office of the clerk of the
16 circuit court, shall constitute a judgment roll in the action, and it shall not be
17 necessary to have a transcript approved. After the commission makes return of the
18 judgment roll to the court, the court shall schedule briefing by the parties. Any party
19 may request oral argument before the court, subject to the provisions of law for a
20 change of the place of trial or the calling in of another judge.

21 6. The court may confirm or set aside the commission's order, but may set aside
22 the order only upon one or more of the following grounds:

- 23 a. That the commission acted without or in excess of its powers.
- 24 b. That the order was procured by fraud.
- 25 c. That the findings of fact by the commission do not support the order.

ASSEMBLY BILL 819

1 (dm) The court shall disregard any irregularity or error of the commission or
2 the department unless it is made to affirmatively appear that a party was damaged
3 by that irregularity or error.

4 (e) The record in any case shall be transmitted to the commission within 5 days
5 after expiration of the time for appeal from the order or judgment of the court, unless
6 an appeal is taken from the order or judgment.

7 (f) If the commission's order depends on any fact found by the commission, the
8 court shall not substitute its judgment for that of the commission as to the weight
9 or credibility of the evidence on any finding of fact. The court may, however, set aside
10 the commission's order and remand the case to the commission if the commission's
11 order depends on any material and controverted finding of fact that is not supported
12 by credible and substantial evidence.

13 (g) Any party aggrieved by a judgment entered upon the review of any circuit
14 court order under this subsection may appeal as provided in ch. 808.

15 (h) The clerk of any court rendering a decision affecting a decision of the
16 commission shall promptly furnish all parties a copy of the decision without charge.

17 **SECTION 56.** 108.09 (7) (d) of the statutes is renumbered 108.09 (7) (i) and
18 amended to read:

19 108.09 (7) (i) ~~Notwithstanding ss. 102.26 (1) and 814.245, upon review of a~~
20 ~~decision of the commission under this chapter~~ No fees may be charged by the clerk
21 of any circuit court for the performance of any service required by this chapter, except
22 for the entry of judgments and for certified transcripts of judgments. In proceedings
23 to review an order under this section, costs as between the parties shall be in the
24 discretion of the court, ~~but.~~ Notwithstanding s. 814.245, no costs may be taxed
25 against the commission or the department.

ASSEMBLY BILL 819

1 **SECTION 57.** 108.095 (2) of the statutes is amended to read:

2 108.095 (2) The department shall investigate whether any person has obtained
3 benefits that were payable to another person by means of any false statement or
4 representation, and may issue an initial determination concerning its findings. The
5 department shall electronically deliver a copy of the determination to, or mail a copy
6 of the determination to the last-known address of, each party affected thereby.
7 Unless designated by a determination under this section, an employing unit is not
8 a party to the determination. The department may set aside or amend the
9 determination at any time prior to a hearing concerning the determination under
10 sub. (5) on the basis of subsequent information or to correct a mistake, including an
11 error of law.

12 **SECTION 58.** 108.095 (3) of the statutes is amended to read:

13 108.095 (3) Any party to a determination may appeal that determination by
14 requesting a hearing concerning any matter in that determination if the request is
15 received by the department or postmarked within 14 days after the electronic
16 delivery or mailing.

17 **SECTION 59.** 108.095 (7) of the statutes is amended to read:

18 108.095 (7) Any party may commence an action for judicial review of a decision
19 of the commission under this section, after exhausting the remedies provided under
20 this section, by commencing the action within 30 days after the decision of the
21 commission is delivered electronically or mailed to the department and is delivered
22 electronically to, or mailed to the last-known address of, each other party. The scope
23 and manner of judicial review is the same as that provided in s. 108.09 (7).

24 **SECTION 60.** 108.10 (1) of the statutes is amended to read:

ASSEMBLY BILL 819

1 108.10 (1) The department shall investigate the status, and the existence and
2 extent of liability of an employing unit, and may issue an initial determination
3 accordingly. The department may set aside or amend the determination at any time
4 prior to a hearing on the determination on the basis of subsequent information or to
5 correct a mistake, including an error of law. The department shall electronically
6 deliver a copy of each determination to, or mail a copy of each determination to the
7 last-known address of, the employing unit affected thereby. The employing unit may
8 request a hearing as to any matter in that determination if the request is received
9 by the department or postmarked within 21 days after the mailing and in accordance
10 with such procedure as the department prescribes by rule.

11 **SECTION 61.** 108.10 (2) of the statutes is amended to read:

12 108.10 (2) Any hearing duly requested shall be held before an appeal tribunal
13 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable
14 to the proceedings before such tribunal. The department may be a party in any
15 proceedings before an appeal tribunal. The employing unit or the department may
16 petition the commission for review of the appeal tribunal's decision under s. 108.09
17 (6).

18 **SECTION 62.** 108.10 (4) of the statutes is amended to read:

19 108.10 (4) ~~The department or the employing unit may commence an action for~~
20 ~~the judicial review of a commission decision under this section, provided the~~
21 ~~department, or the employing unit, after exhausting~~ has exhausted the remedies
22 ~~provided under this section, has commenced such action within 30 days after such~~
23 ~~decision was mailed to the employing unit's last-known address.~~ The department
24 may commence an action for the judicial review of a commission decision under this
25 section, but the department is not required to have been a party to the proceedings

ASSEMBLY BILL 819

1 before the commission or to have exhausted the remedies provided under this
2 section. In an action commenced under this section by a party that is not the
3 department, the department shall be a defendant and shall be named as a party in
4 the complaint commencing the action. If a plaintiff fails to name either the
5 department or the commission as defendants and serve them as required under s.
6 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the
7 manner thereof insofar as applicable, shall be the same as that provided in s. 108.09
8 (7). ~~In an action commenced by an employing unit under this section, the department~~
9 ~~shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the~~
10 ~~complaint commencing the action.~~

11 **SECTION 63.** 108.10 (6) of the statutes is amended to read:

12 108.10 (6) Any determination by the department or any decision by an appeal
13 tribunal or by the commission is conclusive with respect to an employing unit unless
14 ~~it~~ the department or the employing unit files a timely request for a hearing or petition
15 for review as provided in this section. A determination or decision is binding upon
16 the department only insofar as the relevant facts were included in the record ~~which~~
17 that was before the department at the time the determination was issued, or before
18 the appeal tribunal or commission at the time the decision was issued.

19 **SECTION 64.** 108.14 (8n) (e) of the statutes, as affected by 2015 Wisconsin Act
20 55, is amended to read:

21 108.14 (8n) (e) The department shall charge this state's share of any benefits
22 paid under this subsection to the account of each employer by which the employee
23 claiming benefits was employed in the applicable base period, in proportion to the
24 total amount of wages he or she earned from each employer in the base period, except
25 that if s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),

ASSEMBLY BILL 819

1 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such
2 an employer who is subject to the contribution requirements of ss. 108.17 and 108.18,
3 the department shall charge the share of benefits based on employment with that
4 employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3)
5 would have applied to an employer that is not subject to the contribution
6 requirements of ss. 108.17 and 108.18, the department shall charge the share of
7 benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The
8 department shall also charge the fund's balancing account with any other state's
9 share of such benefits pending reimbursement by that state.

10 **SECTION 65.** 108.14 (27) of the statutes, as created by 2015 Wisconsin Act 55,
11 is repealed.

12 **SECTION 66.** 108.141 (3g) (a) 3. (intro.) of the statutes, as affected by 2015
13 Wisconsin Act 55, is amended to read:

14 108.141 (3g) (a) 3. (intro.) ~~Notwithstanding s. 108.02 (24g), work~~ Work is
15 suitable within the meaning of subd. 2. if:

16 **SECTION 67.** 108.141 (4) of the statutes is amended to read:

17 108.141 (4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate
18 payable to an individual for a week of total unemployment is the same as the rate
19 payable to the individual for regular benefits during his or her most recent benefit
20 year as determined under s. 108.05 (1). ~~No adjustment of rates under s. 108.05 (2)~~
21 ~~applies to benefits payable under this section.~~

22 **SECTION 68.** 108.141 (7) (a) of the statutes, as affected by 2015 Wisconsin Act
23 55, is amended to read:

24 108.141 (7) (a) The department shall charge the state's share of each week of
25 extended benefits to each employer's account in proportion to the employer's share

ASSEMBLY BILL 819

1 of the total wages of the employee receiving the benefits in the employee's base
2 period, except that if the employer is subject to the contribution requirements of ss.
3 108.17 and 108.18 the department shall charge the share of extended benefits to
4 which s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),
5 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

6 **SECTION 69.** 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.)
7 and amended to read:

8 108.151 (3) (b) (intro.) The department may terminate any election as of the
9 close of any calendar year if the department determines that the any of the following
10 applies:

11 1. The employer has failed to make the required reimbursement payments or,

12 3. The employer no longer satisfies the requirements of sub. (4), or whenever
13 s.

14 4. Section 108.16 (8) applies with respect to the employer.

15 **SECTION 70.** 108.151 (3) (b) 2. of the statutes is created to read:

16 108.151 (3) (b) 2. The employer has failed to pay the required assessments
17 authorized by sub. (7) or s. 108.155.

18 **SECTION 71.** 108.151 (4) (b) of the statutes is amended to read:

19 108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its
20 deposit of assurance. Any assurances shall be retained by the fund's treasurer in
21 escrow, for the fund, until the employer's liability under its election is terminated,
22 at which time they shall be returned to the employer, less any deductions made under
23 this paragraph. The employer may at any time substitute assurances of equal or
24 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the
25 assurances deposited to the extent necessary to satisfy any delinquent

ASSEMBLY BILL 819**SECTION 71**

1 reimbursements or assessments due under this section or s. 108.155 together with
2 any interest and any tardy filing fees due. The treasurer shall hold in escrow any
3 cash remaining from the sale of the assurances, without interest. The fund's
4 treasurer shall require the employer within 30 days following any liquidation of
5 deposited assurances to deposit sufficient additional assurances to make whole the
6 employer's deposit at the prior level. Any income from assurances held in escrow
7 shall inure to and be the property of the employer.

8 **SECTION 72.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

9 108.152 **(6)** (a) (intro.) If an Indian tribe or tribal unit fails to pay required
10 contributions, reimbursements in lieu of contributions, penalties, interest, ~~or fees,~~
11 or assessments within 90 days of the time that the department transmits to the tribe
12 a final notice of delinquency:

13 **SECTION 73.** 108.155 of the statutes is created to read:

14 **108.155 Liability of reimbursable employers for identity theft. (1)** In
15 this section:

16 (a) "Payroll" has the meaning given in s. 108.02 (21) (a).

17 (b) "Reimbursable employer" means an employer under s. 108.02 (13) (a) that
18 is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

19 **(2)** (a) On the effective date of this paragraph ... [LRB inserts date], the fund's
20 treasurer shall set aside \$2,000,000 in the balancing account for accounting
21 purposes. On an ongoing basis, the fund's treasurer shall tally the amounts allocated
22 to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those
23 amounts from the amount set aside plus any interest calculated thereon.

24 (b) On each June 30, beginning with June 30, 2016, the fund's treasurer shall
25 do all of the following:

ASSEMBLY BILL 819

- 1 1. Determine the current result of the calculations described in par. (a).
- 2 2. Determine the amount that was allocated to reimbursable employers’
3 accounts under s. 108.04 (13) (d) 4. c. in the preceding calendar year.
- 4 (c) Annually, beginning with the first year in which the amount determined
5 under par. (b) 1. is less than \$100,000, the department shall proceed as follows:
- 6 1. If the sum of the amount determined under par. (b) 2. in the current year and
7 any amount carried over under subd. 2. or 3. from the preceding year is \$20,000 or
8 more, the department shall, subject to subd. 3., assess reimbursable employers for
9 that sum.
- 10 2. If the sum of the amount determined under par. (b) 2. in the current year and
11 any amount carried over under this subdivision or subd. 3. from the preceding year
12 is less than \$20,000 the department shall, subject to subd. 4., postpone the current
13 year’s assessment by carrying that sum over to the following year.
- 14 3. If the sum of the amount determined under par. (b) 2. in the current year and
15 any amount carried over under this subdivision or subd. 2. from the preceding year
16 is more than \$200,000, the department shall postpone the amount of the assessment
17 that exceeds \$200,000 by carrying that amount over to the following year.
- 18 4. If the department postponed assessments under subd. 2. in each of the 4
19 previous years, the department shall, subject to subd. 3., assess reimbursable
20 employers for the sum of the amount determined under par. (b) 2. in the current year
21 and the amount carried over under subd. 2. from the preceding year.
- 22 (d) If the department assesses reimbursable employers under par. (c), the
23 department shall determine the amount of assessments to be levied as provided in
24 sub. (3), and the fund’s treasurer shall notify reimbursable employers that the
25 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall

ASSEMBLY BILL 819**SECTION 73**

1 be payable by each reimbursable employer that is subject to this chapter as of the
2 date the assessment is imposed. Assessments imposed under this section shall be
3 credited to the balancing account.

4 (3) (a) The rate of an assessment imposed under sub. (2) (c) for a given calendar
5 year shall be a rate that, when applied to the payrolls of all reimbursable employers
6 for the preceding calendar year, will generate an amount equal to the total amount
7 to be assessed in that year as determined under sub. (2) (c).

8 (b) Except as provided in par. (c), the amount of a reimbursable employer's
9 assessment imposed under sub. (2) (c) for a given calendar year is the product of the
10 rate determined under par. (a) and the reimbursable employer's payroll for the
11 preceding calendar year, as reported by the reimbursable employer under s. 108.15
12 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated
13 by the department.

14 (c) If a reimbursable employer would otherwise be assessed an amount less
15 than \$10 for a calendar year, the department shall, in lieu of requiring that
16 reimbursable employer to pay an assessment for that calendar year, apply the
17 amount that the reimbursable employer would have been required to pay to the other
18 reimbursable employers subject to an assessment on a pro rata basis.

19 (4) The department shall bill assessments under this section to a reimbursable
20 employer at its last known address in the month of September of each year and the
21 assessment shall be due to the department within 20 days after the date such bill is
22 mailed by the department. Any assessment that remains unpaid after its applicable
23 due date is a delinquent payment. If a reimbursable employer is delinquent in
24 paying an assessment under this section, in addition to pursuing action under the
25 provisions of ss. 108.22 and 108.225, the department may do any of the following:

ASSEMBLY BILL 819

1 (a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer
2 is subject to reimbursement financing under s. 108.15.

3 (b) Terminate the reimbursable employer's election of reimbursement
4 financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s.
5 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under
6 s. 108.151 (2).

7 (c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer
8 elected reimbursement financing under s. 108.152 (1).

9 **(5)** If the payroll of a reimbursable employer for any quarter is adjusted to
10 decrease the amount of the payroll after an employment and wage report for the
11 reimbursable employer is filed under s. 108.205 (1), the department shall refund the
12 amount of any assessment that was overpaid by the reimbursable employer under
13 this section as a result of the adjustment.

14 **(6)** The department shall annually report to the council on unemployment
15 insurance the balance remaining of the amount set aside under sub. (2) (a) and the
16 amount of charges restored to reimbursable employers' accounts under s. 108.04 (13)
17 (d) 4. c.

18 **SECTION 74.** 108.16 (6) (g) of the statutes is amended to read:

19 108.16 **(6)** (g) Any payment or other amount received for the balancing account
20 under s. 108.15 ~~or, 108.151, 108.152, or 108.155.~~

21 **SECTION 75.** 108.16 (6m) (i) of the statutes is created to read:

22 108.16 **(6m)** (i) Any amount restored to the account of an employer subject to
23 reimbursement financing under s. 108.04 (13) (d) 4.

24 **SECTION 76.** 108.16 (7m) of the statutes is amended to read:

ASSEMBLY BILL 819**SECTION 76**

1 108.16 (**7m**) The fund's treasurer may write off, by charging to the fund's
2 balancing account, any delinquent contribution, reimbursement in lieu of
3 contribution, assessment, tardy payment or filing fee, or interest for which the
4 employer's liability to the fund was established under s. 108.10, upon receipt of
5 certification by the department that reasonable efforts have been made to recover the
6 delinquency and that the delinquency is uncollectible.

7 **SECTION 77.** 108.16 (10) of the statutes, as affected by 2015 Wisconsin Act 86,
8 is amended to read:

9 108.16 (**10**) All money withdrawn from the fund shall be used solely in the
10 payment of benefits, exclusive of expenses of administration, and for refunds of sums
11 erroneously paid into the fund, for refund of a positive net balance in an employer's
12 reimbursement account under ss. 108.15 (4) ~~and~~, 108.151 (5), and 108.152 (4) on
13 request by the employer, for expenditures made pursuant to s. 108.161 and
14 consistently with the federal limitations applicable to s. 108.161, and for payment
15 of fees and expenses for collection of overpayments resulting from fraud or failure to
16 report earnings that are assessed by the U.S. secretary of the treasury and charged
17 to the department under 26 USC 6402 (f).

18 **SECTION 78.** 108.18 (7) (a) 1. of the statutes is amended to read:

19 108.18 (**7**) (a) 1. Except as provided in pars. (b) to (i), any employer may make
20 payments to the fund during the month of November in excess of those required by
21 this section and s. 108.19 (1) ~~and~~, (1e), and (1f). Each payment shall be credited to
22 the employer's account for the purpose of computing the employer's reserve
23 percentage as of the immediately preceding computation date.

24 **SECTION 79.** 108.18 (7) (h) of the statutes is amended to read:

ASSEMBLY BILL 819

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

6 **SECTION 80.** 108.18 (9c) of the statutes is amended to read:

7 108.18 (9c) REDUCTION OF SOLVENCY RATE. The department shall reduce the
8 solvency rate payable under sub. (9) by each employer for each year by the ~~rate~~ rates
9 payable by that employer under s. 108.19 (1e) (a) ~~and (1f) (a)~~ for that year.

10 **SECTION 81.** 108.19 (title) of the statutes is repealed and recreated to read:

11 **108.19** (title) **Contributions to administrative account and**
12 **unemployment interest payment and program integrity funds.**

13 **SECTION 82.** 108.19 (1f) of the statutes is created to read:

14 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an
15 employer that finances benefits by reimbursement in lieu of contributions under s.
16 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under
17 s. 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01
18 percent of its payroll for that year or the solvency contribution that would otherwise
19 be payable by the employer under s. 108.18 (9) for that year. Assessments under this
20 paragraph shall be deposited in the unemployment program integrity fund.

21 (b) The levy prescribed under par. (a) is not effective for any year unless the
22 department, no later than the November 30 preceding that year, publishes a class
23 1 notice under ch. 985 giving notice that the levy is in effect for the ensuing year. The
24 department shall consider the balance of the unemployment reserve fund before
25 prescribing the levy under par. (a). The secretary of workforce development shall

ASSEMBLY BILL 819

1 consult with the council on unemployment insurance before the department
2 prescribes the levy under par. (a).

3 (c) Notwithstanding par. (a), the department may, if it finds that the full
4 amount of the levy is not required to effect the purposes specified in sub. (1s) (b) for
5 any year, prescribe a reduced levy for that year and in such case shall publish in the
6 notice under par. (b) the rate of the reduced levy.

7 **SECTION 83.** 108.19 (1m) of the statutes, as affected by 2013 Wisconsin Act 20,
8 section 1720q, is amended to read:

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

ASSEMBLY BILL 819

1 department shall transfer the excess to the balancing account of the fund, the
2 unemployment program integrity fund, or both in amounts determined by the
3 department.

4 **SECTION 84.** 108.19 (1s) (a) of the statutes, as affected by 2015 Wisconsin Act
5 55, is renumbered 108.19 (1s) (a) (intro.) and amended to read:

6 108.19 (1s) (a) (intro.) There is created a separate, nonlapsible trust fund
7 designated as the unemployment program integrity fund consisting of all of the
8 following:

9 1. All amounts collected under s. 108.04 (11) (bh) other than the amounts
10 required to be deposited in the fund under s. 108.16 (6) (n).

11 **SECTION 85.** 108.19 (1s) (a) 2. of the statutes is created to read:

12 108.19 (1s) (a) 2. Assessments levied and deposited into the unemployment
13 program integrity fund under sub. (1f).

14 **SECTION 86.** 108.19 (1s) (a) 3. of the statutes is created to read:

15 108.19 (1s) (a) 3. Amounts transferred under sub. (1m).

16 **SECTION 87.** 108.19 (1s) (a) 4. of the statutes is created to read:

17 108.19 (1s) (a) 4. Assessments under s. 108.221 (1) and (2).

18 **SECTION 88.** 108.22 (1) (b) of the statutes is amended to read:

19 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
20 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a
21 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next
22 following day which is not a Saturday, Sunday, or legal holiday under state or federal
23 law.

24 **SECTION 89.** 108.22 (1) (c) of the statutes is amended to read:

ASSEMBLY BILL 819

1 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
2 (5) (b) ~~or~~, 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is
3 delinquent, within the meaning of par. (a), unless it is received by the department,
4 in the form prescribed by law or rule of the department, no later than its due date
5 as determined under par. (b). Any payment required by s. 108.15 (5) (b) ~~or~~, 108.151
6 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is
7 received by the department, in the form prescribed by law, no later than the last day
8 of the month in which it is due.

9 **SECTION 90.** 108.22 (1m) of the statutes is amended to read:

10 108.22 (1m) If an employer owes any contributions, reimbursements, or
11 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or
12 payments for forfeitures or other penalties to the department under this chapter and
13 fails to pay the amount owed, the department has a perfected lien upon the
14 employer's right, title, and interest in all of its real and personal property located in
15 this state in the amount finally determined to be owed, plus costs. Except where
16 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien
17 is effective when the department issues a determination of the amount owed under
18 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the
19 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other
20 insolvency law, it shall become effective immediately upon expiration or removal of
21 such bar or stay. The perfected lien does not give the department priority over
22 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
23 whose interests have been recorded before the department's lien is recorded.

24 **SECTION 91.** 108.22 (9) of the statutes is amended to read:

ASSEMBLY BILL 819

1 108.22 (9) An individual who is an officer, employee, member ~~or~~, manager,
2 partner, or other responsible person holding at least ~~20%~~ 20 percent of the ownership
3 interest of a corporation ~~or of a~~, limited liability company, or other business
4 association subject to this chapter, and who has control or supervision of or
5 responsibility for filing any required contribution reports or making payment of
6 contributions, and who willfully fails to file such reports or to make such payments
7 to the department, or to ensure that such reports are filed or that such payments are
8 made, may be found personally liable for such amounts, including interest, tardy
9 payment or filing fees, costs and other fees, in the event that after proper proceedings
10 for the collection of such amounts, as provided in this chapter, the corporation ~~or~~,
11 limited liability company, or other business association is unable to pay such
12 amounts to the department. Ownership interest of a corporation ~~or~~, limited liability
13 company, or other business association includes ownership or control, directly or
14 indirectly, by legally enforceable means or otherwise, by the individual, by the
15 individual's spouse or child, by the individual's parent if the individual is under age
16 18, or by a combination of 2 or more of them, and such ownership interest of a parent
17 corporation ~~or~~, limited liability company, or other business association of which the
18 corporation ~~or~~, limited liability company, or other business association unable to pay
19 such amounts is a wholly owned subsidiary. The personal liability of such officer,
20 employee, member ~~or~~, manager, partner, or other responsible person as provided in
21 this subsection survives dissolution, reorganization, bankruptcy, receivership,
22 assignment for the benefit of creditors, judicially confirmed extension or
23 composition, or any analogous situation of the corporation ~~or~~, limited liability
24 company, or other business association and shall be set forth in a determination or
25 decision issued under s. 108.10.

ASSEMBLY BILL 819

1 **SECTION 92.** 108.221 of the statutes is created to read:

2 **108.221 Misclassification; administrative assessments.** (1) (a) Any
3 employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing
4 of buildings or other structures who knowingly and intentionally provides false
5 information to the department for the purpose of misclassifying or attempting to
6 misclassify an individual who is an employee of the employer as a nonemployee shall,
7 for each incident, be assessed a penalty by the department in the amount of \$500 for
8 each employee who is misclassified, but not to exceed \$7,500 per incident.

9 (b) The department shall consider the following nonexclusive factors in
10 determining whether an employer described under par. (a) knowingly and
11 intentionally provided false information to the department for the purpose of
12 misclassifying or attempting to misclassify an individual who is an employee of the
13 employer as a nonemployee:

14 1. Whether the employer was previously found to have misclassified an
15 employee in the same or a substantially similar position.

16 2. Whether the employer was the subject of litigation or a governmental
17 investigation relating to worker misclassification and the employer, as a result of
18 that litigation or investigation, received an opinion or decision from a federal or state
19 court or agency that the subject position or a substantially similar position should
20 be classified as an employee.

21 **(2)** Any employer described in s. 108.18 (2) (c) or engaged in the painting or
22 drywall finishing of buildings or other structures who, through coercion, requires an
23 individual to adopt the status of a nonemployee shall be assessed a penalty by the
24 department in the amount of \$1,000 for each individual so coerced, but not to exceed
25 \$10,000 per calendar year.

ASSEMBLY BILL 819

1 **(3)** Assessments under subs. (1) and (2) shall be deposited in the
2 unemployment program integrity fund.

3 **SECTION 93.** 108.225 (1) (a) of the statutes is amended to read:

4 108.225 **(1)** (a) "Contribution" includes a reimbursement or assessment under
5 s. 108.15, 108.151, ~~or 108.152~~, or 108.155, interest for a nontimely payment, fees, and
6 any payment due for a forfeiture imposed upon an employing unit under s. 108.04
7 (11) (c) or other penalty assessed by the department under this chapter.

8 **SECTION 94.** 108.24 (2m) of the statutes is amended to read:

9 108.24 **(2m)** Any employer described in s. 108.18 (2) (c) or engaged in the
10 painting or drywall finishing of buildings or other structures who ~~willfully~~, after
11 having previously been assessed an administrative penalty by the department under
12 s. 108.221 (1), knowingly and intentionally provides false information to the
13 department for the purpose of misclassifying or attempting to misclassify an
14 individual who is an employee of the employer as a nonemployee shall be fined \$1,000
15 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each
16 violation. The department may refer violations of this subsection for prosecution by
17 the department of justice or the district attorney for the county in which the violation
18 occurred.

19 **SECTION 95.** 111.327 of the statutes is repealed.

20 **SECTION 96.** 2011 Wisconsin Act 198, section 4m is repealed.

21 **SECTION 97.** 2011 Wisconsin Act 198, section 6m is repealed.

22 **SECTION 98.** 2011 Wisconsin Act 198, section 37m is repealed.

23 **SECTION 99.** 2011 Wisconsin Act 198, section 47m (1), as last affected by 2013
24 Wisconsin Act 36, is repealed.

25 **SECTION 100.** 2013 Wisconsin Act 36, section 236m is repealed.

ASSEMBLY BILL 819**1 SECTION 101. Nonstatutory provisions.**

2 (1) UNEMPLOYMENT INSURANCE; REPEAL OF PROGRAM INTEGRITY FUND SUNSET. The
3 repeal of 2011 Wisconsin Act 198, sections 4m, 6m, 37m, and 47m (1) and 2013
4 Wisconsin Act 36, section 236m applies notwithstanding section 990.03 of the
5 statutes.

6 SECTION 102. Initial applicability.

7 (1) CONCEALMENT BY CLAIMANTS. The renumbering and amendment of section
8 108.04 (11) (g) of the statutes and the creation of section 108.04 (11) (g) 2. and 3. of
9 the statutes first apply to determinations issued under section 108.09 of the statutes
10 on the effective date of this subsection.

11 (2) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section
12 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes first applies
13 retroactively to determinations issued under section 108.09 of the statutes on the
14 effective date of this subsection.

15 (3) JUDICIAL REVIEW CHANGES. The treatment of sections 108.09 (4o), (7) (a), (b),
16 and (c) to (h) and 108.10 (4) of the statutes first applies to actions filed on the effective
17 date of this subsection.

18 (4) ABLE AND AVAILABLE DETERMINATIONS. The treatment of sections 108.04 (1)
19 (b) and (bm), (7) (c), (cg), and (h), (8) (e), and (16) (b), 108.14 (8n) (e), and 108.141 (7)
20 (a) of the statutes first applies to determinations issued under section 108.09 of the
21 statutes on the effective date of this subsection.

22 (5) PERSONAL LIABILITY OF LLP PARTNERS. The treatment of section 108.22 (9)
23 of the statutes first applies to determinations issued under section 108.10 of the
24 statutes on the effective date of this subsection.

ASSEMBLY BILL 819

1 (6) **SUITABLE WORK.** The treatment of section 108.04 (7) (e) and (8) (c), (dm), and
2 (em) of the statutes, the renumbering and amendment of section 108.04 (8) (d) of the
3 statutes, and the creation of section 108.04 (8) (d) 2. of the statutes first apply to
4 determinations issued under section 108.09 of the statutes on the effective date of
5 this subsection.

6 (7) **RECEIPT OF WORKER'S COMPENSATION.** The treatment of section 108.04 (12) (e)
7 of the statutes first applies to determinations issued under section 108.09 of the
8 statutes on the effective date of this subsection.

9 (8) **MISCLASSIFICATION; ASSESSMENTS AND PENALTIES.** The treatment of sections
10 102.07 (8) (d), 108.221, 108.24 (2m), and 111.327 of the statutes first applies to
11 violations committed on the effective date of this subsection.

12 **SECTION 103. Effective dates.** This act takes effect on the first Sunday after
13 publication, except as follows:

14 (1) **CONCURRENT RECEIPT OF SSDI AND UI BENEFITS.** The treatment of section
15 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes and SECTION
16 102 (2) of this act take effect retroactively to January 5, 2014.

17 (2) **REIMBURSABLE EMPLOYER IDENTITY THEFT CHARGING.** The treatment of
18 sections 108.02 (21) (b), 108.04 (13) (d) 3. (intro.) and a. and 4. (intro.), a., and c.,
19 108.151 (4) (b), 108.152 (6) (a) (intro.), 108.155, 108.16 (6) (g), (6m) (i), (7m), and (10),
20 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes, the renumbering
21 and amendment of section 108.151 (3) (b) of the statutes, and the creation of section
22 108.151 (3) (b) 2. of the statutes take effect on October 2, 2016.

23 (3) **JUDICIAL REVIEW CHANGES.** The treatment of sections 108.09 (4o), (7) (a), (b),
24 and (c) to (h) and 108.10 (4) of the statutes and SECTION 102 (3) of this act take effect
25 on the first day of the 5th month beginning after publication.

