Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 668: Workforce Development -- Unemployment Insurance

Assembly Bill 668, which would modify a number of provisions of the state's unemployment insurance laws, was introduced on November 13, 2003, by the Assembly Committee on Labor. The bill was introduced at the request of the Unemployment Insurance Advisory Council, a ten-member council appointed by the Secretary of the Department of Workforce Development (DWD). The Committee took executive action on AB 668, on January 7, 2004, and the bill was recommended for passage on January 14, by a vote of 9-0.

SUMMARY OF BILL

Assembly Bill 668 includes modifications to provisions related to unemployment insurance taxes and benefits, and to administration of the unemployment insurance system.

Tax and Benefit Provisions

General Benefit Qualifying Requirements. Under current law, in order to be eligible for benefits for any week in which the individual receives no wages, he or she must:

a. Be able to work and available for work during that week.

b. Be registered for work.

c. Be seeking suitable work during that week or, during the 156-week period beginning on January 2, 2000, be conducting a reasonable search for work during that week. The reasonable search required during that period must include two actions that constitute reasonable search, as prescribed by rule by DWD. The Department is required, by rule, to require claimants to conduct a

reasonable search for suitable work during the period starting after the 156-week period beginning after January 2, 2000, and to prescribe standards for reasonable search.

Assembly Bill 668 would modify the items in (c) to eliminate provisions related to the 156-week period after January 2, 2000. The bill would specify that seeking suitable work must include two actions that constitute reasonable search, as prescribed by rule of DWD. In addition, the bill would provide an exclusion from the suitable work search requirements if DWD determined that the individual was laid off from work with an employer, but there was reasonable expectation of reemployment of that individual with the employer. In determining whether the individual had a reasonable expectation of reemployment with an employer, DWD would be required to request that the employer verify the individual's employment status, and consider other factors including: (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.

Base Period Wages--Treatment of Social Security Payments. Generally, under current law, compensation in lieu of wages (including temporary worker's compensation payments, back pay, vacation pay, holiday pay, termination pay, and sick pay paid directly by the employer at the employee's usual rate of pay) are treated as base-period wages for the purposes of benefit qualification and the determination of an individual's weekly benefit amount. Also, such payments are treated in the same manner as wages earned in partial employment and can act to reduce or deny a claimant's benefit payment.

Retirement pay, however, is treated somewhat differently than other nonwage payments. An individual's regular benefit payment will be reduced by the amount of retirement pay attributed to that week and financed by contributions made by an employer in the claimant's base period. One-half of the amount is considered to have been financed by the employer and the weekly unemployment insurance benefit payment is reduced by one-half of any pension payments an individual received for that week, unless evidence is provided to DWD that a separately calculated fraction should be used. If an individual receives retirement pay that is entirely financed by employer contributions, his or her unemployment payment for that week will be reduced by the entire amount of the retirement pay. However, social security payments are not subject to this treatment. There is no reduction in unemployment insurance benefits for any amount of social security benefits received.

The U.S. Department of Labor has advised DWD that state law must specify that the reason social security payments are disregarded in calculating base period wages is that they are based, in part, on contributions made by the individual. Consequently, the bill includes provisions that indicate that the benefits of a claimant would not be reduced if he or she receives social security pension payments, because the claimant contributed to a portion of that pension payment.

Approved Training. Under current law, the availability for work, suitable work, general benefit, and additional extended benefit qualifying provisions for benefit eligibility do not apply to an individual who is enrolled in training approved by DWD. The training must include a full-time course of vocational training or basic education that is a prerequisite to such training. In order to remain eligible for benefits, the individual must: (a) possess aptitudes or skills that can be usefully supplemented by training; (b) attend the course on a full-time basis during the training week or have good cause for failing to do so, and make satisfactory progress in the course [DWD may require the training institution to file a certification showing the individual's attendance and progress]; and (c) be reasonably expected to complete the training course successfully, and find and accept work. In addition, the course must be expected to increase the individual's opportunities to obtain employment, not grant substantial credit leading to a bachelor's or higher degree, and be given by a Wisconsin Technical College District or other DWD-recognized training institution. Individuals who enroll in training or who leave unsuitable work to enter or continue training provided under the federal Trade Adjustment Assistance Act or the Workforce Investment Act of 1998 are exempt from requalifying requirements under voluntary reduction in hours of employment and suitable work provisions and from the general benefit qualifying requirements. In these cases, benefits paid based on the terminated employment are charged to the balancing account of the unemployment reserve fund. Finally, benefits may not be denied to an individual who is enrolled in a dislocated workers training program provided under the federal Workforce Investment Act.

Assembly Bill 668 would make a number of modifications and clarifications to the current approved training provisions. The bill would clarify that benefits would not be reduced or denied for participants in approved training under the general benefit qualifying requirements, except in cases where the claimant fails to provide DWD with his or her social security number or knowingly provides a false number. The bill would eliminate specific requirements that DWD determine that: (a) the individual possesses aptitudes or skills that can be usefully supplemented in training; and (b) that the individual can reasonably be expected to complete the training course successfully, and find and accept work. However, the Department would have to determine that the course is expected to increase the individual's opportunities to obtain employment. The bill would provide that the exception from benefit eligibility requirements for individuals participating in approved training would continue to apply in cases where the individual was granted a leave of absence or took family and medical leave from approved training programs.

Benefit disqualification under general qualifying requirements and additional extended benefit qualifying requirements, and disqualification for unavailability for or inability to accept suitable work, or for termination of employment and unavailability for or inability to perform work due to the inability of the employee or health of a family member, or for failure to accept suitable work from an employer for good cause could not be imposed while the individual was enrolled in a course of training or education that met the requirements for approved training, even if the training did not directly exclude the individual from such provisions. DWD could not reduce benefits under general disqualification availability to work provisions, or deny benefits under general benefit and additional extended benefit eligibility provisions, or for unavailability for or inability to accept suitable work, or for termination of employment and unavailability for or inability to perform work

due to the inability of the employee or health of a family member or for failure to accept suitable work from an employer for good cause, for individuals enrolled in a program administered by DWD for training unemployed workers that existed on October 1, 2003, other than the youth apprenticeship program, or for a plan for training youth under the federal Workforce Investment Act of 1998, even if the program did not meet the specific requirements for approved training established by the bill. Unemployment insurance benefits could not be denied as a result of an individual leaving unsuitable work to enter or continue training, and the requalifying requirements for voluntary termination of work and suitable work would not apply to individuals enrolled in training programs under the federal Trade Adjustment Assistance Act and dislocated worker training programs under the Workforce Investment Act. Finally, the bill provides that benefits that are paid based on employment terminated to participate in training program provided by DWD or under the federal Trade Adjustment Assistance and Workforce Investment Acts are charged to the balancing account of the unemployment reserve fund.

Educational Employees. Under current law, specific provisions govern the eligibility of certain educational employees for unemployment insurance benefits during certain periods in which these individuals are not working. The provisions apply specifically to: (a) school-year employees of educational institutions; (b) school-year employees of governmental units, Indian tribes, and nonprofit organizations which provide services to or on behalf of educational institutions; and (c) school-year employees of educational service agencies who perform services in an educational institution or provide services to or on behalf of an educational institution.

"School-year employee" is defined as an employee of an educational institution or an educational service agency or an employee of a governmental unit, Indian tribe, or nonprofit organization which provides services to, or on behalf of, an educational institution, which performs services under an employment contract which does not require that the services be performed on a year-round basis. Employees hired to work for the entire year rather than for an academic year are excluded from the benefit eligibility restrictions. An educational service agency is a government entity or Indian tribal unit which is established and operated exclusively for the purpose of providing services to one or more educational institutions.

A school-year employee who performs services in an instructional, research, or principal administrative capacity is ineligible for benefits based on services for any unemployment which occurred:

a. During the period between two successive academic years or terms if the school-year employee performed such services in the first year or term and if there was a reasonable assurance that he or she would be reemployed in the same capacity by a nonprofit organization, governmental unit, Indian tribe, or an educational service agency or institution, whichever is applicable, in the second academic year or term.

b. During the period between two regular but not successive terms under an agreement between the employer and school-year employee which provides for such a period, if the school-

year employee performed such services in the first term and there was reasonable assurance that he or she would be reemployed in the same capacity by a nonprofit organization, governmental unit, Indian tribe, or an educational service agency or institution, whichever is applicable, in the second academic year or term.

c. During an established and customary vacation period or holiday recess if the school-year employee performed such services in the period immediately before the vacation period or holiday recess and if there was reasonable assurance that he or she would perform services for a nonprofit organization, governmental unit, Indian tribe, or an educational service agency or institution, whichever is applicable, in the period immediately following the vacation period or holiday recess.

The restrictions under items (a) and (c) above also apply to school-year employees who perform services that are not in an instructional, research, or principal administrative capacity. Item (b) does not apply to these employees.

Assembly Bill 668 would specify that the subsequent work of an educational employee could be with any, rather than a or an, nonprofit organization, Indian tribe, governmental unit, educational service agency, or educational institution. This would clarify that the subsequent work could be with any similar employer as opposed to the specific employer the employee worked for in the previous year.

Treatment of Limited Liability Companies. Limited liability companies (LLCs) are generally covered employers under the unemployment insurance system. However, current law does not specify the treatment of LLC members for benefit purposes. DWD indicates that its policy has been to treat members of LLCs as sole proprietors if the LLC has one member, and as partners in a partnership if the LLC consists of more than one member. Under this policy, members of an LLC are generally treated as employers for the purposes of unemployment insurance taxes and benefit eligibility. However, differing treatments of LLC members have occurred both within the Department and between the Department and Labor and Industry Review Commission.

Under current law, a corporation with taxable payroll of $500,000 or less can exclude principal officers from coverage, if certain conditions are met. In addition, current law limits the benefits of family members who are employees of certain family businesses.

Assembly Bill 668 would treat LLCs for unemployment and tax purposes in a manner consistent with the manner in which they have elected to be treated for federal tax purposes as follows:

a. An LLC that is treated as a corporation for federal tax purposes would be treated as a corporation, and the LLC members would be treated like corporate officers for unemployment insurance tax and benefit purposes. An LLC that wished to be treated as a corporation would have to file an election with the federal Internal Revenue Service (IRS) and file proof with DWD that the

IRS has agreed to treat the LLC as a corporation. DWD would treat an LLC that filed proof as a corporation for tax purposes, beginning on the same date that the IRS treated the company as a corporation for tax purposes. For benefit purposes, DWD would treat the company as a corporation on the later of the date that the IRS applied corporate treatment or the date on which proof is filed with DWD.

b. A multimember LLC that was not treated as a corporation for federal tax purposes would be treated as a partnership, and its members would be treated as partners for unemployment insurance tax and benefit purposes.

c. A single-member LLC that was not treated as a corporation for federal tax purposes would be treated as a sole-proprietorship, and the member would be treated as a sole proprietor for unemployment insurance tax and benefit purposes.

d. An LLC that was treated as a corporation for unemployment insurance tax and benefit purposes would have to be treated as a partnership if it had multiple members, or treated as a sole-proprietorship if it had one member, if the company filed proof with DWD that the IRS treated the company as a partnership or sole-proprietorship, respectively, for tax purposes.

e. DWD would be required to treat the sole-proprietorship as a sole-proprietorship, or a partnership as a partnership for tax purposes on the same date the IRS treated the company as a sole-proprietorship or partnership, respectively, for tax purposes. For benefit purposes, DWD would have to treat the sole-proprietorship as a sole-proprietorship, or a partnership as a partnership on the later of the date on which the IRS applied for such treatment, or on the date the company filed proof with DWD.

f. DWD would be authorized to determine that a member of an LLC was an employee of that company in the interests of justice or to prevent fraud.

Current law provisions related to exclusion from coverage for certain corporate officers and limits on benefits for family members who were employees of family businesses would be specifically applied to LLCs depending on LLC's form of organization.

Assembly Bill 668 would also specifically exclude from the definition of employee under the unemployment insurance law: (a) an individual who owns a business that operates as a sole proprietorship; and (b) a partner in a business that operates as a partnership. The definition of partnership would be cross-referenced to the definition of partnership under the state uniform partnership law.

Definition of Employee/Independent Contractor. Under current law, "employee" is generally defined as an individual who is or has been performing services for an employing unit, in an employment, whether or not the individual is paid directly by the employing unit. However, there are certain exceptions to this definition, including exceptions for determining if an individual

is an independent contractor. Under current law, there are two different tests for determining independent contractors.

For years prior to January 1, 2000, and after April 3, 2004, an individual is not considered an employee but, rather an independent contractor, (other than an individual performing services for a government unit or nonprofit organization in a capacity other than a logger or a trucker) if the employing unit satisfies to the Department that:

a. The individual:

(1) Holds or has applied for an employer identification number with the federal IRS; or

(2) Has filed business or self-employment income tax returns with the IRS based on such services in the previous year; and

b. The individual meets six or more of the following conditions:

(1) The individual maintains a separate business with his or her own office equipment, materials, and other facilities;

(2) The individual operates under contracts to perform specific services for specific amounts of money, and under which the individual controls the means and methods of performing the services;

(3) The individual incurs the main expenses related to the services that he or she performs under contract;

(4) The individual is responsible for the satisfactory completion of the services that he or she contracts to perform, and is liable for a failure to satisfactorily complete the services;

(5) The individual receives compensation for services performed under a contract on a commission or per-job or competitive-bid basis, and not any other basis;

(6) The individual may realize a profit or suffer a loss under contracts to perform services;

(7) The individual has recurring business liabilities or obligations;

(8) The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

For the period beginning on January 1, 2000, and ending on April 3, 2004, the two-part test does not apply. Rather the individual must meet seven of the 10 factors (under a. and b. above) relating to control of the business or services performed to be treated as an independent contractor.

Assembly Bill 668 would eliminate the sunset of the seven-factor test for determining if an individual would be treated as an independent contractor rather than as an employee under the unemployment insurance system. As a result, an individual would not be considered an employee if he or she met seven of the ten factors listed in a. and b. above.

Clarification of Provisions Related to Cessation of a Family Corporation. Under current law, base-period wages for benefit purposes are limited to 10 times the weekly benefit rate in certain cases where an individual is an employee of a family business. However, these provisions do not apply in certain circumstances where a family corporation ceases operations.

The bill would clarify the circumstances where the benefit reduction did not apply to include: (a) dissolution under laws in which the corporation was incorporated or organized; (b) filing of a petition in bankruptcy; and (c) filing of a petition in bankruptcy by all owners who are personally liable.

Definition of Child. Currently, "child" is not defined under the unemployment insurance law. Because the term has not been specifically defined to include stepchildren, the Labor and Industry Review Commission has indicated that stepchildren are not included as children for unemployment insurance purposes.

Assembly Bill 668 would define "child" as a natural child, adopted child, or stepchild. Including stepchild in the definition of child would affect a number of provisions including: (a) the treatment, for benefit and tax purposes, of the wages of stepchildren of nonresident aliens temporarily in the U. S.; (b) treating stepchildren and stepparents as members of family businesses; or (c) qualification for benefits after voluntary termination of employment because of domestic abuse or need for child care for a stepchild.

Administrative Provisions

Funding for Technology Development. The Division of Unemployment Insurance is implementing an unemployment insurance tax and accounting information technology system referred to as the unemployment insurance tax enterprise system (SUITES). The project involves redesigning and developing an unemployment insurance tax and accounting information technology system, including the development and implementation of a new system, and reengineering of automated processes and normal business functions. The sources for funding the system have included: (a) monies from unemployment interest and penalties; (b) federal unemployment insurance administration grants; (c) employer assessments; (d) payments from the Department of Revenue (DOR) for access to tax and accounting information; and (e) federal Reed Act funds. Reed Act funds are excess federal unemployment taxes from accounts in the federal unemployment trust

fund that are transferred to the states when the balances in the accounts exceed statutory limits. The transfers require special legislation and federal approval for each allocation. In addition, Congress authorized a special transfer of Reed Act funding to the states in 2002.

AB 668 would eliminate current specific statutory references to the unemployment tax and accounting system in unemployment insurance and appropriations provisions to allow unemployment insurance interest and penalty funds, federal unemployment administration, federal Reed Act funds, and employer assessments to be used generally to fund information technology systems, including the development and implementation of an information technology system for paying unemployment insurance benefits and processing appeals. The new information technology system, the enhanced automated benefits and legal enterprise system (EnABLES), would replace the current information technology hardware and software. The bill includes provisions that would specifically require federal Reed Act monies to be placed in the appropriation for federal funds for employment assistance and unemployment insurance administration, to be transferred to the appropriation for unemployment information technology systems, and to be used for administration of apprenticeship programs.

Administrative Assessment for Technology Development. Under current law, an administrative assessment is imposed on employers subject to contribution financing each year through 2003, to fund the costs of redesigning and developing the unemployment insurance tax and accounting information technology system, including development and implementation of a new system and reengineering of automated processes and normal business functions. Annual expenditure authority of approximately $4.7 million for technology development is provided through a separate appropriation for the assessment funds. The assessment equals 0.01% of the taxable payroll for the year, or the employer's solvency rate if the solvency rate is lower than 0.01%. DWD is required to reduce an employer's solvency rate by the assessment rate for each year, and the Department is authorized to reduce or eliminate the assessment in any year it determines that a reduced amount of funding would be sufficient to finance technology design and development. DWD cannot impose the assessment unless it publishes a public notice that the assessment was in effect for that year. The Department is also required to submit quarterly reports to the Council on Unemployment Insurance, which describe the use of funding for technology design and development, and the status of any projects for which the funding is expended.

AB 668 would extend authority to impose the administrative assessment through 2007. DWD would be required to publish notice of the assessment to be levied in 2004, within 60 days after the effective date of the bill. In addition, specific reference to an information technology tax and accounting system would be deleted to allow the funds to be used in general for renovation and modernization of unemployment insurance information technology systems, and specifically to fund a benefit payment and appeals processing system.

Transfer of Compensating Balances/Payment of Bank Fees. Currently, the costs of banking services related to unemployment insurance administration are paid from compensating balances that are maintained in bank accounts used to make daily transactions.

The bill would require the treasurer of the unemployment insurance reserve fund to estimate, at the end of each calendar quarter, the earnings rate that would be payable on the fund's bank balances, and the earnings rate that would be payable by the federal unemployment reserve fund for the following quarter. Based on these estimates, the treasurer would be required to pay the cost of banking services incurred by the state unemployment reserve fund either by maintaining compensating bank balances or by transferring the compensating balances to the federal unemployment reserve fund and paying the costs with federal unemployment administration monies, using whichever method would yield the highest net earnings to the state unemployment reserve fund. A separate appropriation would be created for federal unemployment insurance administration funds that would be used to pay bank service costs. The treasurer would be authorized to transfer federal administrative funds to this appropriation and to expend such funds for bank service costs. Any unencumbered balance in the appropriation that was not needed to pay bank service costs would have to be transferred to the employment assistance and unemployment insurance administration appropriation. In addition, funds transferred to the appropriation for bank service costs and Reed Act funds received from the special congressional allocation in 2002 would not be subject to a two-year limit on obligation that currently applies to other federal administrative funds.

Fraudulent Benefit Claims/Benefit Overpayments. Generally, under current law, if unemployment insurance benefits are erroneously paid to an individual, the individual's liability to reimburse the unemployment reserve fund for the overpayment of benefits may be established following the process used for benefit appeals. Benefit overpayments not otherwise repaid or waived may be offset against benefits the individual may otherwise be eligible to receive. DWD is authorized to use powers of levy and distraint to collect benefit overpayments. Also, under current law, any person who makes a false statement or representation in order to obtain benefits in the name of another person may, through proceedings for investigating false statements or misrepresentations, be required to repay the amount of the benefits obtained, and be subject to an administrative assessment of an additional amount of up to 50% of the amount of such benefits.

Assembly Bill 668 would make benefits obtained through a false statement or representation made in order to obtain the benefits in the name of another person and the related administrative assessment subject to current law provisions governing the collection of benefit overpayments, including the use of powers of levy and distraint. These imposter benefit overpayments and related penalty assessments would be written off upon receipt by DWD of information that reasonable efforts were made to recover them and the amount due was uncollectible. The bill would also authorize DWD to recoup benefit overpayments, rather than offset them against future benefit payments. These changes would subject imposter overpayments and penalties to the general collection procedure for overpayments. In addition, the changes would increase the chances for collecting benefit overpayments and penalty assessments in certain bankruptcy proceedings.

Late Appeals. Under current law, if a party files a late appeal of a hearing determination, DWD is authorized to schedule a hearing concerning whether the late filing was for a reason

beyond the party's control. The Department is also authorized to provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, an appeal tribunal finds that the party's failure to file a timely appeal was not for a reason beyond the party's control, the appeal tribunal is required to issue a decision with this finding and to dismiss the appeal. If, after hearing testimony, the appeal tribunal finds that the party's failure to file a timely appeal was for a reason beyond the party's control, the tribunal is required to issue a decision with this finding. Subsequently, an appeal tribunal is required to conduct a hearing and issue a decision concerning any manner in the determination.

Assembly Bill 668 includes provisions that authorize an administrative law judge to review a party's reasons for filing a late appeal before deciding if a hearing is necessary. Specifically, the bill provides that an appeal tribunal would be authorized to review the appellant's written reasons for filing a 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 could dismiss the appeal without a hearing and issue a decision accordingly. Otherwise DWD could schedule a hearing concerning whether the late filing was beyond the appellant's control, and could also provisionally schedule a hearing concerning any matter in the determination being appealed. After hearing testimony on the late appeal question, the appeal tribunal would be required to issue a decision that made the ultimate findings of fact and conclusions of law concerning whether the appellant's appeal was filed late for a reason that was beyond the appellant's control and that, 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, an appeal tribunal established by DWD for this purpose, after conducting a hearing, would have to issue a decision concerning any matter in the determination.

Eliminate Partial Successorship. A successor transaction involves the transfer from one employer account to another the positive or negative reserve fund balance, rate experience factors, future benefit liability, and, possibly, the unpaid tax liability of the former employer. Current law provides for successorship in a number of business transfers. If a business is transferred to a single transferee, the transferee is deemed a successor if:

a. The transferee continues or resumes the business of the transferor, with substantially the same employees.

b. The transferor includes 100% of its total business on the date of transfer.

c. The same unemployment insurance benefit financing provisions apply to the transferee.

d. DWD receives a written application from the transferee requesting it be deemed a successor.

A transferee is also considered a successor business if the transferee is a legal representative or trustee in bankruptcy or receiver or trustee, or guardian of an estate, or legal representative of a deceased person, and a. through c. apply. Finally, a transferee is deemed a successor if, at the time of business transfer, the transferor and transferee are owned or controlled, in whole or in substantial part, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, including the spouse, child, or parent of the individual who owned or controlled the business, or any combination of more than one of them. Again, a. through c. would also apply.

Current law specifies that the successor must take over and continue the transferor's unemployment reserve fund account, including its negative balance and all other aspects of its experience. In cases where the transfer includes less than 100% of the transferor's total assets on the date of the transfer, DWD is required to allocate the transferor's experience to the successor in proportion to the payroll assignable to the transferred business and the liability of the successor is proportioned relative to the extent of the transferred business.

Assembly Bill 668 would delete the requirements that 100% of the transferor's total business must be transferred for the transferee to be deemed a successor in cases where: (a) the transferee is a legal representative or trustee in bankruptcy, guardian of an estate, or legal representative of a deceased person; and (b) the transferor and transferee are controlled by family members. The bill would also modify current provisions to specify that if a business is transferred, the transferee may be deemed a successor if at least 25% (rather than 100%) of the transferor's total business is transferred, as measured by comparing the payroll experience assignable to the portion of the business transferred with the transferor's total payroll experience for the last four completed calendar quarters immediately preceding the date of the transfer. Under the bill, the successor would assume the transferor's account, including positive and negative balance and other aspects of its experience, in proportion to the payroll assignable to transferred business, and the liability of the successor would be proportioned to the extent of the transferred business. These modifications would permit the transfer of part of a business' reserve fund balance in cases where the business is transferred.

Payment of Fees for Satisfaction of Warrants. Under current law, the Department is authorized to file a warrant with the clerk of courts in cases where an employing unit fails to pay amounts due to the Department. The clerk is required to enter each warrant in the judgment and lien docket without any prepayment of fee. Instead, the fees are paid semiannually, unless a different billing period is agreed to between the clerk of the circuit court and the Department. When all amounts due are paid to DWD, the Department files a satisfaction of the warrant with the clerk and pays the filing fee at that time. The bill would allow DWD to pay filing fees for voiding, satisfaction, or release of warrants in the same manner as it pays fees for filing warrants (biennially or in an agreed upon manner).

Duration of Levy. Under current law, DWD can impose a levy to collect delinquent unemployment insurance taxes and overpaid benefits. A levy is effective from the date on which the levy is first served on the third party until the earlier of when the liability out of which the levy

arose is satisfied, the levy is released, or one year from the date of service. The bill would modify current law provisions to permit the levy to continue until it is satisfied or released.

Wages Exempt from Levy. Current law provides that, in the case of benefit overpayments or forfeitures imposed on an employing unit for aiding a claimant in a fraudulent benefit claim, an individual debtor is entitled to an exemption from levy of the greater of the following:

a. A subsistence allowance of 75% of the debtor's disposable earnings then due and owing;

b. An amount equal to 30 times the federal minimum hourly wage for each full week of the debtor's pay period; or

c. In the case of earnings for a period other than a week, a subsistence allowance computed so that that it is equivalent to 30 times the federal minimum hourly wage for each full week of the debtor's pay period, using a multiple of the federal minimum hourly wage prescribed by rule by DWD.

Assembly Bill 668 would modify the wage exemption from levy provisions to specify that the current law provisions would only apply to forfeitures imposed on employing units. New provisions would apply to benefit overpayments. In the case of benefit overpayments, an individual debtor would be entitled to an exemption from levy of 80% of the debtor's disposable earnings except that:

a. A debtor's disposable earnings would be totally exempt from the levy if the debtor's wages were below the federal poverty level established for a household that was the size of the debtor's, or the levy would cause such a result. DWD would be required, by rule, to prescribe a methodology for determining the exemption applicable in these cases.

b. Upon petition by a debtor that demonstrated hardship, the Department could increase the portion of the debtor's disposable earnings that were exempt from the levy.

c. The Department could decrease or eliminate the exemption from levy if a final determination was issued or a judgment was entered concerning the amount owed in which the debtor was found guilty of making a false statement or representation to obtain benefits, and the benefits or any related assessment had not been paid or reimbursed at the time the levy was issued

Repeal Rule Making Requirements. Under the provisions of 2001 Wisconsin Act 35, DWD was required to submit proposed rules to the Legislative Counsel by December 1, 2002, that would:

a. Establish a specified level of repeated absenteeism or repeated tardiness that constitutes misconduct so that it would be subject to discharge for misconduct provisions.

b. Specify, in accordance with applicable administrative and judicial interpretations, what constitutes an establishment for purposes of determining a disqualification from receiving unemployment insurance benefits because of a labor dispute in an establishment in which an individual was employed.

Assembly Bill 668 would repeal these provisions.

Effective and Applicability Dates. Provisions related to the use of appropriation balances to pay bank fees and the use of federal unemployment administration and Reed Act funds would first apply to the first calendar quarter beginning after the effective date of the bill. The modifications to provisions related to timely filing of late appeals would first apply with respect to determinations issued on December 29, 2003. Bill provisions concerning sucessorship in business transfers would first apply to transfers of businesses occurring after December 31, 2003. Finally, provisions related to work search, approved training, collection of benefit overpayments, levies, and satisfaction of warrants would first apply on the effective date of the bill.

The bill would take effect on the first Sunday after publication.

FISCAL EFFECT

Transfer of Compensating Balances/Payment of Bank Fees. Under current law, banking service costs related to unemployment insurance administration are paid from compensating balances that are maintained in bank accounts used to make daily transactions.

Assembly Bill 668 would allow the treasurer of the unemployment reserve fund to transfer these compensating balances to the federal unemployment reserve fund if the net return to the state was higher. A separate, continuing FED appropriation would be created to pay the bank fees when the compensating balances were transferred. The source of funding for the appropriation would be federal unemployment insurance administration and Reed Act funds. In the fiscal estimate to AB 668, DWD indicates that approximately $72 million in compensating balances would be transferred to the federal unemployment reserve fund. Based on the formula used by the federal government in computing interest, it is estimated that an additional $4.3 million would be earned annually. The amount of funding necessary to pay bank fees would be $800,000 annually, and would be paid through the FED appropriation created by the bill for that purpose.

Funding for Unemployment Insurance Technology Systems. DWD is currently implementing an unemployment insurance tax and accounting information technology system. Funding is provided by interest and penalty payments transferred to a separate continuing program revenue tax and accounting system appropriation and by federal unemployment insurance administration and Reed Act monies transferred to a continuing FED tax and accounting system appropriation. AB 668 would modify current law provisions to permit this funding to also be used for development and implementation of an unemployment insurance benefits and appeals information technology

system. The bill would provide annual expenditure authority of $430,200 PR for the interest and penalty appropriation and $2.5 million FED for the federal funding appropriation in 2003-04 and 2004-05.

Administrative Assessment for Technology Development. Under current law, an administrative assessment equal to 0.01% of taxable payroll for the year is imposed on employers subject to contribution financing. The assessments are placed in a continuing program revenue appropriation and used to fund development and implementation of the unemployment insurance tax and accounting system. Annual expenditure authority of $4,689,500 PR is provided. AB 668 would extend the administrative assessment through 2007, and allow the funds to also be used to develop an unemployment insurance benefit and appeals processing information technology system. DWD estimates extending the assessment would generate $2.3 million in each year of the biennium.

Approved Training. Assembly Bill 668 would provide an exclusion from disqualification from receiving benefits and requalification requirements for individuals who meet certain conditions and participate in training programs for dislocated workers under the federal Workforce Investment Act of 1998. In part, these changes were made in response to a court ruling that overturned disqualification for voluntary termination of employment of a laid-off individual who paid for training, was authorized to receive federal training funds, and took and then quit a short-term job to reenter training. These provisions along with the court ruling would increase annual benefit payments by an estimated $900,000. However, the payments would be charged to the balancing account of the unemployment reserve fund and would not affect employer tax rates.

In addition, the bill would permit individuals to participate in approved training on less than a full-time basis. Consequently, DWD estimates that annual unemployment insurance benefit payments would increase by $1.0 million.

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