

# State of Wisconsin



2003 Senate Bill 340

Date of enactment: April 8, 2004  
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## 2003 WISCONSIN ACT 197

AN ACT *to repeal* 108.04 (1) (g) 1L., 108.16 (8) (c) 4. and 108.16 (8) (e) 4.; *to renumber* 108.225 (16) (b); *to renumber and amend* 108.04 (2) (a) 3., 108.225 (16) (intro.), 108.225 (16) (a) and 108.225 (16) (c); *to amend* 20.445 (1) (gg), 20.445 (1) (gh), 20.445 (1) (n), 20.445 (1) (nb), 20.445 (1) (nd), 108.02 (12) (a), 108.02 (12) (b) (intro.), 108.02 (12) (bm) (intro.), 108.02 (15) (L), 108.02 (15m) (a) and (b), 108.025 (title) and (1), 108.025 (2) and (6), 108.04 (1) (g) 1., 108.04 (1) (g) 2. and 3., 108.04 (1) (gm) 1., 2., 3. and 4. (intro.), 108.04 (7) (h), 108.04 (7) (r), 108.04 (11) (cm), 108.04 (16) (a) (intro.), 108.04 (16) (e), 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g), (h), (i) and (k) (intro.), 108.05 (7) (c), 108.09 (4) (c), 108.14 (8s) (a) and (b), 108.16 (3) (a), 108.16 (6m) (a), 108.16 (6m) (e), 108.16 (8) (b) (intro.), 108.16 (8) (b) 2., 108.16 (8) (f), 108.161 (4) (c), 108.161 (8), 108.162 (3), 108.19 (1e) (a) and (d), 108.22 (2) (b), 108.22 (8) (b), 108.225 (1) (b) and 108.225 (15); *to repeal and recreate* 108.04 (16) (a) 1. to 4. and 108.04 (16) (b) and (c); *to create* 20.445 (1) (ne), 108.02 (6m), 108.02 (12) (dm) and (dn), 108.02 (20r), 108.02 (25s), 108.025 (1) (b), 108.04 (2) (a) 3. a. to c., 108.04 (16) (a) 5., 108.04 (16) (d), 108.04 (16) (e), 108.05 (7) (cm), 108.068, 108.16 (12) and 108.225 (16) (am) of the statutes; and *to affect* 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3.; **relating to**: various changes in the unemployment insurance law, granting rule-making authority, and making appropriations.

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

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

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

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

20.445 (1) (gh) *Unemployment information technology systems; assessments.* All moneys received from

assessments levied under s. 108.19 (1e) (a) and 1997 Wisconsin Act 39, section 164 (2), for the purpose specified in s. 108.19 (1e) (d). The treasurer of the unemployment reserve fund may transfer moneys from this appropriation account to the appropriation account under par. (gd).

**SECTION 3.** 20.445 (1) (n) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

20.445 (1) (n) *Employment assistance and unemployment insurance administration; federal moneys.* All federal moneys received, as authorized by the governor under s. 16.54, for the administration of employment assistance and unemployment insurance programs of the department, for the performance of the department's other functions under subch. I of ch. 106 and ch. 108, except moneys appropriated under par. (nc), and to pay

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

the compensation and expenses of appeal tribunals and of employment councils appointed under s. 108.14, to be used for such purposes, except as provided in s. 108.161 (3e), and, from the moneys received by this state under section 903 (d) of the federal Social Security Act, as amended, to transfer to the appropriation account under par. (nb) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nb), ~~and~~ to transfer to the appropriation account under par. (nd) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amounts in the schedule under par. (nd), and to transfer to the appropriation account under par. (ne) an amount determined by the treasurer of the unemployment reserve fund not exceeding the lesser of the amount specified in s. 108.161 (4) (d) or the amount required to pay for the cost of banking services incurred by the unemployment reserve fund.

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

20.445 (1) (nb) *Unemployment information technology systems; federal moneys.* ~~As From the moneys received from the federal government under section 903 (d) of the federal Social Security Act, as amended, as~~ a continuing appropriation, the amounts in the schedule, as authorized by the governor under s. 16.54, for the purpose specified in s. 108.19 (1e) (d). All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. Notwithstanding s. 20.001 (3) (a), the treasurer of the unemployment reserve fund shall transfer any unencumbered balance in this appropriation account that is not needed or available to carry out the purpose of this appropriation to the appropriation account under par. (n). No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in s. 108.19 (1e) (d).

**SECTION 5.** 20.445 (1) (nd) of the statutes, as created by 2003 Wisconsin Act 33, is amended to read:

20.445 (1) (nd) *Unemployment insurance administration; apprenticeship.* From the moneys received from the federal government under section 903 (d) of the federal Social Security Act, as amended, the amounts in the schedule, as authorized by the governor under s. 16.54, to be used for administration by the department of apprenticeship programs under subch. I of ch. 106. All moneys transferred from par. (n) for this purpose shall be credited to this appropriation account. Notwithstanding s. 20.001 (3) (a), the treasurer of the unemployment reserve fund shall transfer any unencumbered balance in this appropriation account that is not needed or available to carry out the purpose of this appropriation to the appropriation account under par. (n). No moneys may be

expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

**SECTION 6.** 20.445 (1) (ne) of the statutes is created to read:

20.445 (1) (ne) *Unemployment administration; bank service costs.* From the moneys received by this state under section 903 (d) of the federal Social Security Act, as amended, all moneys transferred from the appropriation account under par. (n) to be used for the payment of the cost of banking services incurred by the unemployment reserve fund. Notwithstanding s. 20.001 (3) (c), the treasurer of the unemployment reserve fund shall transfer any unencumbered balance in this appropriation account that is not needed or available to carry out the purpose of this appropriation to the appropriation account under par. (n). No moneys may be expended from this appropriation unless the treasurer of the unemployment reserve fund determines that such expenditure is currently needed for the purpose specified in this paragraph.

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

108.02 (6m) CHILD. "Child" means a natural child, adopted child, or stepchild.

**SECTION 8.** 108.02 (12) (a) of the statutes is amended to read:

108.02 (12) (a) "Employee" means any individual who is or has been performing services for an employing unit, in an employment, whether or not the individual is paid directly by such employing unit; except as provided in par. (b), (bm), (c) ~~or~~ (d), (dm) or (dn).

**SECTION 9.** 108.02 (12) (b) (intro.) of the statutes is amended to read:

108.02 (12) (b) (intro.) During the period beginning on January 1, 1996, and ending on December 31, 1999, ~~and during the period beginning on January 1, 2004,~~ with respect to contribution requirements, and during the period beginning on January 1, 1996, and ending on April 1, 2000, ~~and during the period beginning on April 4, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that:

**SECTION 10.** 108.02 (12) (bm) (intro.) of the statutes is amended to read:

108.02 (12) (bm) (intro.) During the 4-year period beginning on January 1, 2000, with respect to contribution requirements, and during the period beginning on April 2, 2000, ~~and ending on April 3, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit sat-

ifies the department that the individual meets 7 or more of the following conditions by contract and in fact:

**SECTION 11.** 108.02 (12) (dm) and (dn) of the statutes are created to read:

108.02 (12) (dm) Paragraph (a) does not apply to an individual who owns a business that operates as a sole proprietorship.

(dn) Paragraph (a) does not apply to a partner in a business that operates as a partnership.

**SECTION 12.** 108.02 (15) (L) of the statutes is amended to read:

108.02 (15) (L) "Employment" includes an individual's service for an employer organized as a corporation or a limited liability company that is treated as a corporation under this chapter in which the individual is a principal officer and has a direct or indirect ownership interest, except as provided in s. 108.025.

**SECTION 13.** 108.02 (15m) (a) and (b) of the statutes are amended to read:

108.02 (15m) (a) A corporation or a limited liability company that is treated as a corporation under this chapter in which 50% or more of the ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant or by the claimant's spouse or child, or by the claimant's parent if the claimant is under the age of 18, or by a combination of 2 or more of them; or

(b) Except where par. (a) applies, a corporation or a limited liability company that is treated as a corporation under this chapter in which 25% or more of ownership interest, however designated or evidenced, is or during a claimant's employment was owned or controlled, directly or indirectly, by the claimant.

**SECTION 14.** 108.02 (20r) of the statutes is created to read:

108.02 (20r) PARTNERSHIP. "Partnership" has the meaning given in s. 178.03.

**SECTION 15.** 108.02 (25s) of the statutes is created to read:

108.02 (25s) VOCATIONAL TRAINING. "Vocational training" includes technical, skill-based, or job readiness training intended to pursue a career.

**SECTION 16.** 108.025 (title) and (1) of the statutes are amended to read:

**108.025 (title) Coverage of certain corporate officers and limited liability company members.**

(1) In this section, "principal officer" means ~~an~~:

(a) ~~An~~ individual named as a principal officer in the ~~a~~ corporation's most recent annual report or, if that information is not current, an individual holding an office described in the corporation's most recent annual report as a principal officer; or

**SECTION 17.** 108.025 (1) (b) of the statutes is created to read:

108.025 (1) (b) An individual named as a member of a limited liability company that is treated as a corporation under this chapter in the records of the company required to be kept under s. 183.0405 as of the date of an election under this section.

**SECTION 18.** 108.025 (2) and (6) of the statutes are amended to read:

108.025 (2) If an employer ~~having~~ is organized as a corporation or limited liability company that is treated as a corporation under this chapter, the employer has no annual payroll for the calendar year preceding an election ~~or an employer having~~ has an annual payroll of less than the amount specified in s. 108.18 (9) which establishes separate solvency contribution rates for the calendar year preceding an election, ~~and the employer~~ files a notice of election, in the manner prescribed by the department, to exclude the service of all of its principal officers who have a direct or indirect substantial ownership interest in the corporation or limited liability company, employment does not include the service of those officers.

(6) A principal officer has a direct or indirect substantial ownership interest in a corporation or limited liability company that is treated as a corporation under this section if 25% or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is owned or controlled, directly or indirectly, by the officer.

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

108.04 (1) (g) 1. Employment by a partnership or limited liability company that is treated as a partnership under this chapter, if a one-half or greater ownership interest in the partnership or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

**SECTION 20.** 108.04 (1) (g) 1L. of the statutes is repealed.

**SECTION 21.** 108.04 (1) (g) 2. and 3. of the statutes are amended to read:

108.04 (1) (g) 2. Employment by a corporation or limited liability company that is treated as a corporation under this chapter, if one-half or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them.

3. Except where subd. 2. applies, employment by a corporation or limited liability company that is treated as a corporation under this chapter, if one-fourth or more of the ownership interest, however designated or evidenced, in the corporation or limited liability company is

or during such employment was owned or controlled, directly or indirectly, by the individual.

**SECTION 22.** 108.04 (1) (gm) 1., 2., 3. and 4. (intro.) of the statutes are amended to read:

108.04 (1) (gm) 1. Dissolution of the family corporation, due to economic inviability, under ch. 180 or the analogous applicable laws of the jurisdiction in which the corporation is incorporated or organized;

2. Filing ~~for corporate~~ of a petition in bankruptcy by the family corporation;

3. Filing ~~for personal~~ of a petition in bankruptcy by all owners who are personally liable for any of the debts of the family corporation; or

4. (intro.) Disposition of a total of 75% or more of the assets of the family corporation using one or more of the following methods:

**SECTION 23.** 108.04 (2) (a) 3. of the statutes is renumbered 108.04 (2) (a) 3. (intro.) and amended to read:

108.04 (2) (a) 3. (intro.) The individual ~~is seeking suitable work during that week or, during the 156 week period beginning on January 2, 2000, the individual conducts a reasonable search for suitable work during that week. The reasonable search required during the period specified in this subdivision for suitable work must include 2 actions that constitute a reasonable search as prescribed by rule of the department. The department shall, by rule, require claimants to conduct a reasonable search for suitable work during the period beginning after the 156 week period specified in this subdivision and shall, by rule, prescribe standards for the search to be considered reasonable. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:~~

**SECTION 24.** 108.04 (2) (a) 3. a. to c. of the statutes are created to read:

108.04 (2) (a) 3. a. The history of layoffs and reemployments by the employer;

b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and

c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement.

**SECTION 25.** 108.04 (7) (h) of the statutes is amended to read:

108.04 (7) (h) The department shall charge to the fund's balancing account benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements

of ss. 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and par. (a), (c), (d), (e), (k), (L), (o), (p), (q), or (s) ~~or sub. (16) (b)~~ applies.

**SECTION 26.** 108.04 (7) (r) of the statutes is amended to read:

108.04 (7) (r) Paragraph (a) does not apply if the department determines that the employee owns or controls, directly or indirectly, an ownership interest, however designated or evidenced, in a family corporation and the employee's employment was terminated by the employer because of an involuntary cessation of the business of the corporation under one or more of the conditions specified in sub. (1) (gm). In this paragraph, "family corporation" has the meaning given in s. 108.02 (15m) and also includes a corporation or a limited liability company that is treated as a corporation under this chapter in which 50% or more of the ownership interest is or was owned or controlled, directly or indirectly, by one or more brothers or sisters of a claimant, or by a combination of one or more brothers or sisters and one or more of the persons specified in s. 108.02 (15m) (a).

**SECTION 27.** 108.04 (11) (cm) of the statutes is amended to read:

108.04 (11) (cm) ~~Any~~ If any person who makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to not more than 50% of the amount of benefits obtained.

**SECTION 28.** 108.04 (16) (a) (intro.) of the statutes is amended to read:

108.04 (16) (a) (intro.) ~~Benefits~~ The department shall not ~~be reduced~~ reduce benefits under sub. (1) (a), or ~~denied~~ deny benefits under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to any otherwise eligible individual for any week ~~because the individual is enrolled in a full-time as a result of the individual's enrollment in a course of vocational training or basic education which is a prerequisite to such training, provided it is determined~~ the department determines that:

**SECTION 29.** 108.04 (16) (a) 1. to 4. of the statutes are repealed and recreated to read:

108.04 (16) (a) 1. The course is expected to increase the individual's opportunities to obtain employment;

2. The training is given by a school established under s. 38.02 or other training institution approved by the department;

3. The individual is enrolled full time as determined by the training institution;

4. The course does not grant substantial credit leading to a bachelor's or higher degree; and

**SECTION 30.** 108.04 (16) (a) 5. of the statutes is created to read:

108.04 (16) (a) 5. The individual is attending regularly and making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

**SECTION 31.** 108.04 (16) (b) and (c) of the statutes are repealed and recreated to read:

108.04 (16) (b) The department shall not apply any benefit disqualification under sub. (1) (b) 1., (2) (a) or (d), (7) (c), or (8) (e) or s. 108.141 (3g) that is not the result of training or basic education under par. (a) while an individual is enrolled in a course of training or education that meets the standards specified in par. (a).

(c) If an individual is enrolled in a program administered by the department for the training of unemployed workers that was in existence on October 1, 2003, other than the Youth Apprenticeship Program under s.106.13 or a plan for training of youth approved under 29 USC 2822, then notwithstanding any failure of the program to meet the standards specified in par. (a):

1. The department shall not reduce benefits under sub. (1) (a) or deny benefits under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to an otherwise eligible individual as a result of the individual's enrollment in such training; and

2. The department shall not apply benefit disqualifications under sub. (1) (b) 1., (2) (a) or (d), (7) (c), or (8) (e) or s. 108.141 (3g) that are not the result of the training while the individual is enrolled in the training.

**SECTION 32c.** 108.04 (16) (d) of the statutes is created to read:

108.04 (16) (d) If an individual is enrolled under the plan of any state for training under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822:

1. The department shall not deny benefits under sub. (7) as a result of the individual's leaving unsuitable work to enter or continue such training; and

2. The requalifying requirements under subs. (7) and (8) do not apply while the individual is enrolled in such training.

**SECTION 32g.** 108.04 (16) (e) of the statutes is created to read:

108.04 (16) (e) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (d).

**SECTION 32r.** 108.04 (16) (e) of the statutes, as affected by 2003 Wisconsin Act .... (this act), is amended to read:

108.04 (16) (e) The department shall charge to the fund's balancing account the cost of benefits paid to an individual that are otherwise chargeable to the account of an employer that is subject to the contribution require-

ments of ss. 108.17 and 108.18 if the individual receives benefits based on the application of par. (b), (c) 2., or (d).

**SECTION 33.** 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g), (h), (i) and (k) (intro.) of the statutes are amended to read:

108.04 (17) (a) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational institution in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational institution in the first such term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such term.

(b) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the first such year or term and if there is reasonable assurance that he or she will perform such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the first such term and if there is reasonable assurance that he or she will perform such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the 2nd such term.

(c) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational service agency in the first such year or term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational service agency in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational service agency in the first such term and if there is reasonable assurance that he or she will perform such services for ~~an~~ any educational service agency in the 2nd such term.

(d) A school year employee of an educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unem-

ployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for ~~an~~ any educational institution in the first such year or term and there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such year or term.

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

(f) A school year employee of an educational service agency who performs services other than in an instructional, research or principal administrative capacity, and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for ~~an~~ any educational service agency in the first such year or term and there is reasonable assurance that he or she will perform such services for ~~an~~ any educational service agency in the 2nd such year or term.

(g) A school year employee of an educational institution who performs services as described in par. (a) or (d) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for ~~an~~ any educational institution in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that he or she will perform the services described in par. (a) or (d) for ~~an~~ any educational institution in the period immediately following the vacation period or holiday recess.

(h) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution who performs the services described in par. (b) or (e) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the period immediately before the vacation period or

holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (b) or (e) for any such ~~a~~ government unit, Indian tribe, or nonprofit organization in the period immediately following the vacation period or holiday recess.

(i) A school year employee of an educational service agency who performs the services described in par. (c) or (f), and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for ~~an~~ any educational service agency in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (c) or (f) for ~~an~~ any educational service agency in the period immediately following the vacation period or holiday recess.

(k) (intro.) If benefits are reduced or denied to a school year employee who performed services other than in an instructional, research or principal administrative capacity under pars. (d) to (f), and the department later determines that the school year employee was not offered an opportunity to perform such services for ~~the~~ an applicable employer under pars. (d) to (f) in the 2nd academic year or term, the department shall recompute the school year employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive payment of benefits for each week of such reduction or denial if the school year employee:

**SECTION 36.** 108.05 (7) (c) of the statutes is amended to read:

108.05 (7) (c) *Required benefit reduction.* ~~If~~ Except as provided in par. (cm), if a claimant actually or constructively receives a pension payment, the department shall reduce benefits otherwise payable to the claimant for a week of partial or total unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

**SECTION 37.** 108.05 (7) (cm) of the statutes is created to read:

108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant receives a pension payment under the federal Social Security Act (42 USC 301 et seq.), the department shall not reduce the benefits otherwise payable to the claimant because the claimant contributed to a portion of the pension payment received by the claimant.

**SECTION 40.** 108.068 of the statutes is created to read:

**108.068 Treatment of limited liability companies and members.** (1) Subject to subs. (2) to (6) and (8), the department shall treat a multimember limited liability company as a partnership and shall treat a single-member limited liability company as a sole proprietorship under this chapter unless the company has filed an election with the federal internal revenue service to be treated

as a corporation for federal tax purposes and files proof with the department that the internal revenue service has agreed to treat the company as a corporation for such purposes.

(2) The department shall treat a limited liability company that files proof under sub. (1) as a corporation under this chapter beginning on the same date that the federal internal revenue service treats the company as a corporation for federal tax purposes, except that for benefit purposes the treatment shall apply on the same date that the internal revenue service applies the treatment or the date that proof is filed with the department, whichever is later.

(3) Subject to subs. (1), (2), and (6) to (8), a limited liability company that is treated as a corporation for federal tax purposes shall be treated as a corporation under this chapter, and each member of the limited liability company shall be treated as a corporate officer for contribution and benefit purposes.

(4) Subject to subs. (2) and (6) to (8), a multimember limited liability company that is not treated as a corporation for federal tax purposes shall be treated as a partnership under this chapter, and the members of the limited liability company shall be treated for contribution and benefit purposes as partners of that partnership.

(5) Subject to subs. (2) and (6) to (8), a single-member limited liability company that is not treated as a corporation for federal tax purposes shall be treated as a sole proprietorship under this chapter, and the member shall be treated as a sole proprietor for contribution and benefit purposes.

(6) The department may, in the interests of justice or to prevent fraud upon the unemployment insurance program, determine that a member of a limited liability company is an employee of that company.

(7) Subject to subs. (2) to (6), if a limited liability company is treated as a corporation under this chapter the department shall treat the company as a partnership under this chapter, if the company has multiple members or shall treat the company as a sole proprietorship under this chapter if the company has a single member if the company files proof with the department that the internal revenue service has agreed to treat the company as a partnership or sole proprietorship for federal tax purposes.

(8) The department shall treat a limited liability company that files proof under sub. (7) as a partnership or sole proprietorship under this chapter beginning on the same date that the federal internal revenue service treats the company as a partnership or sole proprietorship for federal tax purposes, except that for benefit purposes the treatment shall apply on the same date that the internal revenue service applies the treatment or the date that proof is filed with the department, whichever is later.

**SECTION 41.** 108.09 (4) (c) of the statutes is amended to read:

108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an appeal tribunal shall review the

appellant's written reasons for filing the late appeal. If those reasons, when taken as true and construed most favorably to the appellant, do not constitute a reason beyond the appellant's control, the appeal tribunal may dismiss the appeal without a hearing and issue a decision accordingly. Otherwise, the department may schedule a hearing concerning the issue question of whether the party's failure to timely file the appeal was filed late for a reason that was beyond the party's appellant's control. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file the appeal was not for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file an appeal was for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding. The being appealed. After hearing testimony on the late appeal question, the appeal tribunal shall issue a decision which makes ultimate findings of fact and conclusions of law concerning whether the the appellant's appeal was filed late for a reason that was beyond the appellant's control and which, in accordance with those findings and conclusions, either dismisses the appeal or determines that the appeal was filed late for a reason that was beyond the appellant's control. If the appeal is not dismissed, the same or another appeal tribunal established by the department for this purpose, after conducting a hearing, shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination.

**SECTION 42.** 108.14 (8s) (a) and (b) of the statutes are amended to read:

108.14 (8s) (a) Overpayments of unemployment insurance benefits as determined under this chapter may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under the unemployment insurance law of another state, and overpayments of unemployment insurance benefits as determined under the unemployment insurance law of that other state may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under this chapter; and

(b) Overpayments of unemployment insurance benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the U.S. secretary of labor, may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under that program, or under the unemployment insurance law of this state or of another state or any such federal unemployment benefit or allowance program administered by the other state under an agreement with the U.S. secretary of labor if the other state has in effect a reciprocal agreement with the

U.S. secretary of labor as authorized by [42 USC 503 \(g\) \(2\)](#), if the United States agrees, as provided in the reciprocal agreement with this state entered into under [42 USC 503 \(g\) \(2\)](#), that overpayments of unemployment insurance benefits as determined under this chapter, and overpayments as determined under the unemployment insurance law of another state which has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by [42 USC 503 \(g\) \(2\)](#), may be recovered by offset recouped from benefits or allowances for unemployment otherwise payable under a federal program administered by this state or the other state under an agreement with the U.S. secretary of labor.

**SECTION 43.** 108.16 (3) (a) of the statutes is amended to read:

108.16 (3) (a) Any overpayment for which the claimant's liability to reimburse the fund is established under s. 108.22 (8) or any assessment under s. 108.04 (11) (cm) for which a final determination has been issued under s. 108.09 upon receipt of certification by the department that reasonable efforts have been made to recover the overpayment or the amount of the assessment and that it the amount due is uncollectible.

**SECTION 44.** 108.16 (6m) (a) of the statutes is amended to read:

108.16 (6m) (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (7) (h), (8) (a), ~~or~~ (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), (6), or (8), 108.14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

**SECTION 45.** 108.16 (6m) (e) of the statutes is amended to read:

108.16 (6m) (e) Any overpayment of benefits or assessment that is written off under sub. (3), unless except, in the case of an overpayment, if it is chargeable to an employer's account under s. 108.04 (13).

**SECTION 46.** 108.16 (8) (b) (intro.) of the statutes is amended to read:

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

**SECTION 47.** 108.16 (8) (b) 2. of the statutes is amended to read:

108.16 (8) (b) 2. The transfer included ~~100% at least 25%~~ of the transferor's total business on as measured by comparing the payroll experience assignable to the the portion of the business transferred with the transferor's total payroll experience for the last 4 completed quarters immediately preceding the date of the transfer.

**SECTION 48.** 108.16 (8) (c) 4. of the statutes is repealed.

**SECTION 49.** 108.16 (8) (e) 4. of the statutes is repealed.

**SECTION 50.** 108.16 (8) (f) of the statutes is amended to read:

108.16 (8) (f) The successor shall take over and continue the transferor's account, including its positive or negative balance and all other aspects of its experience under this chapter. ~~If the transfer included less than 100% of the transferor's total assets on the date of the transfer, the department shall allocate the transferor's experience to the successor in proportion to the payroll assignable to the transferred business and the liability of the successor shall be proportioned to the extent of the transferred business. The transferor and the successor shall be jointly and severally liable for any amounts owed by the transferor to the fund and to the administrative account at the time of the transfer, but a successor under par. (c) is not liable for the debts of the transferor except in the case of fraud or malfeasance.~~

**SECTION 51.** 108.16 (12) of the statutes is created to read:

108.16 (12) The fund's treasurer shall estimate at the end of each calendar quarter the earnings rate payable on the fund's bank balances and the earnings rate payable by the federal unemployment account under title XII of the Social Security Act ([42 USC 1321 to 1324](#)) for the following quarter. Based on these estimates, the treasurer shall pay for the cost of banking services incurred by the fund in the following quarter either by maintaining compensating bank balances or by payment for the services from the appropriation under s. 20.445 (1) (ne), whichever payment method is estimated to yield the highest net earnings for the fund.

**SECTION 52.** 108.161 (4) (c) of the statutes, as affected by [2003 Wisconsin Act 33](#), is amended to read:

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

**SECTION 53.** 108.161 (8) of the statutes is amended to read:

108.161 (8) If any sums are appropriated and spent hereunder to buy land and to build a suitable employment security building thereon, or to purchase information technology hardware and software, then any federal moneys thereafter credited to the fund or paid to the department by way of gradual reimbursement of such employment security capital expenditures, or in lieu of the estimated periodic amounts which would otherwise (in the absence of such expenditures) be federally granted for the rental of substantially equivalent quarters, shall be credited to the account created by sub. (1), consistently



with any federal requirements applicable to the handling and crediting of such moneys.

**SECTION 54.** 108.162 (3) of the statutes, as affected by [2003 Wisconsin Act 33](#), is amended to read:

108.162 (3) The amount obligated under this section during any fiscal year may not exceed the aggregate of all amounts credited under s. 108.161 (1), including amounts credited under s. 108.161 (8), reduced by the amount obligated under s. 20.445 (1) (nb) ~~and~~ (nd) ~~and~~ (ne) and further reduced at the time of any obligation by the sum of the moneys obligated and charged against any of the amounts thus credited.

**SECTION 55.** 108.19 (1e) (a) and (d) of the statutes are amended to read:

108.19 (1e) (a) Except as provided in par. (b), each employer, other than an employer that finances benefits by reimbursement in lieu of contributions under s. 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under s. 108.18 and this section, pay an assessment to the administrative account for each year prior to the year ~~2004~~ 2008 equal to the lesser of 0.01% of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under s. 108.18 (9) for that year.

(d) The department may expend the moneys received from assessments levied under this subsection in the amounts authorized under s. 20.445 (1) (gh) for the renovation and modernization of unemployment insurance information technology systems, ~~including the tax and accounting system, and~~ specifically including development and implementation of a new system and reengineering of automated processes and manual business functions.

**SECTION 56.** 108.22 (2) (b) of the statutes is amended to read:

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

**SECTION 57.** 108.22 (8) (b) of the statutes is amended to read:

108.22 (8) (b) To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, or any assessment under s. 108.04 (11) (cm), the department may ~~offset~~ recoup the amount of the overpayment ~~against~~ from benefits the individual would other-

wise be eligible to receive, or file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the actual amount of the overpayment and any costs and disbursements, without interest.

**SECTION 58.** 108.225 (1) (b) of the statutes is amended to read:

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

**SECTION 59.** 108.225 (15) of the statutes is amended to read:

108.225 (15) DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied, or until the levy is released ~~or until one year from the date of service~~, whichever occurs first.

**SECTION 60.** 108.225 (16) (intro.) of the statutes is renumbered 108.225 (16) (a) (intro.) and amended to read:

108.225 (16) (a) (intro.) In the case of ~~benefit overpayments and~~ forfeitures imposed upon an employing unit under s. 108.04 (11) (c), an individual debtor is entitled to an exemption from levy of the greater of the following:

**SECTION 61.** 108.225 (16) (a) of the statutes is renumbered 108.225 (16) (a) 1. and amended to read:

108.225 (16) (a) 1. A subsistence allowance of 75% of the debtor's disposable earnings ~~then due and owing;~~

**SECTION 62.** 108.225 (16) (am) of the statutes is created to read:

108.225 (16) (am) 1. In the case of benefit overpayments, an individual debtor is entitled to an exemption from levy of 80% of the debtor's disposable earnings, except that:

a. A debtor's disposable earnings are totally exempt from levy if the debtor's wages are below the federal income guideline established under [42 USC 9902](#) (2) for a household of the debtor's size or the levy would cause that result.

b. Upon petition by a debtor demonstrating hardship, the department may increase the portion of the debtor's disposable earnings that are exempt from levy.

c. The department may decrease or eliminate the exemption from levy under this paragraph if a final determination has been issued under s. 108.09 or a judgment has been entered under s. 108.24 (1) in which the debtor has been found guilty of making a false statement or representation to obtain benefits and the benefits and any assessment under s. 108.04 (11) (cm) have not been paid or reimbursed at the time that the levy is issued, unless the

fund's treasurer has written off the debt under s. 108.16 (3) (a).

2. The department shall by rule prescribe a methodology for application of the exemption applicable to a levy under subd. 1. a. at the time that the levy is issued.

**SECTION 63.** 108.225 (16) (b) of the statutes is renumbered 108.225 (16) (a) 2.

**SECTION 64.** 108.225 (16) (c) of the statutes is renumbered 108.225 (16) (a) 3. and amended to read:

108.225 (16) (a) 3. In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that provided in ~~par. (b)~~ subd. 2. using a multiple of the federal minimum hourly wage prescribed by rule of the department.

**SECTION 65.** 2001 Wisconsin Act 35, section 72 (2) (a) 2. and 3. are repealed.

**SECTION 66. Nonstatutory provisions.**

(1) PAYMENT OF OUTSTANDING BANK SERVICE CHARGES. Notwithstanding the treatment of sections 20.445 (1) (n) and (ne), 108.16 (12) and 108.161 (4) (c) of the statutes by this act, the treasurer of the unemployment reserve fund may transfer moneys from the appropriation account under section 20.445 (1) (n) of the statutes, as affected by this act, to the appropriation account under section 20.445 (1) (ne) of the statutes, as created by this act, and may thereafter pay any banking service costs incurred by the fund that are outstanding on the effective date of this subsection from the appropriation under section 20.445 (1) (ne) of the statutes, as created by this act, if the treasurer determines that the fund would realize higher net earnings by taking such action.

(2) NOTICE OF LEVY FOR YEAR 2004.

(a) In this subsection, "employer" has the meaning given in section 108.02 (13) of the statutes.

(b) Notwithstanding section 108.19 (1e) (b) of the statutes, the department of workforce development may, no later than the 60th day commencing after the effective date of this subsection, publish a notice under that paragraph of an assessment to be levied against employers under section 108.19 (1e) of the statutes, as affected by this act, in the year 2004.

(3x) CLAIMS BY CLAIMANTS ENROLLED IN CERTAIN TRAINING PLANS. Section 108.04 (16) (d) of the statutes, as created by this act, and SECTION 68 (3x) of this act apply notwithstanding section 108.04 (16) (b) and (c), 2001 stats.

**SECTION 67. Appropriation changes.**

(1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (gg) of the statutes, as affected by the acts of 2003, the dollar amount is increased by \$430,200 for fiscal year 2003-04 and the

dollar amount is increased by \$430,200 for fiscal year 2004-05 to provide funding to upgrade unemployment insurance information technology systems.

(2) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (nb) of the statutes, as affected by the acts of 2003, the dollar amount is increased by \$2,500,000 for fiscal year 2003-04 and the dollar amount is increased by \$2,500,000 for fiscal year 2004-05 to provide funding to upgrade unemployment insurance information technology systems.

**SECTION 68. Initial applicability.**

(1) The treatment of sections 20.445 (1) (n) and (ne), 108.16 (12), 108.161 (4) (c) (with respect to the reference to section 20.445 (1) (ne) of the statutes), and 108.162 (3) of the statutes first applies with respect to the first calendar quarter of 2004.

(2x) The renumbering and amendment of section 108.04 (2) (a) 3. of the statutes and the creation of section 108.04 (2) (a) 3. a. to c. of the statutes first apply with respect to weeks of unemployment beginning on June 27, 2004.

(3x) The creation of section 108.04 (16) (e) of the statutes first applies with respect to weeks of unemployment beginning on December 30, 2001.

(4x) The treatment of sections 108.02 (25s) and 108.04 (7) (h) and (16) (a) (intro.), 1. to 4., and 5., (b), (c), and (d) of the statutes and the amendment of section 108.04 (16) (e) of the statutes first apply with respect to weeks of unemployment beginning on the effective date of this subsection.

(5x) The treatment of section 108.09 (4) (c) of the statutes first applies with respect to determinations issued under sections 108.09, 108.095, and 108.10 of the statutes on the effective date of this subsection.

(6x) The treatment of sections 108.16 (3) (a) and (6m) (e) and 108.225 (1) (b), (15), and (16) (intro.), (a), (am), (b), and (c) of the statutes first applies with respect to levies issued on the effective date of this subsection.

(7x) The treatment of section 108.16 (8) (b) (intro.) and 2., (c) 4., (e) 4., and (f) of the statutes first applies with respect to transfers of businesses occurring after December 31, 2003.

(8x) The treatment of section 108.22 (2) (b) of the statutes first applies with respect to satisfactions, releases, and withdrawals of warrants issued on the effective date of this subsection.

**SECTION 69m. Effective dates.** This act takes effect on the first Sunday after publication, except as follows:

(1x) The treatment of section 108.16 (6m) (a) of the statutes and the creation of section 108.04 (16) (e) of the statutes take effect retroactively to December 30, 2001.