

1989 Assembly Bill 602

Date of enactment: **November 21, 1989**  
Date of publication\*: **November 28, 1989**

# 1989 WISCONSIN ACT 64

AN ACT *to repeal* 102.28 (3); *to renumber* 102.33; *to renumber and amend* 102.07 (1), 102.07 (8), 102.13 (2), 102.17 (7) and 102.65 (3); *to amend* 15.227 (11), 25.17 (3) (a), 59.20 (5) (b), 59.395 (5), 102.01 (2) (f), 102.04 (1) (b) 2, 102.06, 102.076 (3m), 102.11 (1) (intro.), 102.13 (title) and (1) (a), (b) (intro.), 1 and 3 and (d) 1 to 4, 102.13 (3), 102.15 (3), 102.16 (1), 102.16 (3), 102.16 (4), 102.17 (1) (d), 102.17 (1) (e), 102.17 (1) (g), 102.18 (1) (b), 102.18 (1) (bw), 102.26 (3) (c), 102.27 (2) (b), 102.29 (1), 102.29 (3), 102.31 (2) (a), 102.33 (title), 102.42 (1), 102.42 (2) (a), 102.48 (1), 973.05 (1), 973.05 (2) and 973.07; *to repeal and recreate* 102.28 (4); and *to create* 19.85 (1) (eg), 20.445 (1) (b), (sm) and (sp), 25.17 (1) (xg), 102.01 (2) (gm), 102.01 (2) (h) to (j), 102.07 (1) (b), 102.07 (8) (b) and (c), 102.07 (8m), 102.13 (1) (f), 102.13 (2) (b), 102.16 (2) (c) to (e), 102.17 (7) (b), 102.29 (7), 102.31 (1) (e) and (f), 102.33 (2), 102.65 (3) (a), 102.80 to 102.89, 814.60 (2) (bm) and 814.63 (3) (bm) of the statutes, **relating to:** various changes in the worker's compensation laws, making appropriations and providing a penalty.

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

**SECTION 1.** 15.227 (11) of the statutes is amended to read:

15.227 (11) SELF-INSURERS COUNCIL. There is created in the department of industry, labor and human relations a self-insurers council consisting of 5 members

**SECTION 3.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

1989-90      1990-91

**20.445 Industry, labor and human relations, department of**

(1) INDUSTRY, LABOR AND HUMAN RELATIONS

(sp) Uninsured employers fund; administration      SEG A      60,800      109,600

**SECTION 4.** 20.445 (1) (b), (sm) and (sp) of the statutes are created to read:

20.445 (1) (b) *Uninsured employers fund; supplement.* The amounts in the schedule to pay the amounts deposited by the secretary of industry, labor and human relations into the uninsured employers fund under s. 102.80 (2).

appointed by the labor and industry review commission for 3-year terms.

**SECTION 2.** 19.85 (1) (eg) of the statutes is created to read:

19.85 (1) (eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employe members of the council are excluded.

(sm) *Uninsured employers fund; payments.* From the uninsured employers fund, a sum sufficient to make the payments under s. 102.81 (1). No moneys may be expended or encumbered under this paragraph until the first day of the calendar quarter beginning after the day that the secretary of industry, labor and human relations files the certificate under s. 102.80 (3) (a).

– 2 –

## 1989 Assembly Bill 602

(sp) *Uninsured employers fund; administration.* From the uninsured employers fund, the amounts in the schedule for the administration of ss. 102.28 (4) and 102.80 to 102.85. No money may be expended or encumbered under this paragraph after July 1, 1992, unless the secretary of industry, labor and human relations has filed a certificate under s. 102.80 (3) (a).

**SECTION 5.** 25.17 (1) (xg) of the statutes is created to read:

25.17 (1) (xg) Uninsured employers fund (s. 102.80);

**SECTION 6.** 25.17 (3) (a) of the statutes is amended to read:

25.17 (3) (a) Invest ~~any of the following funds: 1.~~ fixed retirement investment trust; ~~2.~~ state life fund; ~~3.~~ veterans trust fund; and uninsured employers fund in loans, securities and any other investments authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred stock of companies engaged in the finance business whether as direct lenders or as holding companies owning subsidiaries engaged in the finance business. Investments permitted by sub. (4) are permitted investments under this subsection.

**SECTION 7.** 59.20 (5) (b) of the statutes is amended to read:

59.20 (5) (b) For all court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 165.87 for the penalty assessment surcharge, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 161.41 (5) for the drug abuse program improvement surcharge, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 29.997 for the natural resources assessment surcharge and the amount required by s. 29.998 for natural resources restitution payments, transmit to the state treasurer a statement of all moneys required by law to be paid on the actions so entered during the preceding month on or before the first day of the next succeeding month, certified by personal affidavit endorsed upon or attached thereto, and at the same time pay to the state treasurer the amount thereof.

**SECTION 8.** 59.395 (5) of the statutes is amended to read:

59.395 (5) Pay monthly to the county treasurer for the use of the state the state's percentage of the fees required to be paid on each civil action, criminal action and special proceeding filed during the preceding month and pay monthly to the county treasurer for the use of the state the percentage of court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 165.87 (2) (b) for the penalty

assessment surcharge, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 161.41 (5) for the drug abuse program improvement surcharge, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required under s. 29.997 (1) (d) for the natural resources assessment surcharge and the amounts required under s. 29.998 (1) (d) for the natural resources restitution payments. The payments shall be made by the 15th day of the month following receipt thereof.

**SECTION 9.** 102.01 (2) (f) of the statutes is amended to read:

102.01 (2) (f) "Temporary help agency" means an employer who places its employe with or leases its employes to another employer who controls the employe's work activities and compensates the first employer for the employe's services, regardless of the duration of the services.

**SECTION 10.** 102.01 (2) (gm) of the statutes is created to read:

102.01 (2) (gm) "Wisconsin compensation rating bureau" means the bureau provided for in s. 626.06.

**SECTION 11.** 102.01 (2) (h) to (j) of the statutes are created to read:

102.01 (2) (h) "Uninsured employer" means an employer that is in violation of s. 102.28 (2).

(i) "Uninsured employer assessment" means the assessment imposed under s. 102.85 (4).

(j) "Uninsured employers fund" means the fund established under s. 102.80 (1).

**SECTION 12.** 102.04 (1) (b) 2. of the statutes is amended to read:

102.04 (1) (b) 2. Every person who usually employs less than 3 employes, provided the person has paid wages of \$500 or more in any calendar quarter for services performed in this state. Such employer shall become subject ~~as of the first on the 10th~~ day of the calendar year month next succeeding such quarter.

**SECTION 13.** 102.06 of the statutes is amended to read:

**102.06 (title) Joint liability of employer and contractor.** An employer shall be liable for compensation to an employe of a contractor or subcontractor under the employer who is not subject to this chapter, or who has not complied with the conditions of s. 102.28 (2) in any case where such employer would have been liable for compensation if such employe had been working directly for the employer, including also work in the erection, alteration, repair or demolition of improvements or of fixtures upon premises of such employer which are used or to be used in the operations of such employer. The con-

## 1989 Assembly Bill 602

tractor or subcontractor ~~(, if subject to this chapter),~~ shall also be liable for such compensation, but the employe shall not recover compensation for the same injury from more than one party. ~~In the same manner, under the same conditions, and with like right of recovery, as in the case of an employe of a contractor or subcontractor, described above, an employer shall also be liable for compensation to an employe who has been loaned by the employer to another employer.~~ The employer who becomes liable for and pays such compensation may recover the same from such contractor, subcontractor or other employer for whom the employe was working at the time of the injury if such contractor, subcontractor or other employer was an employer as defined in s. 102.04. This section does not apply to injuries occurring on or after the first day of the calendar quarter beginning after the day that the secretary files the certificate under s. 102.80 (3) (a).

**SECTION 14.** 102.07 (1) of the statutes is renumbered 102.07 (1) (a) and amended to read:

102.07 (1) (a) Every person, including all officials, in the service of the state, or of any municipality therein whether elected or under any appointment, or contract of hire, express or implied, and whether a resident or employed or injured within or without the state. The state and any municipality may require a bond from a contractor to protect it against compensation to employes of such contractor or employes of a subcontractor under him. This paragraph does not apply beginning on the first day of the calendar quarter beginning after the day that the secretary files the certificate under s. 102.80 (3) (a).

**SECTION 15.** 102.07 (1) (b) of the statutes is created to read:

102.07 (1) (b) Every person, including all officials, in the service of the state, or of any municipality therein whether elected or under any appointment, or contract of hire, express or implied, and whether a resident or employed or injured within or without the state. This paragraph first applies on the first day of the calendar quarter beginning after the day that the secretary files the certificate under s. 102.80 (3) (a).

**SECTION 16.** 102.07 (8) of the statutes is renumbered 102.07 (8) (a) and amended to read:

102.07 (8) (a) ~~Every~~ Except as provided in par. (b), every independent contractor ~~who does not maintain a separate business and who does not hold himself out to and render service to the public, provided he is not himself an employer subject to this chapter or has not complied with the conditions of s. 102.28 (2), shall is,~~ for the purpose of this chapter be, an employe of any employer under this chapter for whom he or she is performing service in the course of the trade, business, profession or occupation of such employer at the time of the injury.

**SECTION 17.** 102.07 (8) (b) and (c) of the statutes are created to read:

102.07 (8) (b) An independent contractor is not an employe of an employer for whom the independent con-

tractor performs work or services if the independent contractor meets all of the following conditions:

1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
2. Holds or has applied for a federal employer identification number.
3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.
4. Incurs the main expenses related to the service or work that he or she performs under contract.
5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.
6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
7. May realize a profit or suffer a loss under contracts to perform work or service.
8. Has continuing or recurring business liabilities or obligations.
9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

(c) The department may not admit in evidence state or federal laws, regulations, documents granting operating authority or licenses when determining whether an independent contractor meets the conditions specified in par. (b) 1. or 3.

**SECTION 18.** 102.07 (8m) of the statutes is created to read:

102.07 (8m) An employer who is subject to this chapter is not an employe of another employer for whom the first employer performs work or service in the course of the other employer's trade, business, profession or occupation.

**SECTION 19.** 102.076 (3m) of the statutes is amended to read:

102.076 (3m) This section does not apply after ~~December 31, 1989~~ June 30, 1993.

**SECTION 20.** 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than \$30 nor more than the wage rate which results in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than \$30. The average weekly earnings for permanent partial disability for injuries occurring on or after ~~May 1, 1988~~ January 1, 1990, shall be not more than ~~\$181.50~~ \$196.50, resulting in a maximum compensation rate of ~~\$124~~ \$131. The average

## 1989 Assembly Bill 602

weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1989 ~~1991~~, shall be not more than \$187.50 ~~\$205.50~~, resulting in a maximum compensation rate of \$125 ~~\$137~~. Between such limits the average weekly earnings shall be determined as follows:

**SECTION 21.** 102.13 (title) and (1) (a), (b) (intro.), 1 and 3 and (d) 1. to 4. of the statutes are amended to read:

**102.13 (title) Examination; competent witnesses; exclusion of evidence; autopsy.** (1) (a) Except as provided in sub. (4), whenever compensation is claimed by an employe, the employe shall, upon the written request of the employe's employer or worker's compensation insurer, submit to reasonable examinations by physicians, chiropractors, psychologists or podiatrists provided and paid for by the employer or insurer. No employe who submits to an examination under this paragraph is a patient of the examining physician, chiropractor, psychologist or podiatrist for any purpose other than for the purpose of bringing an action under ch. 655, unless the employe specifically requests treatment from that physician, chiropractor, psychologist or podiatrist.

(b) (intro.) An employer or insurer who requests that an employe submit to reasonable examination under par. (a) shall tender to the employe, before the examination, all necessary expenses including transportation expenses. The employe is entitled to have a physician, chiropractor, psychologist or podiatrist provided by himself or herself present at the examination. The employer's or insurer's written request for examination shall notify the employe of all of the following:

1. The proposed date, time and place of the examination and the identity of the examining physician, chiropractor, psychologist or podiatrist.

3. The employe's right to have his or her physician, chiropractor, psychologist or podiatrist present at the examination.

(d) 1. Any physician, chiropractor, psychologist or podiatrist who is present at any examination under par. (a) may be required to testify as to the results thereof.

2. Any physician, chiropractor, psychologist or podiatrist who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the department when it so directs.

3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employe, employer, worker's compensation insurer, or the department information and reports relative to a compensation claim.

4. The testimony of any physician, chiropractor, psychologist or podiatrist, who is licensed to practice

where he or she resides or practices in any state may be received in evidence in compensation proceedings.

**SECTION 22.** 102.13 (1) (f) of the statutes is created to read:

102.13 (1) (f) If an employe claims compensation under s. 102.81 (1), the department may require the employe to submit to physical examinations under this subsection.

**SECTION 23.** 102.13 (2) of the statutes is renumbered 102.13 (2) (a) and amended to read:

102.13 (2) (a) An employe who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employe claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employe, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employe claims compensation.

**SECTION 24.** 102.13 (2) (b) of the statutes is created to read:

102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the greater of the actual costs not to exceed 25 cents per page or \$5 per request. If a person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a), the person shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

**SECTION 25.** 102.13 (3) of the statutes is amended to read:

102.13 (3) If 2 or more physicians, chiropractors, psychologists or podiatrists disagree as to the extent of an injured employe's temporary disability, the end of an employe's healing period, an employe's ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the department may appoint another physician, chiropractor, psychologist or podiatrist to examine the employe and render an opinion as soon as possible. The department shall promptly notify the parties of this appointment. If the employe has not returned to work, payment for temporary disability shall continue until the department receives the opinion. The employer or its insurance carrier or both shall pay for the examination and opinion. The employer or insurance carrier or both shall receive appropriate credit for any overpayment to



**1989 Assembly Bill 602**

the employe determined by the department after receipt of the opinion.

**SECTION 26.** 102.15 (3) of the statutes is amended to read:

102.15 (3) All testimony at any hearing held under this chapter shall be taken down by a stenographic reporter ~~or, except that in case of an emergency, as determined by the examiner conducting the hearing, testimony may be recorded by a recording machine.~~

**SECTION 27.** 102.16 (1) of the statutes is amended to read:

102.16 (1) Any controversy concerning compensation ~~or a violation of sub. (3), including any controversies~~ in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified or confirmed by the department within one year from the date the compromise is filed with the department, or from the date an award has been entered, based thereon, or the department may take that action upon application made within one year. Unless the word "compromise" appears in a stipulation of settlement, the settlement shall not be deemed a compromise, and further claim is not barred except as provided in s. 102.17 (4) regardless of whether an award is made. The employer, insurer or dependent under s. 102.51 (5) shall have equal rights with the employe to have review of a compromise or any other stipulation of settlement. Upon petition filed with the department, the department may set aside the award or otherwise determine the rights of the parties.

**SECTION 28.** 102.16 (2) (c) to (e) of the statutes are created to read:

102.16 (2) (c) The department has jurisdiction to pass upon the reasonableness of health service bills and to deny payment of health service bills for unnecessary treatment, in all cases of dispute where compensation is paid, in the same manner and to the same effect as it passes upon compensation.

(d) A health service provider is bound by the department's determination upon the reasonableness of health service bills and the necessity of health service treatment and may not bring an action against the employe receiving service, if the health service provider received all of the following:

1. Reasonable notice from the disputing party that the reasonableness of the bill or the necessity of treatment is disputed.

2. Reasonable opportunity to provide to the department a written explanation of the bill or treatment.

(e) Paragraphs (c) and (d) apply to injuries occurring after December 31, 1989, and before July 1, 1992. Paragraphs (a) and (b) apply to all other injuries.

**SECTION 29.** 102.16 (3) of the statutes is amended to read:

102.16 (3) No employer subject to this chapter may solicit, receive or collect any money from an employe or any other person or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under this chapter or recovering premiums paid on a contract described under s. 102.31 (1) (a); nor may any such employer sell to an employe or other person, or solicit or require the employe or other person to purchase, medical, chiropractic, podiatric, psychological or hospital tickets or contracts for medical, surgical, hospital or other health care treatment which is required to be furnished by that employer.

**SECTION 30.** 102.16 (4) of the statutes is amended to read:

102.16 (4) The department has jurisdiction to pass on any question arising out of sub. (3) and has jurisdiction to order the employer to reimburse an employe or other person for any sum deducted from wages or paid by him or her in violation of that subsection. In addition to the penalty provided in s. 102.85 (1), any employer violating sub. (3) shall be subject to the penalties provided in s. 102.28 (3), and shall be liable to an injured employe for the reasonable value of the necessary services rendered to that employe pursuant to any arrangement made in violation of sub. (3) without regard to that employe's actual disbursements for the same.

**SECTION 31.** 102.17 (1) (d) of the statutes is amended to read:

102.17 (1) (d) The contents of verified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and of verified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation constitute prima facie evidence as to the matter contained in them, subject to any rules and limitations the department prescribes. Verified reports of physicians, podiatrists, surgeons, dentists, psychologists and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to subject himself or herself to cross-examination also constitute prima facie evidence as to the matter contained in them. Verified reports of physicians, podiatrist, surgeons, psychologists and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment and cause and extent of the disability. Verified reports by doctors of dentistry are admissible as evidence of the diagnosis and necessity for treatment but not of disability. Physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and experts may certify instead of verify the reports. That certification is equivalent to verification. Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor or expert who knowingly makes a false statement of fact or opinion in such a certi-

## 1989 Assembly Bill 602

fied report may be fined or imprisoned, or both, under s. 943.395. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, or of any other hospital or sanatorium in this state which is satisfactory to the department, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist, surgeon, dentist, psychologist or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of such patient, constitutes prima facie evidence in any worker's compensation proceeding as to the matter contained in it, to the extent that it is otherwise competent and relevant. The department may, by rule, establish the qualifications of and the form used for verified reports submitted by experts who provide information concerning loss of earning capacity under s. 102.44 (2) and (3). The department may not admit into evidence a verified report of a practitioner or other expert that was not filed with the department and all parties in interest at least 15 days before the date of the hearing, unless the department is satisfied that there is good cause for the failure to file the report.

**SECTION 32.** 102.17 (1) (e) of the statutes is amended to read:

102.17 (1) (e) The department may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be made, or the time books and payrolls of the employer to be examined by any examiner, and may direct any employe claiming compensation to be examined by a physician, chiropractor, psychologist or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the department for its consideration upon final hearing. All ex parte testimony taken by the department shall be reduced to writing and either party shall have opportunity to rebut such testimony on final hearing.

**SECTION 33.** 102.17 (1) (g) of the statutes is amended to read:

102.17 (1) (g) Whenever the testimony presented at any hearing indicates a dispute, or is such as to create doubt as to the extent or cause of disability or death, the department may direct that the injured employe be examined or autopsy be performed, or an opinion of a physician, chiropractor, psychologist or podiatrist be obtained without examination or autopsy, by an impartial, competent physician, chiropractor, psychologist or podiatrist designated by the department who is not under contract with or regularly employed by a compensation insurance carrier or self-insured employer. The expense of such examination shall be paid by the employer or, if the employe claims compensation under s. 102.81, from the uninsured employers fund. The report of such examination shall be transmitted in writing to the depart-

ment and a copy thereof shall be furnished by the department to each party, who shall have an opportunity to rebut such report on further hearing.

**SECTION 34.** 102.17 (7) of the statutes is renumbered 102.17 (7) (a) and amended to read:

102.17 (7) (a) ~~In~~ Except as provided in par. (b), in a claim under s. 102.44 (2) and (3), testimony or verified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employe's actual loss of earning capacity.

**SECTION 35.** 102.17 (7) (b) of the statutes is created to read:

102.17 (7) (b) The department may not receive in evidence testimony or verified reports from expert witnesses under par. (a) if the party offering the testimony or reports failed to notify the department and parties of interest, at least 60 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved.

**SECTION 36.** 102.18 (1) (b) of the statutes is amended to read:

102.18 (1) (b) ~~After~~ Within 90 days after the final hearing and close of the record, the department shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the department may in its discretion after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The department may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith, not exceeding 25% of each amount which shall not have been paid as directed thereby. Where there is a finding that the employe is in fact suffering from an occupational disease caused by the employment of the employer against whom the application is filed, a final award dismissing such application upon the ground that the applicant has suffered no disability from said disease shall not bar any claim he or she may thereafter have for disability sustained after the date of the award.

**SECTION 37.** 102.18 (1) (bw) of the statutes is amended to read:

102.18 (1) (bw) If an insurer ~~or~~ a self-insured employer or, if applicable, the uninsured employers fund pays compensation to an employe in excess of its liability and another insurer is liable for all or part of the excess payment, the department may order the insurer or self-insured employer that is liable to reimburse the insurer or self-insured employer that made the excess payment or, if applicable, the uninsured employers fund.

**SECTION 38.** 102.26 (3) (c) of the statutes is amended to read:

**1989 Assembly Bill 602**

102.26 (3) (c) Payment according to the directions of the award shall protect the employer and the employer's insurer, or the uninsured employers fund if applicable, from any claim of attorney's lien.

**SECTION 39.** 102.27 (2) (b) of the statutes is amended to read:

102.27 (2) (b) If a governmental unit provides public assistance under ch. 49 to pay medical costs or living expenses related to a claim under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the cost of the assistance provided. Reimbursement shall equal the lesser of either the amount of assistance the governmental unit provided or two-thirds of the amount of the award or payment remaining after deduction of attorney fees and any other fees or costs chargeable under ch. 102. The department shall comply with this paragraph when making payments under s. 102.81.

**SECTION 40.** 102.28 (3) of the statutes is repealed.

**SECTION 41.** 102.28 (4) of the statutes is repealed and recreated to read:

102.28 (4) CLOSURE ORDER. (a) When the department discovers an uninsured employer, the department may order the employer to cease operations until the employer complies with sub. (2).

(b) If the department believes that an employer may be an uninsured employer, the department shall notify the employer of the alleged violation of sub. (2) and the possibility of closure under this subsection. The employer may request and shall receive a hearing under s. 102.17 on the matter if the employer applies for a hearing within 10 days after the notice of the alleged violation is served.

(c) After a hearing under par. (b), or without a hearing if one is not requested, the department may issue an order to an employer to cease operations on a finding that the employer is an uninsured employer.

(d) The department of justice may bring an action in any court of competent jurisdiction for an injunction or other remedy to enforce the department's order to cease operations under par. (c).

**SECTION 42.** 102.29 (1) of the statutes is amended to read:

102.29 (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to 102.64 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the

employee's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under s. 102.81 (1), the department shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the department shall become the agent of such party for the giving of a notice as required in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in this subsection, the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action. Out of the balance remaining, the employer ~~or~~ insurance carrier or, if applicable, uninsured employers fund shall be reimbursed for all payments made by it, or which it may be obligated to make in the future, under this chapter, except that it shall not be reimbursed for any payments of increased compensation made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57 or 102.60. Any balance remaining shall be paid to the employee or the employee's personal representative or other person entitled to bring action. If both the employee or the employee's personal representative or other person entitled to bring action, and the employer ~~or~~ compensation insurer or department, join in the pressing of said claim and are represented by counsel, the attorneys' fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court or by the department. A settlement of any 3rd party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.

**SECTION 43.** 102.29 (3) of the statutes is amended to read:

102.29 (3) Nothing in this chapter shall prevent an employee from taking the compensation he or she may be entitled to under it and also maintaining a civil action

## 1989 Assembly Bill 602

against any physician, chiropractor, psychologist or podiatrist for malpractice.

**SECTION 44.** 102.29 (7) of the statutes is created to read:

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

**SECTION 45.** 102.31 (1) (e) and (f) of the statutes are created to read:

102.31 (1) (e) An insurer who provides a contract under par. (a) shall file with the Wisconsin compensation rating bureau a copy of the contract, or other evidence of the contract as designated by the Wisconsin compensation rating bureau, not more than 60 days after the effective date of the contract.

(f) The Wisconsin compensation rating bureau may assess a penalty, in accordance with a schedule adopted by the Wisconsin compensation rating bureau, against an insurer who fails to comply with par. (e).

**SECTION 46.** 102.31 (2) (a) of the statutes is amended to read:

102.31 (2) (a) No party to a contract of insurance may cancel it within the contract period or terminate it upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party does not intend to renew the policy upon expiration. Except as provided in par. (b), such a cancellation or termination is not effective until 30 days after written notice has been given to the department either by personal service of the notice upon the department at its office in Madison or by sending the notice by facsimile machine transmission or certified mail addressed to the department at its office in Madison. The department may provide by rule that the notice of cancellation or termination be given by certified mail or facsimile machine transmission to the Wisconsin compensation rating bureau, ~~as defined in s. 626.02 (1)~~, rather than to the department. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.

**SECTION 47.** 102.33 (title) of the statutes is amended to read:

**102.33 (title) Department forms and records; public access.**

**SECTION 48.** 102.33 of the statutes is renumbered 102.33 (1).

**SECTION 49.** 102.33 (2) of the statutes is created to read:

102.33 (2) The records of the department related to the administration of this chapter are not subject to inspection and copying under s. 19.35 (1), except as provided by the department by rule.

**SECTION 50.** 102.42 (1) of the statutes is amended to read:

102.42 (1) TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employe, if the employer has not filed notice as provided in sub. (4), Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employe to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employe in providing such treatment, medicines, supplies and training. Where the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employe for necessary treatment to cure and relieve the employe from the effects of occupational disease prior to the time that the employe knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employe or to maintain the existing status of such condition whether or not healing is completed.

**SECTION 51.** 102.42 (2) (a) of the statutes is amended to read:

102.42 (2) (a) Where the employer has notice of an injury and its relationship to the employment the employer shall offer to the injured employe his or her choice of any physician, chiropractor, psychologist or podiatrist licensed to practice and practicing in this state for treatment of the injury. By mutual agreement, the employe may have the choice of any qualified practitioner not licensed in this state. In case of emergency, the employer may arrange for treatment without tendering a choice. After the emergency has passed the employe shall be given his or her choice of attending practitioner at the earliest opportunity. The employe has the right to a 2nd choice of attending practitioner on notice to the employer or its insurance carrier. Any further choice shall be by mutual agreement. Partners and clinics are deemed to be one practitioner. Treatment by a practitioner on referral from another practitioner is deemed to be treatment by one practitioner.



**1989 Assembly Bill 602**

**SECTION 52.** 102.48 (1) of the statutes is amended to read:

102.48 (1) An unestranged surviving parent or parents to whose support the deceased has contributed less than \$500 in the 52 weeks next preceding the injury causing death shall receive a death benefit of ~~\$5,000~~ \$6,500. If the parents are not living together, the department shall divide this sum in such proportion as it deems to be just, considering their ages and other facts bearing on dependency.

**SECTION 53.** 102.65 (3) of the statutes is renumbered 102.65 (3) (b) and amended to read:

102.65 (3) (b) If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the department shall, by order, direct an appropriate proportional reduction of the payments into such fund under ss. 102.47, 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year. This paragraph applies after June 30, 1992.

**SECTION 54.** 102.65 (3) (a) of the statutes is created to read:

102.65 (3) (a) If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the department may, by order, direct an appropriate proportional reduction of the payments into such fund under ss. 102.47, 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year. This paragraph does not apply after June 30, 1992.

**SECTION 55.** 102.80 to 102.89 of the statutes are created to read:

**102.80 Uninsured employers fund.** (1) There is established a separate, nonlapsible trust fund designated as the uninsured employers fund consisting of all the following:

(a) Amounts collected from uninsured employers under s. 102.82.

(b) Uninsured employer assessments collected under s. 102.85 (4).

(c) Amounts paid from the appropriation under s. 20.445 (1) (b).

(d) Amounts collected from employes or dependents of employes under s. 102.81 (4) (b).

(e) All moneys received by the department for the uninsured employers fund from any other source.

(2) The secretary shall deposit money from the appropriation under s. 20.445 (1) (b) into the uninsured employers fund to enable the department to make payments under s. 102.81, if all of the following apply:

(a) The secretary has filed a certificate under sub. (3) (a).

(b) The balance in the uninsured employers fund is less than \$500,000.

(3) (a) If the balance in the uninsured employers fund equals or exceeds \$3,000,000 before July 1, 1992, the secretary shall consult the council on worker's compensation within 45 days after the balance equals or exceeds \$3,000,000. The secretary may file with the secretary of administration, within 15 days after consulting the council on worker's compensation, a certificate attesting that the balance equals or exceeds \$3,000,000.

(b) If the secretary does not file the certificate under par. (a) before August 15, 1992, the uninsured employers fund shall cease to exist and the balance in the uninsured employers fund shall be transferred to the work injury supplemental benefit fund created under s. 102.65.

**102.81 Compensation for injured employe of uninsured employer.** (1) (a) If an employe of an uninsured employer suffers an injury for which the uninsured employer is liable under s. 102.03, the department shall pay to the injured employe or the employe's dependents an amount equal to the compensation owed them by the uninsured employer under this chapter except penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57 and 102.60.

(b) The department shall make the payments required under par. (a) from the uninsured employers fund.

(2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and subch. IV of ch. 16 do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sp).

(3) An injured employe of an uninsured employer or his or her dependents may attempt to recover from the uninsured employer, or a 3rd party under s. 102.29, while receiving or attempting to receive payment under sub. (1).

(4) An injured employe, or the dependent of an injured employe, who received one or more payments under sub. (1) shall do all of the following:

(a) If the employe or dependent begins an action to recover compensation from the employe's employer or a 3rd party liable under s. 102.29, provide to the department a copy of all papers filed by any party in the action.

(b) If the employe or dependent receives compensation from the employe's employer or a 3rd party liable under s. 102.29, pay to the department the lesser of the following:

1. The amount after attorney fees and costs that the employe or dependent received under sub. (1).

2. The amount after attorney fees and costs that the employe or dependent received from the employer or 3rd party.

(5) The department of justice may bring an action to collect the payment under sub. (4).

(6) (a) Subject to par. (b), an employe, a dependent of an employe, an uninsured employer, a 3rd party who is liable under s. 102.29 or the department may enter into an agreement to settle liabilities under this chapter.

(b) A settlement under par. (a) is void without the department's written approval.

(7) This section first applies to injuries occurring on the first day of the calendar quarter beginning after the day that the secretary files a certificate under s. 102.80 (3) (a).

**102.82 Uninsured employer payments.** (1) An uninsured employer shall reimburse the department for any payment made under s. 102.81 (1) to an employe of the uninsured employer or to an employe's dependents, less amounts repaid by the employe or dependents under s. 102.81 (4) (b).

(2) (a) All uninsured employers shall pay to the department the greater of the following:

1. Twice the amount determined by the department to equal what the uninsured employer would have paid during periods of illegal nonpayment for worker's compensation insurance in the preceding 3-year period based on the employer's payroll in the preceding 3 years.

2. Seven hundred and fifty dollars.

(b) The payment owed under par. (a) is due within 30 days after the date on which the employer is notified. Interest shall accrue on amounts not paid when due at the rate of 1% per month.

(c) The department of justice may bring an action in circuit court to recover payments and interest owed to the department under this section.

(3) (a) When an employe dies as a result of an injury for which an uninsured employer is liable under s. 102.03, the uninsured employer shall pay \$1,000 to the department.

(b) The payment under par. (a) is in addition to any benefits or other compensation paid to an employe or survivors or the work injury supplemental benefit fund under ss. 102.46 to 102.51.

(c) This subsection does apply after June 30, 1992, unless the secretary has filed a certificate under s. 102.80 (3) (a).

**102.85 Uninsured employers; penalties.** (1) (a) An employer who fails to comply with s. 102.16 (3) or 102.28 (2) for less than 11 days shall forfeit not less than \$100 nor more than \$1,000.

(b) An employer who fails to comply with s. 102.16 (3) or 102.28 (2) for more than 10 days shall forfeit not less than \$10 nor more than \$100 for each day on which the employer fails to comply with s. 102.16 (3) or 102.28 (2).

(2) An employer who is required to provide worker's compensation insurance coverage under this chapter shall forfeit not less than \$100 nor more than \$1,000 if the employer does any of the following:

(a) Gives false information about the coverage to his or her employes, the department or any other person who contracts with the employer and who requests evidence of worker's compensation coverage in relation to that contract.

(b) Fails to notify a person who contracts with the employer that the coverage has been canceled in relation to that contract.

(3) An employer who violates an order to cease operations under s. 102.28 (4) may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

(4) (a) If a court imposes a fine or forfeiture under subs. (1) to (3), the court shall impose an uninsured employer assessment equal to 75% of the amount of the fine or forfeiture.

(b) If a fine or forfeiture is suspended in whole or in part, the uninsured employer assessment shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the uninsured employer assessment prescribed in this section. If the deposit is forfeited, the amount of the uninsured employer assessment shall be transmitted to the state treasurer under par. (d). If the deposit is returned, the uninsured employer assessment shall also be returned.

(d) The clerk of the court shall collect and transmit to the county treasurer the uninsured employer assessment and other amounts required under s. 59.395 (5). The county treasurer shall then make payment to the state treasurer as provided in s. 59.20 (5) (b). The state treasurer shall deposit the amount of the uninsured employer assessment, together with any interest thereon, in the uninsured employers fund as provided in s. 102.80 (1).

(5) (a) The payment of any judgment under this section may be suspended or deferred for not more than 90 days in the discretion of the court. The court shall suspend a judgment under this section upon the motion of the department, if the department is satisfied that the employer's violation of s. 102.16 (3) or 102.28 (2) was beyond the employer's control and that the employer no longer violates s. 102.16 (3) or 102.28 (2). In cases where a deposit has been made, any forfeitures, penalty assessments, jail assessments, uninsured employer assessments and costs shall be taken out of the deposit and the balance, if any, returned to the employer.

(b) In addition to any monetary penalties, the court may order an employer to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest, including ceasing business operations.

**1989 Assembly Bill 602**

(c) All civil remedies are available in order to enforce the judgment of the court, including the power of contempt under ch. 785.

**102.87 Citation procedure.** (1) (a) The citation procedures established by this section shall be used only in an action to recover a forfeiture under s. 102.85 (1) or (2). The citation form provided by this section may serve as the initial pleading for the action and is adequate process to give a court jurisdiction over the person if the citation is filed with the circuit court.

(b) The citation may be served on the defendant by registered mail with a return receipt requested.

(2) A citation under this section shall be signed by a department deputy, or by an officer who has authority to make arrests for the violation, and shall contain substantially the following information:

(a) The name, address and date of birth of the defendant.

(b) The name and department of the issuing department deputy or officer.

(c) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute or rule violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.

(d) A date, time and place for the court appearance, and a notice to appear.

(e) The maximum forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment for which the defendant is liable.

(f) Provisions for deposit and stipulation in lieu of a court appearance.

(g) Notice that if the defendant makes a deposit and fails to appear in court at the time specified in the citation, the failure to appear will be considered tender of a plea of no contest and submission to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and plea, may decide to summon the defendant or may issue an arrest warrant for the defendant upon failure to respond to a summons.

(h) Notice that if the defendant makes a deposit and signs the stipulation, the stipulation will be treated as a plea of no contest and submission to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and stipulation, may decide to summon the defendant or issue an arrest warrant for the defendant upon failure to respond to a summons, and that the defendant may, at any time before or at the time of the court appearance date, move the court for relief from the effect of the stipulation.

(i) Notice that the defendant may, by mail before the court appearance, enter a plea of not guilty and request another date for a court appearance.

(j) Notice that if the defendant does not make a deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or an arrest warrant.

(3) A defendant issued a citation under this section may deposit the amount of money that the issuing department deputy or officer directs by mailing or delivering the deposit and a copy of the citation before the court appearance date to the clerk of the circuit court in the county where the violation occurred, to the department or to the sheriff's office or police headquarters of the officer who issued the citation. The basic amount of the deposit shall be determined under a deposit schedule established by the judicial conference. The judicial conference shall annually review and revise the schedule. In addition to the basic amount determined by the schedule the deposit shall include the penalty assessment, jail assessment, any applicable uninsured employer assessment and costs.

(4) A defendant may make a stipulation of no contest by submitting a deposit and a stipulation in the manner provided by sub. (3) before the court appearance date. The signed stipulation is a plea of no contest and submission to a forfeiture plus the penalty assessment, jail assessment, any applicable uninsured employers assessment and costs not to exceed the amount of the deposit.

(5) Except as provided by sub. (6), a person receiving a deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of the circuit court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time specified in the citation he or she shall be considered to have tendered a plea of no contest and submitted to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit and that the court may accept the plea. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the canceled check is the receipt.

(6) The person receiving a deposit and stipulation of no contest shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of the circuit court regarding the disposition of the deposit, and notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be considered to have submitted to a forfeiture, penalty assessment, jail assessment and applicable uninsured employer assessment plus costs not to exceed the amount of the



deposit. Delivery of the receipt shall be made in the same manner as provided in sub. (5).

(7) If a defendant issued a citation under this section fails to appear in court at the time specified in the citation or by subsequent postponement, the following procedure applies:

(a) If the defendant has not made a deposit, the court may issue a summons or an arrest warrant.

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. If the court accepts the plea of no contest, the defendant may, within 90 days after the date set for appearance, move to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If a defendant is relieved from the plea of no contest, the court may order a written complaint or petition to be filed. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant's deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation serves as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture, penalty assessment, jail assessment and any applicable uninsured employer assessment plus costs not to exceed the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons or an arrest warrant. After signing a stipulation of no contest, the defendant may, at any time before or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on the motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects of the stipulation.

(8) If a citation or summons is issued to a defendant under this section and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing a letter stating that inability to the judge at the address indicated on the citation. The letter must show the defendant's return address. The letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge shall reply by letter to the defendant's address setting a time and place for trial. The time shall be during normal business hours if so requested. The date of the trial shall be at least 10

days from the date on which the letter was mailed by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(9) A department deputy or an officer who collects a forfeiture, penalty assessment, jail assessment, applicable insured employer assessment and costs under this section shall pay the money to the county treasurer within 20 days after its receipt. If the department deputy or officer fails to make timely payment, the county treasurer may collect the payment from the department deputy or officer by an action in the treasurer's name of office and upon the official bond of the department deputy or officer, with interest at the rate of 12% per year from the time when it should have been paid.

**102.88 Penalties; repeaters.** (1) When a person is convicted of any violation of this chapter or of any department rule or order, and it is alleged in the indictment, information or complaint, and proved or admitted on trial or ascertained by the court after conviction that the person was previously subjected to a fine or forfeiture within a period of 5 years under s. 102.85, the person may be fined not more than \$10,000 or imprisoned for not more than 90 days or both.

(2) When any person is convicted and it is alleged in the indictment, information or complaint and proved or admitted on trial or ascertained by the court after conviction that such person had been before subjected to a fine or forfeiture 3 times within a period of 3 years under s. 102.85 and that those convictions remain of record and unreversed, the person may be fined not more than \$2,000 or imprisoned for not more than 9 months or both.

**102.89 Parties to a violation.** (1) Whoever is concerned in the commission of a violation of this chapter or of any department rule or order under this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person does any of the following:

(a) Directly commits the violation.

(b) Aids and abets the commission of the violation.

(c) Is a party to a conspiracy with another to commit the violation or advises, hires or counsels or otherwise procures another to commit it.

(3) No penalty for any violation of this chapter or rule or order of this chapter may be reduced or diminished by reason of this section.

**SECTION 56.** 814.60 (2) (bm) of the statutes is created to read:

814.60 (2) (bm) Uninsured employer assessment imposed by s. 102.85 (4);

**SECTION 57.** 814.63 (3) (bm) of the statutes is created to read:



**1989 Assembly Bill 602**

- 13 -

814.63 (3) (bm) Uninsured employer assessment imposed by s. 102.85 (4);

**SECTION 58.** 973.05 (1) of the statutes is amended to read:

973.05 (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, of the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 53.46 (1), the crime victim and witness assistance surcharge under s. 973.045, any applicable drug abuse program improvement surcharge imposed by s. 161.41 (5), any applicable domestic abuse assessment imposed by s. 971.37 (1m) (c) 1 or 973.055, any applicable driver improvement surcharge imposed by s. 346.655, any applicable weapons assessment imposed by s. 167.31, any applicable uninsured employer assessment imposed by s. 102.85 (4), any applicable natural resources assessment imposed by s. 29.997 and any applicable natural resources restitution payment imposed by s. 29.998 to be made within a period not to exceed 60 days. If no such permission is embodied in the sentence, the fine, the penalty assessment, the jail assessment, the crime victim and witness assistance surcharge, any applicable drug abuse program improvement surcharge, any applicable domestic abuse assessment, any applicable driver improvement surcharge, any applicable weapons assessment, any applicable uninsured employer assessment, any applicable natural resources assessment and any applicable natural resources restitution payment shall be payable immediately.

**SECTION 59.** 973.05 (2) of the statutes is amended to read:

973.05 (2) When a defendant is sentenced to pay a fine and is also placed on probation, the court may make the payment of the fine, the penalty assessment, the jail assessment, the crime victim and witness assistance surcharge, any applicable drug abuse program improvement surcharge, any applicable domestic abuse assessment, any applicable uninsured employer assessment, any applicable driver improvement surcharge, any applicable weapons assessment, any applicable natural resources assessment and any applicable natural resources restitution payments a condition of probation. When the payments are made a condition of probation by the court, payments thereon shall be applied first to payment of the penalty assessment until paid in full, shall then be applied to the payment of the jail assessment until paid in full, shall then be applied to the payment of the crime victim and witness assistance surcharge until paid in full, shall then be applied to the drug abuse program improvement surcharge until paid in full, shall then be applied to payment of the driver improvement surcharge until paid in full, shall then be applied to payment of the domestic abuse assessment until paid in full, shall then be applied to payment of the natural resources assessment if applicable until paid in full, shall then be applied to payment of the natural resources restitution payment until paid in full, shall then

be applied to payment of the weapons assessment until paid in full, shall then be applied to payment of the uninsured employer assessment until paid in full and shall then be applied to payment of the fine.

**SECTION 60.** 973.07 of the statutes is amended to read:

**973.07 Failure to pay fine or costs.** If the fine, costs, penalty assessment, jail assessment, crime victim and witness assistance surcharge, applicable drug abuse program improvement surcharge, applicable domestic abuse assessment, applicable driver improvement surcharge, applicable weapons assessment, applicable uninsured employer assessment, applicable natural resources assessment and applicable natural resources restitution payments are not paid as required by the sentence, the defendant may be committed to the county jail until the fine, costs, penalty assessment, jail assessment, crime victim and witness assistance surcharge, applicable drug abuse program improvement surcharge, applicable domestic abuse assessment, applicable driver improvement surcharge, applicable weapons assessment, applicable uninsured employer assessment, applicable natural resources assessment or applicable natural resources restitution payments are paid or discharged for a period fixed by the court not to exceed 6 months.

**SECTION 61. Nonstatutory provisions; industry, labor and human relations.** (1) POSITION AUTHORIZATION. The authorized FTE positions for the department of industry, labor and human relations are increased by 3.15 SEG positions, to be funded from the appropriation under section 20.445 (1) (sp) of the statutes, as created by this act, for the purpose of administering and enforcing the requirements of this act relating to the uninsured employers fund and uninsured employers.

(2) SELF-INSURERS COUNCIL. Notwithstanding the length of terms specified in section 15.227 (11) of the statutes, as affected by this act, all of the following apply:

(a) The terms of the persons who are members of the self-insurers council on the effective date of this paragraph expire on July 1, 1990.

(b) Of the members that it appoints to the self-insurers council for terms beginning July 1, 1990, the labor and industry review commission shall designate 2 to serve terms expiring on July 1, 1991; 2 to serve terms expiring on July 1, 1992; and one to serve a term expiring on July 1, 1993.

(3) WORKER'S COMPENSATION INSURANCE CONTRACT FILING. (a) In this subsection, "Wisconsin compensation rating bureau" has the meaning given in section 102.01 (2) (gm) of the statutes, as created by this act.

(b) An insurer who is a party to any contract described in section 102.31 (1) (a) of the statutes on the effective date of this paragraph shall file with the Wisconsin compensation rating bureau a copy of the contract, or other evidence of the contract in a form specified

by the Wisconsin compensation rating bureau, not more than 60 days after the effective date of this paragraph.

(c) The Wisconsin compensation rating bureau shall enforce this subsection against an insurer who fails to comply with paragraph (b).

(4) QUARTERLY REPORT TO LEGISLATURE AND GOVERNOR. Beginning on July 15, 1990, and on a quarterly basis thereafter through April 15, 1992, the secretary of industry, labor and human relations shall provide all of the following information in writing to the chairpersons of the senate and assembly labor committees, the cochairpersons of the joint committee on finance and the governor:

(a) The current balance in the uninsured employers fund created under section 102.80 of the statutes.

(b) The amounts paid in compensation to injured employes of uninsured employers under section 102.81 of the statutes, and the types of injuries resulting in claims against the uninsured employers fund.

(c) The amounts estimated to be paid in compensation to injured employes of uninsured employers under section 102.81 of the statutes, and the types of injuries resulting in claims against the uninsured employers fund as if section 102.80 to 102.87 of the statutes had applied to injuries occurring on or after January 1, 1990.

(d) The amounts received in uninsured employer payments and reimbursements under section 102.82 of the statutes.

(e) A summary of the number and disposition of uninsured employer prosecutions under section 102.85

of the statutes, and the amounts imposed and the amounts actually collected in fines and forfeitures.

(f) The amount of uninsured employer assessments imposed and the amount actually collected under section 102.85 (4) of the statutes.

(g) A summary of closure orders against uninsured employers under section 102.28 (4) of the statutes.

**SECTION 62. Initial applicability.** (1) WORKER'S COMPENSATION PROCEDURE. The treatment of section 102.17 (7) of the statutes and the creation of section 102.17 (7) (b) of the statutes first apply to hearings noticed under section 102.17 (1) (a) of the statutes on the effective date of this subsection.

(2) WORKER'S COMPENSATION COVERAGE. The treatment of sections 102.01 (2) (f), 102.06, 102.07 (8) and (8m) and 102.29 (7) of the statutes and the creation of section 102.07 (8) (b) and (c) of the statutes first apply to injuries occurring after the effective date of this subsection.

**SECTION 63. Effective dates.** This act takes effect on January 1, 1990, or the first day of the first month beginning after publication, whichever is later, except as follows:

(1) The treatment of section 15.227 (11) of the statutes takes effect on July 1, 1990.

(2) The creation of sections 20.445 (1) (b) and 102.80 (2) of the statutes takes effect on July 1, 1992.