



## 2017 SENATE BILL 781

February 7, 2018 - Introduced by Senators STROEBEL and COWLES, cosponsored by Representative DUCHOW. Referred to Committee on Labor and Regulatory Reform.

1     **AN ACT to amend** 102.29 (6) (b) (intro.), 102.29 (6) (b) 3., 102.29 (6) (c) (intro.),  
2           102.29 (6) (c) 2., 102.29 (6m) (a) (intro.), 102.29 (6m) (a) 3., 102.29 (6m) (b)  
3           (intro.), 102.29 (6m) (b) 2., 102.29 (7), 102.29 (8), 102.29 (8m), 102.29 (8r),  
4           102.29 (10), 102.29 (11) and 102.29 (12) of the statutes; **relating to:** actions  
5           against certain third parties by injured employees under the worker's  
6           compensation law.

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### *Analysis by the Legislative Reference Bureau*

This bill eliminates the right of action in tort by an injured employee against certain third parties by reason of the injury if the injured employee has the right to make a claim for compensation against his or her employer under the worker's compensation law.

Under current law, worker's compensation is the exclusive remedy for an employee who is injured while performing services growing out of and incidental to his or her employment, except that, subject to certain exceptions, an injured employee may claim worker's compensation from his or her employer and bring an action in tort against a third party for damages by reason of the injury. Current law also provides that certain specified types of employee are prohibited from making claims against certain third parties, such as a "temporary help agency" or "employee leasing company," if the injured employee makes a claim for compensation under the worker's compensation law.

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The bill prohibits an injured employee from maintaining an action in tort against certain third parties, specified under current law, regardless of whether the employee makes a claim for compensation under the worker's compensation law against his or her employer. For example, an injured employee of a temporary help agency engaged in work for the employer to which the employee is placed or leased may not maintain a tort action against the employer to which the employee is placed or leased if the employee has the right to make a claim for compensation under the worker's compensation law.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 102.29 (6) (b) (intro.) of the statutes is amended to read:

2           102.29 (6) (b) (intro.) No employee of a temporary help agency who ~~makes~~ has  
3           the right to make a claim for compensation may make a claim or maintain an action  
4           in tort against any of the following:

5           **SECTION 2.** 102.29 (6) (b) 3. of the statutes is amended to read:

6           102.29 (6) (b) 3. Any employee of that compensating employer or of that other  
7           temporary help agency, unless the employee who ~~makes~~ has the right to make a claim  
8           for compensation would have a right under s. 102.03 (2) to bring an action against  
9           the employee of the compensating employer or the employee of the other temporary  
10          help agency if the employees were coemployees.

11          **SECTION 3.** 102.29 (6) (c) (intro.) of the statutes is amended to read:

12          102.29 (6) (c) (intro.) No employee of an employer that compensates a  
13          temporary help agency for another employee's services who ~~makes~~ has the right to  
14          make a claim for compensation may make a claim or maintain an action in tort  
15          against any of the following:

16          **SECTION 4.** 102.29 (6) (c) 2. of the statutes is amended to read:

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1           102.29 (6) (c) 2. Any employee of the temporary help agency, unless the  
2 employee who makes has the right to make a claim for compensation would have a  
3 right under s. 102.03 (2) to bring an action against the employee of the temporary  
4 help agency if the employees were coemployees.

5           **SECTION 5.** 102.29 (6m) (a) (intro.) of the statutes is amended to read:

6           102.29 (6m) (a) (intro.) No leased employee, as defined in s. 102.315 (1) (g), who  
7 makes has the right to make a claim for compensation may make a claim or maintain  
8 an action in tort against any of the following:

9           **SECTION 6.** 102.29 (6m) (a) 3. of the statutes is amended to read:

10           102.29 (6m) (a) 3. Any employee of the client or of that other employee leasing  
11 company, unless the leased employee who makes has the right to make a claim for  
12 compensation would have a right under s. 102.03 (2) to bring an action against the  
13 employee of the client or the leased employee of the other employee leasing company  
14 if the employees and leased employees were coemployees.

15           **SECTION 7.** 102.29 (6m) (b) (intro.) of the statutes is amended to read:

16           102.29 (6m) (b) (intro.) No employee of a client who makes has the right to  
17 make a claim for compensation may make a claim or maintain an action in tort  
18 against any of the following:

19           **SECTION 8.** 102.29 (6m) (b) 2. of the statutes is amended to read:

20           102.29 (6m) (b) 2. Any leased employee of the employee leasing company,  
21 unless the employee who makes has the right to make a claim for compensation  
22 would have a right under s. 102.03 (2) to bring an action against the leased employee  
23 if the employee and the leased employee were coemployees.

24           **SECTION 9.** 102.29 (7) of the statutes is amended to read:

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1           102.29 (7) No employee who is loaned by his or her employer to another  
2 employer and who ~~makes~~ has the right to make a claim for compensation under this  
3 chapter may make a claim or maintain an action in tort against the employer who  
4 accepted the loaned employee's services.

5           **SECTION 10.** 102.29 (8) of the statutes is amended to read:

6           102.29 (8) No student of a public school, a private school, or an institution of  
7 higher education who is named under s. 102.077 as an employee of the school district,  
8 private school, or institution of higher education for purposes of this chapter and who  
9 ~~makes~~ has the right to make a claim for compensation under this chapter may make  
10 a claim or maintain an action in tort against the employer that provided the work  
11 training or work experience from which the claim arose.

12           **SECTION 11.** 102.29 (8m) of the statutes is amended to read:

13           102.29 (8m) No participant in a community service job under s. 49.147 (4) or  
14 a transitional placement under s. 49.147 (5) who, under s. 49.147 (4) (c) or (5) (c), is  
15 provided worker's compensation coverage by a Wisconsin works agency, as defined  
16 under s. 49.001 (9), and who ~~makes~~ has the right to make a claim for compensation  
17 under this chapter may make a claim or maintain an action in tort against the  
18 employer who provided the community service job or transitional placement from  
19 which the claim arose.

20           **SECTION 12.** 102.29 (8r) of the statutes is amended to read:

21           102.29 (8r) No participant in a food stamp employment and training program  
22 under s. 49.79 (9) who, under s. 49.79 (9) (a) 5., is provided worker's compensation  
23 coverage by the department of health services or by a Wisconsin Works agency, as  
24 defined in s. 49.001 (9), or other provider under contract with the department of  
25 health services or a county department under s. 46.215, 46.22, or 46.23 or tribal

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1 governing body to administer the food stamp employment and training program and  
2 who ~~makes~~ has the right to make a claim for compensation under this chapter may  
3 make a claim or maintain an action in tort against the employer who provided the  
4 employment and training from which the claim arose.

5 **SECTION 13.** 102.29 (10) of the statutes is amended to read:

6 102.29 (10) A practitioner who, under s. 257.03, is considered an employee of  
7 the state for purposes of worker's compensation coverage while providing services on  
8 behalf of a health care facility, the department of health services, or a local health  
9 department during a state of emergency and who ~~makes~~ has the right to make a  
10 claim for compensation under this chapter may not make a claim or maintain an  
11 action in tort against the health care facility, department, or local health department  
12 that accepted those services.

13 **SECTION 14.** 102.29 (11) of the statutes is amended to read:

14 102.29 (11) No security officer employed by the department of military affairs  
15 who is deputed under s. 59.26 (4m), who remains an employee of the state for  
16 purposes of worker's compensation coverage while conducting routine external  
17 security checks around military installations in this state, and who ~~makes~~ has the  
18 right to make a claim for compensation under this chapter may make a claim or bring  
19 an action in tort against the county in which the security officer is conducting routine  
20 external security checks or against the sheriff or undersheriff who deputed the  
21 security officer.

22 **SECTION 15.** 102.29 (12) of the statutes is amended to read:

23 102.29 (12) No individual who is an employee of an entity described in s. 102.07  
24 (20) for purposes of this chapter and who ~~makes~~ has the right to make a claim for  
25 compensation under this chapter may make a claim or maintain an action in tort

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**SECTION 15**

1 against the person described in s. 102.07 (20) who received the services from which  
2 the claim arose.

3 **SECTION 16. Initial applicability.**

4 (1) **THIRD-PARTY LIABILITY.** This act first applies to claims for worker's  
5 compensation made or civil tort claims filed on the effective date of this subsection.

6 (END)