

To: Unemployment Insurance Advisory Council
From: Andy Rubsam
Cc: Janell Knutson
Date: September 17, 2015
Re: 2015 WI Act 55 (the Budget) – Unemployment Insurance Provisions

Testing Claimants for Use of Controlled Substances

Federal law permits states to require an unemployment insurance claimant to submit to a test for the unlawful use of controlled substances as a condition of receiving unemployment insurance under two circumstances.¹

First, states may test claimants who were terminated from employment with their most recent employer because of the use of controlled substances. Currently, under Wisconsin Law, a claimant who is terminated for the use of controlled substances may be disqualified for unemployment benefits if the use of controlled substances is found to be misconduct.²

Second, a state may test an unemployment insurance benefit claimant for whom suitable work is *only* available in an occupation that regularly conducts drug testing. The US Department of Labor (“USDOL”) will determine, by regulations that are not yet final, which occupations regularly conduct drug testing.

The 2015-2017 Budget requires the Department to establish, by administrative rules, a program to require certain claimants to submit to tests for the unlawful use of controlled substances. When a claimant applies for unemployment insurance benefits, the Department will determine whether the claimant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.

If the claimant’s only suitable work is in an occupation that regularly conducts drug testing, the Department must screen the applicant in order to determine whether the claimant should be required to submit to a test for controlled substances. If the screening shows that the claimant should be required to submit to the controlled substances test, the claimant must submit to the test. The test for controlled substances must comply with the federal Substance Abuse and Mental Health Services Administration (“SAMHSA”) testing guidelines. Under the Budget, the

¹ 42 USC § 503(l).

² Wis. Stat. § 108.04(5). Courts have found misconduct for violations of policies prohibiting off-duty drug use where the employer has established a valid business interest that is served by such policy. *White v. LIRC and Stoughton Trailers, Inc.*, No. 90-CV-5006 (Wis. Cir. Ct. Dane County Nov. 24, 1991) (available at http://dwd.wisconsin.gov/lirc/ucdg_s_z.htm#Dale A. White).

term “controlled substance” is defined as it is under federal law, which “does not include distilled spirits, wine, malt beverages, or tobacco.”³

If the test is negative for controlled substances, the claimant may be entitled to unemployment benefits if the claimant is otherwise eligible, without further testing. If the test is positive for a controlled substance but the claimant has a valid prescription for the controlled substance, the claimant may be entitled to benefits if the claimant is otherwise eligible.

If the claimant refuses to submit to the test for controlled substances, the claimant is ineligible for benefits for a period of time or until they requalify, or both, which will be determined by the Department by rule.

If the test is positive for a controlled substance for which the claimant does not have a valid prescription, the claimant is ineligible for benefits for a period of time or until they requalify, or both, which will be determined by the Department by rule. But a claimant who tests positive for a controlled substance (for which the claimant does not have a valid prescription) may maintain eligibility for unemployment insurance benefits for each week in which the claimant enrolls in a state-sponsored substance abuse treatment program *and* undergoes a state-sponsored job skills assessment.

The Budget requires the Department, by administrative rule, to “create a screening process for determining whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances,” “identify a process for testing claimants for the presence of controlled substances,” “identify the parameters for a substance abuse treatment program,” “identify the parameters for a job skills assessment for claimants who misuse controlled substances” and “identify a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for a claimant to again qualify for benefits after becoming ineligible for benefits.”

The Budget directs the Department, by administrative rule, to identify occupations for which drug testing is regularly conducted in Wisconsin. The Budget also defines “occupation that regularly conducts drug testing” as that term is defined by USDOL regulations. The USDOL has not yet promulgated its final regulations of the occupations that regularly conduct drug testing. The USDOL has issued a *proposed* list of occupations that regularly conduct drug testing, which are:⁴

- a) An occupation that requires the employee to carry a firearm;
- b) An occupation identified in 14 CFR 120.105 (as in effect on October 9, 2014) by the Federal Aviation Administration, in which the employee must be tested (Aviation flight crew members and air traffic controllers);

³ 21 USC § 802(6).

⁴ Proposed 20 CFR § 620.3. This list of occupations in the proposed federal regulations is *not* yet final.

- c) An occupation identified in 49 CFR 382.103 (as in effect on October 9, 2014) by the Federal Motor Carrier Safety Administration, in which the employee must be tested (Commercial drivers);
- d) An occupation identified in 49 CFR 219.3 (as in effect on October 9, 2014) by the Federal Railroad Administration, in which the employee must be tested (Railroad operating crew members);
- e) An occupation identified in 49 CFR 655.3 (as in effect on October 9, 2014) by the Federal Transit Administration, in which the employee must be tested (Public transportation operators);
- f) An occupation identified in 49 CFR 199.2 (as in effect on October 9, 2014) by the Pipeline and Hazardous Materials Safety Administration, in which the employee must be tested (Pipeline operation and maintenance crew members);
- g) An occupation identified in 46 CFR 16.201 (as in effect on October 9, 2014) by the United States Coast Guard, in which the employee must be tested (Crewmembers and maritime credential holders on a commercial vessel);
- h) An occupation specifically identified as requiring an employee to be tested for controlled substances in a State law that took effect no later than October 9, 2014, and still remains in effect.

Pre-Employment Drug Testing

The Budget permits employers to *voluntarily* submit to the Department the results of a test for controlled substances that was conducted as a pre-employment screening. The Budget also permits employers to inform the Department that an individual refused to take a pre-employment test for controlled substances.

If the individual tests positive for controlled substances (and lacks a valid prescription for the drug) or if the individual refuses to take the test, there is a rebuttable presumption that the claimant refused to accept an offer of suitable work.

If an employer reports that an individual refused to submit to a test for controlled substances as part of a pre-employment screening, the claimant is ineligible for benefits for a period of time or until they requalify, or both, which will be determined by the Department by rule.

If an employer reports that an individual tested positive for a controlled substance for which the claimant does not have a valid prescription as part of a pre-employment screening, the claimant is ineligible for benefits for a period of time or until they requalify, or both, which will be determined by the Department by rule.

Like claimants whose only suitable work is in an occupation that regularly conducts drug testing, a claimant who tests positive for a controlled substance as part of a pre-employment screening (without a valid prescription) may maintain eligibility for unemployment insurance benefits for each week in which the claimant enrolls in a state-sponsored substance abuse treatment program *and* undergoes a state-sponsored job skills assessment.

The Budget provides that the provisions related to controlled substances testing, including the voluntary reporting of pre-employment testing by employers, are not effective until the administrative rules related to those provisions take effect.

Increased Civil Penalty for Fraud

Federal law requires states to assess a minimum civil penalty against claimants who commit unemployment insurance benefit fraud. Pursuant to the federal mandate, Wisconsin enacted 2011 Act 236, which imposed the minimum civil penalty of 15% of the amount of benefits obtained by fraud. *See* Wis. Stat. § 108.04(11)(bh).

The Budget increased the civil penalty to 40% of the amount of the fraudulently obtained benefits. The amount of the civil penalty that is 15% of the amount of fraudulently obtained benefits is deposited into the trust fund and the amount of the civil penalty that is 25% of the amount of fraudulently obtained benefits will be deposited into the program integrity fund.

The increased civil penalty will be effective for overpayments established on or after October 3, 2015.

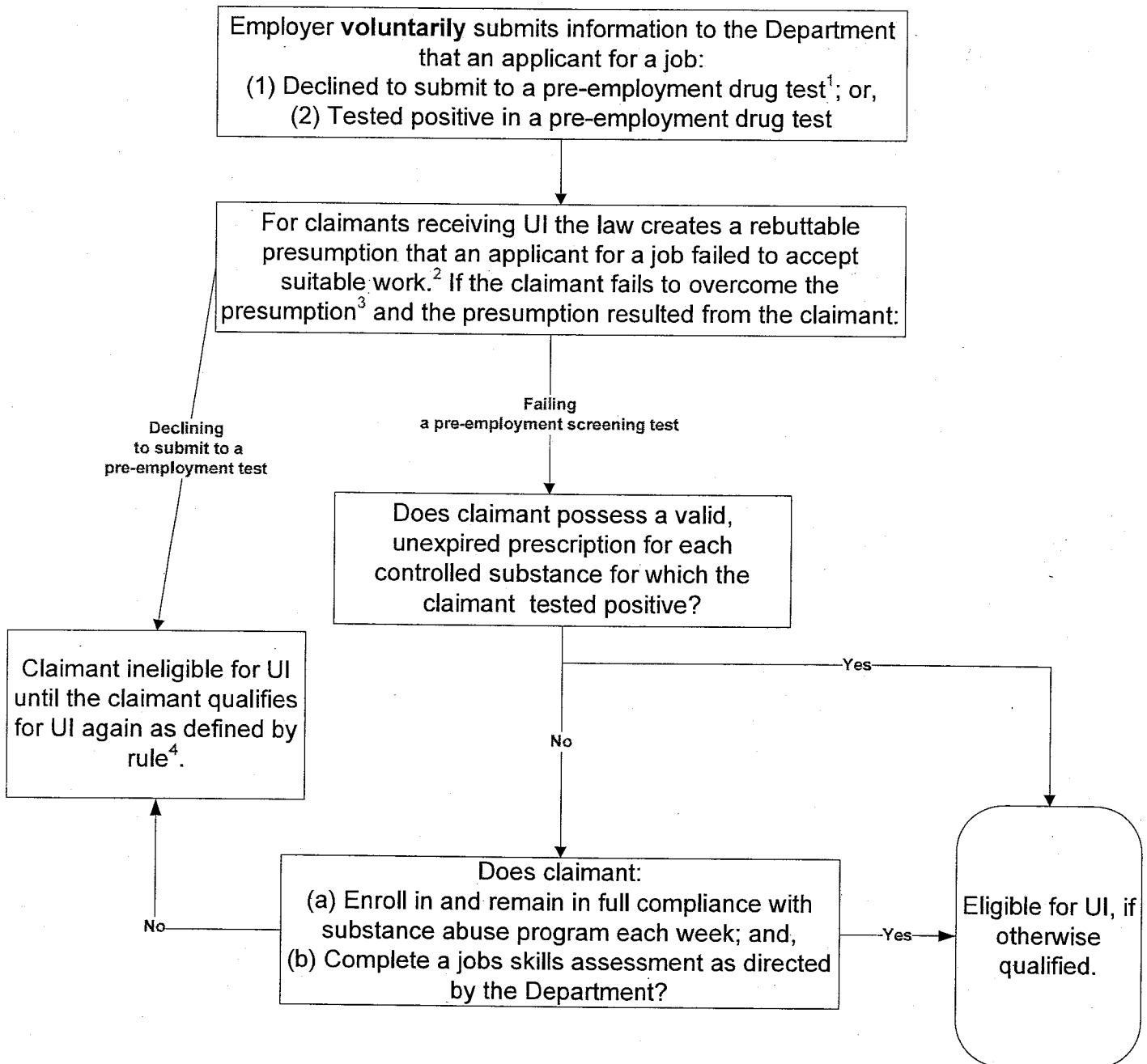
The draft Budget proposed increased criminal penalties for unemployment insurance fraud but the proposed increased criminal penalties were not part of the final Budget.

Definition of Suitable Work

Current law defines “suitable work” as “work that is reasonable considering the claimant’s training, experience, and duration of unemployment as well as the availability of jobs in the labor market.” Wis. Admin. Code § DWD 100.02(61). The Budget directs the Department to amend the definition of “suitable work” by administrative rule to “specify different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year.” The revised definition of “suitable work” will not “affect the ability of an employee to fail to accept suitable work” during the six-week canvassing period.

The definition of “suitable work” in the administrative code will be effective when the rule is promulgated. The Department has not yet submitted a scope statement regarding the definition of “suitable work.”

2015 Act 55
Employers Voluntary
Submittal of Pre-Employment Drug Test Screening Information



1. Pre-employment drug test to be used by the Department must be conducted in accordance with rules promulgated by the Department

2. The Employer must withdraw the offer because of either the claimant:

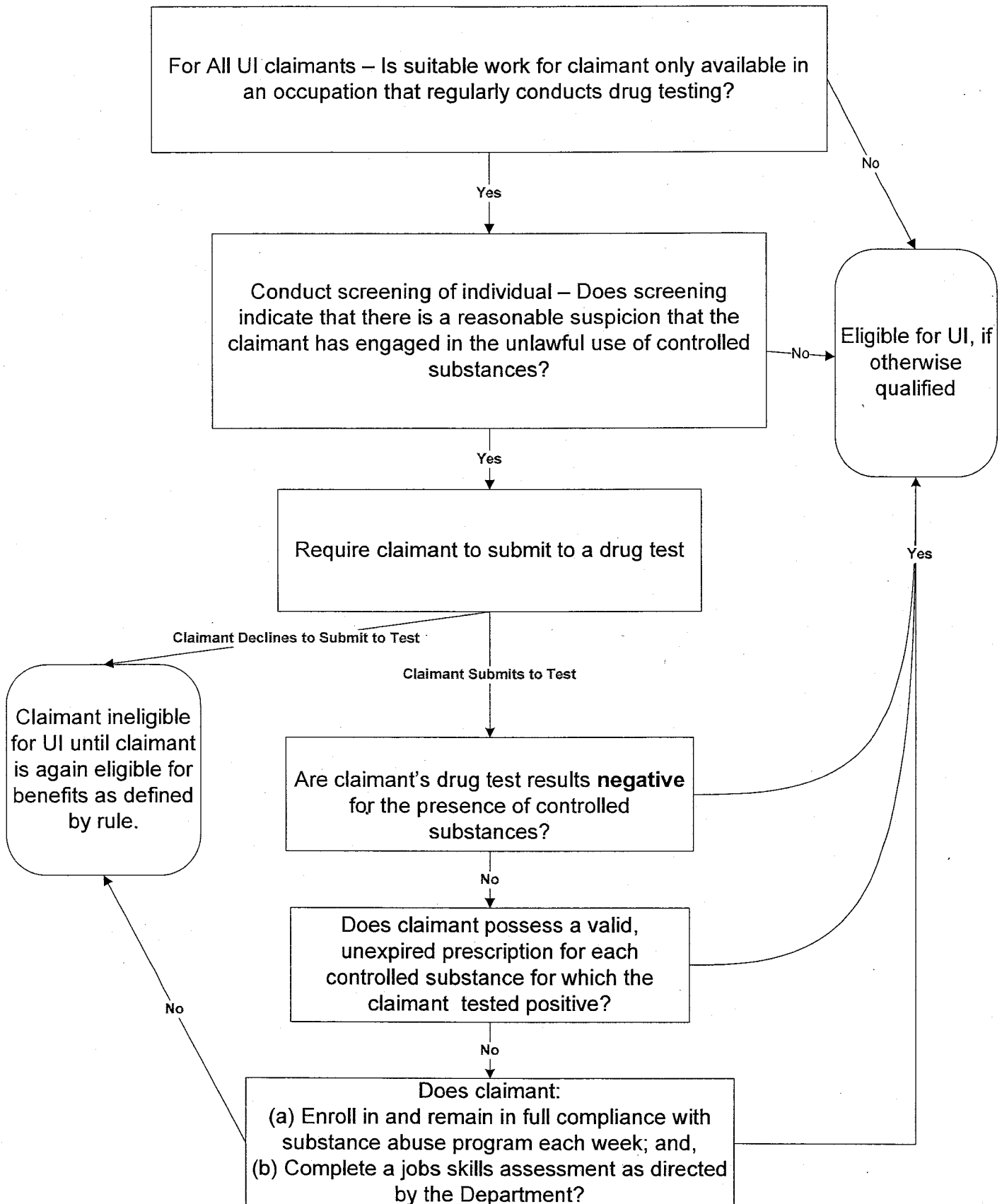
- (a) Declining to submit to a pre-employment test; or,
- (b) Failing a pre-employment screening test.

3. Department shall promulgate rules specifying how a claimant may overcome the presumption.

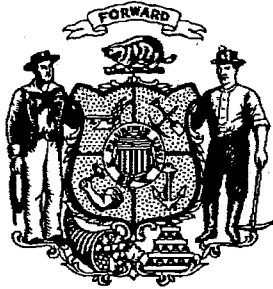
4. Department shall promulgate rules specifying the ineligibility period/requalification requirement.

2015 Act 55

Process for Department to Drug Test UI Claimants



State of Wisconsin



2015 Senate Bill 21

Date of enactment: July 12, 2015
Date of publication*: July 13, 2015

2015 WISCONSIN ACT 55

(Vetoed in Part)

AN ACT; relating to: state finances and appropriations, constituting the executive budget act of the 2015 legislature.

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

SECTION 2. 5.15 (1) (c) of the statutes is amended to read:

5.15 (1) (c) The wards established by municipal governing bodies in a division ordinance or resolution enacted or adopted under this section shall govern the adjustment of supervisory districts under s. 59.10 (2) (a) and (3) (b) and of aldermanic districts under s. 62.08 (1) for the purpose of local elections beginning on January 1 of the 2nd year commencing after the year of the census until revised under this section on the basis of the results of the next decennial census of population unless adjusted under sub. (2) (f) 4. or 5., (6) (a), or (7), or unless a division is required to effect an act of the legislature redistricting legislative districts under article IV, section 3, of the constitution or redistricting congressional districts. The populations of wards under each decennial ward division shall be determined on the basis of the federal decennial census and any official corrections to the census issued on or before the date of adoption of the division ordinance or resolution to reflect the correct populations of the municipality and the blocks within the municipality on April 1 of the year of the census.

SECTION 3. 5.15 (2) (f) 5. of the statutes is created to read:

5.15 (2) (f) 5. Territory that lies between an actual municipal boundary that existed on April 1 of the year of a federal decennial census and an intersecting municipal boundary that deviates from the actual municipal boundary on that date if the deviating boundary was used by the U.S. bureau of the census to enumerate the population of the municipality in that census.

SECTION 4. 5.15 (4) (b) of the statutes is amended to read:

5.15 (4) (b) Within 5 days after adoption or enactment of an ordinance or resolution under this section or any amendment thereto, the municipal clerk shall transmit one copy of the ordinance or resolution or the amendment to the county clerk of each county in which the municipality is contained, accompanied by the list and map specified in par. (a). ~~If the population of the municipality exceeds 10,000, the municipal clerk shall furnish one copy to the legislative reference bureau at the same time.~~ Each copy shall identify the name of the municipality and the county or counties in which it is located.

SECTION 5. 5.15 (4) (bg) of the statutes is created to read:

5.15 (4) (bg) No later than October 15 of each year following the year of a federal decennial census, each municipal clerk shall file a report with the county clerk of each county in which the municipality is contained confirming the boundaries of the municipality and of all wards in the municipality. The report shall be accompa-

* Section 991.11, WISCONSIN STATUTES: 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."

45.435 (1) (a) "Disabled veteran" means a veteran who is verified by the department of veterans affairs to have a service-connected disability rating of at least 50 percent under 38 USC 1114 or 1134.

SECTION 3100. 106.32 (1) (b) and (c) of the statutes are renumbered 45.435 (1) (b) and (c).

SECTION 3101. 106.32 (1) (d) of the statutes is repealed.

SECTION 3102. 106.32 (2) of the statutes is renumbered 45.435 (2), and 45.435 (2) (a) (intro.), as renumbered, is amended to read:

45.435 (2) (a) (intro.) ~~Beginning on July 2, 2013, from From~~ the appropriation account under s. 20.445 (1) 20.485 (2) (q), the department shall award a grant in any of the following amounts to any person who hires a disabled veteran to work at a business in this state:

SECTION 3103. 106.32 (3) of the statutes is renumbered 45.435 (3), and 45.435 (3) (b), as renumbered, is amended to read:

45.435 (3) (b) The department shall pay a grant under this section only for hiring a disabled veteran who has received unemployment compensation insurance benefits for at least one week prior to being hired by the applicant, who was receiving such benefits at the time that he or she was hired by the applicant, and who was eligible to receive such benefits at the time the benefits were paid.

SECTION 3104e. 106.36 of the statutes is created to read:

106.36 Offender reentry initiative. (1) In this section, "offender" has the meaning given in 29 USC 3102 (38).

(2) The department shall align its workforce development activities under the federal Workforce Innovation and Opportunity Act, 29 USC 3101 to 3361, with the department of corrections' initiatives to reintegrate offenders into the community by doing all of the following:

(a) Training staff of the department of corrections in the use of assessment tools to assess the educational and vocational needs and skills of offenders who are incarcerated.

(b) Providing in its guidelines for the development of local plans under 29 USC 3123 a specific requirement that local workforce development boards established under 29 USC 3122 outline in their local plans how they will work with local and statewide offender reentry initiatives supported by the department of corrections.

(c) Appointing a representative of the department of corrections to serve on any subcommittee of the state workforce development board established under 29 USC 3111 that is responsible for the planning and operation of, and other issues relating to, the state workforce development system to ensure that workforce development programs made available through that system provide workforce development activities serving offenders.

(d) Integrating offender reentry initiatives supported by the department of corrections with the job center network under s. 106.14 (1) to ensure that offenders are aware of the comprehensive career planning, job placement, job training, and other resources available to them through the job center network.

SECTION 3105. 106.52 (1) (d) 1. of the statutes is amended to read:

106.52 (1) (d) 1. A bed and breakfast establishment, as defined in s. 254.61 (4) 97.01 (1g).

SECTION 3106. 106.52 (1) (d) 2. of the statutes is amended to read:

106.52 (1) (d) 2. A hotel, as defined in s. 254.61 (3) 97.01 (7).

SECTION 3107. 106.52 (1) (d) 3. of the statutes is amended to read:

106.52 (1) (d) 3. A tourist rooming house, as defined in s. 254.61 (6) 97.01 (15k).

SECTION 3110. 108.02 (24g) of the statutes is created to read:

108.02 (24g) SUITABLE WORK. "Suitable work" has the meaning specified by the department by rule under s. 108.14 (27).

SECTION 3111. 108.04 (8) (a) of the statutes is amended to read:

108.04 (8) (a) ~~If Except as provided in par. (b), if an~~ employee fails, without good cause, to accept suitable work when offered, the employee is ineligible to receive benefits until the employee earns wages after the week in which the failure occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the failure not occurred. This paragraph does not preclude an employee from establishing a benefit year during a period in which the employee is ineligible to receive benefits under this paragraph if the employee qualifies to establish a benefit year under s. 108.06 (2) (a). ~~The Except as provided in par. (b), the~~ department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to accept suitable work offered by that employer.

SECTION 3112. 108.04 (8) (b) of the statutes is created to read:

108.04 (8) (b) There is a rebuttable presumption that an employee has failed, without good cause, to accept suitable work when offered if the department determines, based on a report submitted by an employing unit in accordance with s. 108.133 (4), that the employing unit required, as a condition of an offer of employment, that

the employee submit to a test for the presence of controlled substances and withdrew the conditional offer after the employee either declined to submit to such a test or tested positive for one or more controlled substances without evidence of a valid prescription for each controlled substance for which the employee tested positive. In the case of the employee declining to submit to such a test, the employee shall be ineligible for benefits until the employee again qualifies for benefits in accordance with the rules promulgated under this paragraph. In the case of the employee testing positive in such a test without evidence of a valid prescription, the employee shall be ineligible for benefits until the employee again qualifies for benefits in accordance with the rules promulgated under this paragraph, except that the employee may maintain his or her eligibility for benefits in same manner as is provided in s. 108.133 (3) (d). The department shall promulgate rules identifying a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for an employee who becomes ineligible for benefits as provided in this paragraph to again qualify for benefits and specifying how a claimant may overcome the presumption in this paragraph. The department shall charge to the fund's balancing account any benefits otherwise chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee of that employer fails, without good cause, to accept suitable work as described in this paragraph.

SECTION 3113. 108.04 (11) (bh) of the statutes is amended to read:

108.04 (11) (bh) In addition to ineligibility for benefits resulting from concealment as provided in par. (be), the department shall assess a penalty against the claimant in an amount equal to ~~45~~ 40 percent of the benefit payments erroneously paid to the claimant as a result of one or more acts of concealment described in pars. (a) and (b).

SECTION 3115. 108.133 of the statutes is created to read:

108.133 Testing for controlled substances. (1) DEFINITIONS. In this section:

(a) Notwithstanding s. 108.02 (9), "controlled substance" has the meaning given in 21 USC 802.

(b) "Job skills assessment" means an assessment conducted by the department under sub. (2) (d).

(c) "Occupation that regularly conducts drug testing" means an occupation identified in the regulations issued by the federal secretary of labor under 42 USC 503 (l) (1) (A) (ii).

(d) "Screening" means the screening process created by the department under sub. (2) (a) 3.

(e) "Substance abuse treatment program" means the program provided under sub. (2) (c).

(f) "Valid prescription" means a prescription, as defined in s. 450.01 (19), for a controlled substance that has not expired.

(2) **DRUG TESTING PROGRAM.** The department shall establish a program to test claimants who apply for regular benefits under this chapter for the presence of controlled substances in accordance with this section and shall, under the program, do all of the following:

(a) Promulgate rules to establish the program. The department shall do all of the following in the rules promulgated under this paragraph:

1. Identify a process for testing claimants for the presence of controlled substances. The department shall ensure that the process adheres to any applicable federal requirements regarding drug testing.

2. Identify the parameters for a substance abuse treatment program for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with requirements of the substance abuse treatment program. If the rules require that a claimant enrolled in the substance abuse treatment program submit to additional tests for the presence of controlled substances following the initial test conducted under sub. (3) (c), the rules shall allow the claimant to have at least one more positive test result following the initial test without, on that basis, being considered not to be in full compliance with the requirements of the substance abuse treatment program.

3. Create a screening process for determining whether there is a reasonable suspicion that a claimant has engaged in the unlawful use of controlled substances.

4. Identify the parameters for a job skills assessment for claimants who engage in the unlawful use of controlled substances and specify criteria that a claimant must satisfy in order to be considered in full compliance with the requirements of the job skills assessment.

5. Identify a period of ineligibility that must elapse or a requalification requirement that must be satisfied, or both, in order for a claimant to again qualify for benefits after becoming ineligible for benefits under sub. (3) (a) or (c).

(am) Promulgate rules identifying occupations for which drug testing is regularly conducted in this state. The department shall notify the U.S. department of labor of any rules promulgated under this paragraph.

(b) When a claimant applies for regular benefits under this chapter, do all of the following:

1. Determine whether the claimant is an individual for whom suitable work is only available in an occupation that regularly conducts drug testing.

2. Determine whether the claimant is an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am).

3. If the claimant is determined by the department under subd. 1. to be an individual for whom suitable work is only available in an occupation that regularly conducts drug testing, conduct a screening on the claimant.

4. If the claimant is determined by the department under subd. 2. to be an individual for whom suitable work is only available in an occupation identified in the rules promulgated under par. (am), conduct a screening on the claimant if a screening is not already required under subd. 3.

5. If a screening conducted as required under subd. 3. or 4. indicates a reasonable suspicion that the claimant has engaged in the unlawful use of controlled substances, require that the claimant submit to a test for the presence of controlled substances.

(c) Create and provide, or contract with an entity or another agency to provide, a substance abuse treatment program in accordance with the rules promulgated under par. (a) 2.

(d) Create and conduct job skills assessments in accordance with the rules promulgated under par. (a) 4.

(3) DRUG TESTING; SUBSTANCE ABUSE TREATMENT. (a) If a claimant is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances and the claimant declines to submit to such a test, the claimant is ineligible for benefits under this chapter until the claimant is again eligible for benefits as provided in the rules promulgated under sub. (2) (a) 5.

(b) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and does not test positive for any controlled substance or the claimant presents evidence satisfactory to the department that the claimant possesses a valid prescription for each controlled substance for which the claimant tests positive, the claimant may receive benefits under this chapter if otherwise eligible and may not be required to submit to any further test for the presence of controlled substances until a subsequent benefit year.

(c) If a claimant who is required under sub. (2) (b) 5. to submit to a test for the presence of controlled substances submits to the test and tests positive for one or more controlled substances without presenting evidence satisfactory to the department that the claimant possesses a valid prescription for each controlled substance for which the claimant tested positive, the claimant is ineligible for benefits under this chapter until the claimant is again eligible for benefits as provided in the rules promulgated under sub. (2) (a) 5., except as provided in par. (d).

(d) A claimant who tests positive for one or more controlled substances without presenting evidence of a valid prescription as described in par. (c) may maintain his or her eligibility for benefits under this chapter by enrolling in the substance abuse treatment program and undergoing a job skills assessment. Such a claimant remains eligible for benefits under this chapter, if otherwise eligible, for each week the claimant is in full compliance with any requirements of the substance abuse treatment program and job skills assessment, as deter-

mined by the department in accordance with the rules promulgated under sub. (2) (a) 2. and 4.

(e) All information relating to a claimant's enrollment in the substance abuse treatment program shall, subject to and in accordance with any rules promulgated by the department, be confidential and not subject to the right of inspection or copying under s. 19.35 (1).

(f) 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).

(4) PREEMPLOYMENT DRUG TESTING. (a) An employing unit may, in accordance with the rules promulgated by the department under par. (b), voluntarily submit to the department the results of a test for the presence of controlled substances that was conducted on an individual as a condition of an offer of employment or notify the department that an individual declined to submit to such a test, along with information necessary to identify the individual. Upon receipt of any such results of a test conducted and certified in a manner approved by the department or notification that an individual declined to submit to such a test, the department shall determine whether the individual is a claimant receiving benefits. If the individual is a claimant receiving benefits, the department shall, in accordance with rules promulgated by the department under par. (b), use that information for purposes of determining eligibility for benefits under s. 108.04 (8) (b).

(b) The department shall promulgate rules necessary to implement par. (a).

(5) APPLICATION OF THIS SECTION. (a) Notwithstanding subs. (2) (b) 1., 3., and 5., (c), and (d) and (3), subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) do not apply until the rules required under sub. (2) (a) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which subs. (2) (b) 1., 3., and 5., (c), and (d) and (3) will be implemented.

(b) Notwithstanding sub. (2) (b) 2. and 4., sub. (2) (b) 2. and 4. do not apply until the rules required under sub. (2) (am) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which sub. (2) (b) 2. and 4. will be implemented.

(c) Notwithstanding sub. (4) (a) and s. 108.04 (8) (b), sub. (4) (a) and s. 108.04 (8) (b) do not apply until the rules required under sub. (4) (b) take effect. The department shall submit to the legislative reference bureau for publication in the Wisconsin administrative register a notice identifying the date on which sub. (4) (a) and s. 108.04 (8) (b) will be implemented.

(d) The secretary may waive compliance with any provision under this section and s. 108.04 (8) (b) if the secretary determines that waiver of the provision is nec-

essary to permit continued certification of this chapter for grants to this state under Title III of the federal Social Security Act or for maximum credit allowances to employers under the federal Unemployment Tax Act.

SECTION 3116. 108.14 (8n) (e) of the statutes is amended to read:

108.14 (8n) (e) The department shall charge this state's share of any benefits paid under this subsection to the account of each employer by which the employee claiming benefits was employed in the applicable base period, in proportion to the total amount of wages he or she earned from each employer in the base period, except that if s. 108.04 (1) (f), (5), (7) (a), (c), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b), 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such an employer who is subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on employment with that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied to an employer that is not subject to the contribution requirements of ss. 108.17 and 108.18, the department shall charge the share of benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the fund's balancing account with any other state's share of such benefits pending reimbursement by that state.

SECTION 3117. 108.14 (27) of the statutes is created to read:

108.14 (27) The department shall promulgate a rule to define what constitutes suitable work for claimants, which shall specify different levels of suitable work based upon the number of weeks that a claimant has received benefits in a given benefit year. The rule promulgated under this subsection may not affect the ability of an employee to fail to accept suitable work pursuant to s. 108.04 (8) (d).

SECTION 3118. 108.141 (3g) (a) 3. (intro.) of the statutes is amended to read:

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

SECTION 3119. 108.141 (7) (a) of the statutes is amended to read:

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

SECTION 3119m. 108.16 (6) (n) of the statutes is amended to read:

108.16 (6) (n) Any The amount of any penalty collected under s. 108.04 (11) (bh) that accounts for the minimum penalty required to be assessed and deposited into the fund under 42 USC 503 (a) (11).

SECTION 3120. 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), (5g), (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) (b), (5m), or (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.151, or 108.152 or sub. (6) (e) or (7) (a) and (b).

SECTION 3120m. 108.19 (1s) (a) of the statutes is amended to read:

108.19 (1s) (a) There is created a separate, nonlapsable trust fund designated as the unemployment program integrity fund consisting of all amounts collected under s. 108.04 (11) (bh) other than the amounts required to be deposited in the fund under s. 108.16 (6) (n).

SECTION 3121. 108.227 (1) (e) 3. of the statutes is amended to read:

108.227 (1) (e) 3. A license, certificate of approval, provisional license, conditional license, certification, certification card, registration, permit, training permit or approval specified in s. 50.35, 50.49 (6) (a) or (10), 51.038, 51.04, 51.42 (7) (b) 11., 51.421 (3) (a), 51.45 (8), 146.40 (3), (3g), or (3m), ~~252.23 (2), 252.24 (2), 254.176, 254.20 (3), 255.08 (2) (a), 256.15 (5) (a) or (b), (6g) (a), (7), or (8) (a) or (f) or 343.305 (6) (a) or a permit for operation of a campground specified in s. 254.47 (1).~~

SECTION 3122. 108.227 (1) (e) 3. of the statutes, as affected by 2015 Wisconsin Act (this act), is amended to read:

108.227 (1) (e) 3. A license, certificate of approval, provisional license, conditional license, certification, certification card, registration, permit, training permit or approval specified in s. 50.35, 50.49 (6) (a) or (10), 51.038, 51.04, 51.42 (7) (b) 11., 51.421 (3) (a), 51.45 (8), 146.40 (3), (3g), or (3m), 254.176, 254.20 (3), 256.15 (5) (a) or (b), (6g) (a), (7), or (8) (a) or (f) or 343.305 (6) (a) or a permit license for operation of a campground specified in s. ~~254.47 (1)~~ 27.67 (1).

SECTION 3133m. 109.03 (1) (c) of the statutes is amended to read:

109.03 (1) (c) Unclassified employees Employees of the University of Wisconsin System other than university staff, as defined in s. 36.05 (15).

SECTION 3135c. 109.09 (1) of the statutes is amended to read:

109.09 (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which that is filed with the department, or received by the

trative law judge positions, and all incumbent employees holding those positions, in the department of workforce development performing duties that are primarily related to the adjudicatory functions of the division of worker's compensation in that department, as determined by the secretary of administration, are transferred to the division of hearings and appeals in the department of administration. In determining the number of administrative law positions to be transferred under this paragraph, the secretary of administration shall ensure that not less than 6.0 FTE SEG administrative law judge positions and 2.0 FTE SEG legal support staff positions remain at the department of workforce development.

(c) *Employee status.* Employees transferred under paragraph (b) have all the rights and the same status under chapter 230 of the statutes in the division of hearings and appeals in the department of administration that they enjoyed in the department of workforce development immediately before the transfer. Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who has attained permanent status in class is required to serve a probationary period.

(d) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the department of workforce development that is primarily related to the adjudicatory functions of the division of worker's compensation in that department, as determined by the secretary of administration, is transferred to the division of hearings and appeals in the department of administration.

(e) *Pending matters.* Any matter pending with the department of workforce development on the effective date of this paragraph that is primarily related to the adjudicatory functions of the division of worker's compensation in that department, as determined by the secretary of administration, is transferred to the division of hearings and appeals in the department of administration. All materials submitted to or actions taken by the department of workforce development with respect to the pending matter are considered as having been submitted to or taken by the division of hearings and appeals in the department of administration.

(f) *Contracts.* All contracts entered into by the department of workforce development in effect on the effective date of this paragraph that are primarily related to the adjudicatory functions of the division of worker's compensation in that department, as determined by the secretary of administration, remain in effect and are transferred to the division of hearings and appeals in the department of administration. The division of hearings and appeals in the department of administration shall carry out any obligations under those contracts unless modified or rescinded by the division of hearings and appeals in the department of administration to the extent allowed under the contract.

(g) *Rules and orders.* All rules promulgated by the department of workforce development in effect on the effective date of this paragraph that are primarily related to the adjudicatory functions of the division of worker's compensation in that department, as determined by the secretary of administration, remain in effect until their specified expiration dates or until amended or repealed by the administrator of the division of hearings and appeals in the department of administration. All orders issued by the department of workforce development in effect on the effective date of this paragraph that are primarily related to the adjudicatory functions of the division of worker's compensation in that department, as determined by the secretary of administration, remain in effect until their specified expiration dates or until modified or rescinded by the administrator of the division of hearings and appeals in the department of administration.

(5) UNEMPLOYMENT INSURANCE; DRUG TESTING.

(a) *Scope statements for rules.* The department of workforce development shall present the statements of scope of the rules required under sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the statutes, as created by this act, to the governor for approval under section 227.135 (2) of the statutes no later than the 180th day after the effective date of this paragraph.

(b) *Emergency rule authority.* Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate any rules required under sections 108.04 (8) (b) and 108.133 (2) (a) and (am) and (4) (b) of the statutes, as created by this act, for the period before the effective date of any corresponding permanent rules, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

(6) INFRASTRUCTURE EMPLOYEE TRANSFERS.

(a) *Employee transfers.* On the effective date of this paragraph, 4.0 FTE positions and the incumbent employees in the classified service of the state civil service holding those positions in the department of workforce development performing duties primarily related to infrastructure, as determined by the secretary of administration, are transferred to the department of administration.

(b) *Employee status.* Employees transferred under paragraph (a) have all the rights and the same status under chapter 230 of the statutes in the department of administration that they enjoyed in the department of workforce development immediately before the transfer. Notwith-

local government related to community sensitive solutions has not been entered into on the effective date of this subsection.

Vetoed In Part (6j) BICYCLE AND PEDESTRIAN FACILITIES. The treatment of section 84.01 (35) (b), (c) (intro.), 1., 2., 3., 4., and 5., and (d) of the statutes and chapter Trans 75 of the administrative code first applies to a project that is not complete on the effective date of this subsection, except to the extent that funds for a project that has not been completed are encumbered on the effective date of this subsection.

(7j) MUNICIPAL UTILITY FACILITIES. The treatment of sections 84.295 (4m) (d) and (e) 2. and 200.35 (7) of the statutes first applies to utility facility owners notified by the department of transportation under section 84.063 (2) (a) of the statutes on January 1, 2016.

SECTION 9348. Initial applicability; University of Wisconsin System.

(1f) PUBLIC RECORDS LAW; FINAL CANDIDATES FOR UNIVERSITY OF WISCONSIN SYSTEM POSITIONS. The treatment of section 19.36 (7) (a) (intro.), 1. (intro.), a., and c., 2. (intro.), and 3. of the statutes first applies to requests to inspect or copy a record that are made on the effective date of this subsection.

SECTION 9350. Initial applicability; Wisconsin Economic Development Corporation.

(1) BROWNFIELDS GRANT PROGRAM MATCHING REQUIREMENT. The treatment of section 238.13 (2) (b) 2. and 3. of the statutes first applies to grants awarded on the effective date of this subsection.

SECTION 9351. Initial applicability; Workforce Development.

(1) TRANSFER TO WORKER'S COMPENSATION UNINSURED EMPLOYERS FUND. The amendment of section 20.445 (1) (ra) of the statutes and the creation of 102.81 (1) (c) of the statutes first apply to claims paid from the uninsured employers fund in 2014.

(2) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS PAID. The renumbering and amendment of section 102.44 (1) (c) of the statutes and the creation of section 102.44 (1) (c) 2. and 3. of the statutes first apply to supplemental benefits paid under section 102.44 (1) (ag) of the statutes on the effective date of this subsection.

(3q) PREVAILING WAGE.

(a) The treatment of sections 16.856, 19.36 (12), 66.0129 (5), 66.0903 (title), (1) (a), (am), (b), (c), (cm), (dr), (em), (f), (g), (hm), (im), and (j), (1m) (a) (intro.) and 1. to 3. and (b), and (2) to (12), 84.062, 84.41 (3), 103.005 (12) (a), 103.49 (title), (1) (intro.), (a), (am) (b), (bg), (bj), (br), (c), (d), (em), (f), (fm), and (g), (1m), (2), (2m), (3), (3g), (4r), (5), (6m) (title), (ag), (am), (b) to (e), and (f), and (7), 103.50 (title), (1), (2), (2g), (2m), (3) to (5), (6), (7) (title), (a) to (e), and (f), and (8), 103.503 (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3) (intro.), (a), and (b), 106.04 (1) (d), 109.09 (1), 111.322

(2m) (a), (b), and (c), 227.01 (13) (t), 229.682 (2), 229.8275, 946.15 (1), (2), (3), and (4), and 978.05 (6) (a) (by SECTION 4740b) of the statutes first applies, with respect to a project of public works that is subject to bidding, to a project for which the request for bids is issued on the effective date of this paragraph and, with respect to a project of public works that is not subject to bidding, to a project the contract for which is entered into on the effective date of this paragraph.

(b) The treatment of sections 66.0903 (10) (d), 111.322 (2m) (c), and 229.8275 of the statutes first applies to acts of discrimination that occur on the effective date of this paragraph.

(4) UNEMPLOYMENT INSURANCE; ADMINISTRATIVE PENALTIES FOR ACTS OF CONCEALMENT. The treatment of section 108.04 (11) (bh), 108.16 (6) (n), and 108.19 (1s) (a) of the statutes first applies to overpayments established by the department of workforce development on the effective date of this subsection.

(4u) ONE DAY OF REST IN 7. The treatment of section 103.85 (2) (g) of the statutes first applies to an employee who is covered under a collective bargaining agreement that contains provisions inconsistent with that treatment on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

SECTION 9352. Initial applicability; Other.

(1j) COLLECTIVE BARGAINING ELECTIONS. The treatment of sections 111.70 (4) (d) 1. and 111.83 (1) and (5) (d), (e), and (f) of the statutes first applies to elections occurring on the effective date of this subsection.

SECTION 9400. Effective dates; general. Except as otherwise provided in SECTIONS 9401 to 9452 of this act, this act takes effect on July 1, 2015, or on the day after publication, whichever is later.

SECTION 9401. Effective dates; Administration.

(1f) INFORMATION TECHNOLOGY BLOCK GRANTS; SUNSET. The treatment of sections 20.505 (4) (s) (by SECTION 800d) and 196.218 (5) (a) 12. (by SECTION 3532d) of the statutes and the repeal of section 16.994 of the statutes take effect on July 1, 2017.

SECTION 9402. Effective dates; Agriculture, Trade and Consumer Protection.

Vetoed In Part

(1v) FOOD SAFETY ADVISORY COUNCIL. The treatment of section 15.137 (4) of the statutes takes effect on July 1, 2016.

SECTION 9406. Effective dates; Children and Families.

(1q) READ TO LEAD DEVELOPMENT FUND. The amendment of section 20.437 (1) (fm) of the statutes, the renumbering of section 48.53 (3) (a) of the statutes, and the repeal of sections 13.94 (1) (dL), 20.255 (2) (q), 20.437 (1) (q), 25.17 (1) (ge), 25.79, and 48.53 (3) (b) and (c) of the statutes take effect on June 30, 2017.

Vetoed In Part

(1v) RATE-REGULATED AND RATE-BASED SERVICE CONTRACTS. The treatment of sections 46.036 (3) (a) and

Vetoed In Part

SECTION 9451. Effective dates; Workforce Development.

(1) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS. The treatment of section 102.44 (1) (ag) (by SECTION 2944d) of the statutes takes effect on January 1, 2016.

(1v) TRANSFER OF WORKER'S COMPENSATION FUNCTIONS. The treatment of sections 40.65 (2) (a) and (b) 3. and 4., 102.01 (2) (a), (ad), (ar), and (dm), 102.07 (8) (c), 102.11 (1) (am) 1., 102.12, 102.13 (1) (c), (d) 2., and 3., and (f), (2) (a), (3), (4), and (5), 102.14 (title), (1), and (2), 102.15 (1) and (2), 102.16 (1), (1m) (a), (b), and (c), (2) (a) and (b), (2m) (a) and (b), and (4), 102.17 (1) (a) 1., 2., 3., and 4., (b), (c), (d) 1., 2., 3., and 4., (e), (f), (g), and (h), (2), (2m), (2s), (7) (b) and (c), and (8), 102.175 (2), 102.18 (1) (b), (bg) 1., 2., and 3., (bp), (bw), (c), and (e), (3), (4) (c) 3. and (d), (5), and (6), 102.195, 102.21, 102.22 (1) and (2), 102.23 (1) (a), (2), (3), and (5), 102.24 (2), 102.25 (1), 102.26 (2), (3) (b) 1. and 3., and (4), 102.27 (2) (b), 102.28 (3) (c) and (4) (c) and (d), 102.29 (1) (b) (intro.), (c), and (d), 102.30 (7) (a), 102.32 (1m) (intro.), (a), (c), and (d), (5), (6m), and (7), 102.33 (title) and (2) (a), (b) (intro.), 1., 2., and 4., (c), and (d) 2., 102.35 (3), 102.42 (1m), (6), and (8), 102.425 (4m) (a) and (b), 102.43 (5) (b), 102.44 (2) and (6) (b), 102.475 (6), 102.48 (1), (2), and (3), 102.49 (3) and (6), 102.51 (3), (4), and (6), 102.55 (3), 102.555 (12) (a), 102.56 (1) and (2), 102.565 (1), (2), and (3), 102.61 (1g) (c), (1m) (c), and (2), 102.62, 102.64 (1) and (2), 102.65 (3), 102.66 (1), 102.75 (1), and 227.43 (1) (bm), (2) (am), (3) (bm); and (4) (bm) of the statutes, the renumbering and amendment of section 102.18 (2) of the statutes, the creation of section 102.18 (2) (b) of the statutes, and SECTION 9151 (2) of this act take effect on January 1, 2016.

(3q) PREVAILING WAGE. The treatment of sections 116.856, 19.36 (12), 66.0129 (5), 66.0903 (title), (1) (a), (am), (b), (c), (cm), (dr), (em), (f), (g), (hm), (im), and (j), (1m) (a) (intro.) and 1. to 3. and (b), and (2) to (12),

84.062, 84.41 (3), 103.005 (12) (a), 103.49 (title), (1) (intro.), (a), (am) (b), (bg), (bj), (br), (c), (d), (em), (f), (fm), and (g), (1m), (2), (2m), (3), (3g), (4r), (5), (6m) (title), (ag), (am), (b) to (e), and (f), and (7), 103.50 (title), (1), (2), (2g), (2m), (3) to (5), (6), (7) (title), (a) to (e), and (f), and (8), 103.503 (1) (a), (c), (e), and (g), (2), and (3) (a) 2., 104.001 (3) (intro.), (a), and (b), 106.04 (1) (d), 109.09 (1), 111.322 (2m) (a), (b), and (c), 227.01 (13) (t), 229.682 (2), 229.8275, 946.15 (1), (2), (3), and (4), and 978.05 (6) (a) (by SECTION 4740b) of the statutes and SECTIONS 9151 (1q) and 9351 (3q) of this act take effect on January 1, 2017.

(4) UNEMPLOYMENT INSURANCE; ADMINISTRATIVE PENALTIES FOR ACTS OF CONCEALMENT. The treatment of sections 108.04 (11) (bb), 108.16 (6) (n), and 108.19 (1s) (a) of the statutes and SECTION 9351 (4) of this act take effect on October 4, 2015, or on the first Sunday after publication, whichever is later.

(7f) MINIMUM WAGE. The treatment of sections 49.141 (1) (g), 103.06 (1) (b) 5. and (c) 5., (3) (a) 4., and (4) (a) 1., 103.67 (2) (fm) 3., 103.70 (2) (b) 3., 104.001 (1) and (2), 104.01 (intro.), (1), (1d), (5), (5g), (5m), (7m), and (8), 104.02, 104.03, 104.035, 104.05, 104.06, 104.07 (1) and (2), 104.08 (2m), 104.10, 104.11, 104.12, 234.94 (5) and (8), 800.09 (1j), 800.095 (1) (d), and 895.035 (2m) (c) of the statutes, the repeal of section 104.04 (title) of the statutes, the renumbering and amendment of sections 104.04 and 104.045 of the statutes, and the creation of sections 104.045 (2) and (3) of the statutes take effect on the first day of the first month beginning after publication.

SECTION 9452. Effective dates; Other.

(3u) SCRAP METAL DEALER ACQUISITION OF MOTOR VEHICLES. The treatment of section 134.405 (2), (3) (a) (intro.), (3m), and (5) (a) (intro.) and (am) of the statutes takes effect on the first day of the 4th month beginning after publication.