

# State of Wisconsin



1997 Senate Bill 323

Date of enactment: **December 12, 1997**  
Date of publication\*: **December 30, 1997**

## 1997 WISCONSIN ACT 38

AN ACT *to amend* 20.445 (3) (jb), 102.07 (8) (b) 2., 102.07 (12m), 102.076 (1), 102.077 (3), 102.11 (1) (intro.), 102.11 (1) (d), 102.13 (1) (a), 102.13 (1) (b) (intro.), 102.13 (1) (b) 1., 102.13 (1) (b) 3., 102.13 (1) (b) 4., 102.13 (1) (d) 1., 102.13 (1) (d) 2., 102.13 (1) (d) 3., 102.13 (1) (d) 4., 102.13 (2) (a), 102.13 (2) (b), 102.13 (3), 102.16 (2) (a), 102.16 (2) (b), 102.16 (2) (d), 102.16 (2) (f), 102.16 (2m) (a), 102.16 (2m) (b), 102.16 (2m) (e), 102.16 (3), 102.17 (1) (e), 102.17 (1) (g), 102.28 (3) (a) (intro.), 102.28 (3) (a) 4., 102.28 (3) (b) 4., 102.28 (3) (c), 102.28 (3) (d), 102.29 (3), 102.29 (8), 102.29 (9), 102.42 (2) (a), 102.42 (6), 102.82 (1) and 102.83 (8); *to repeal and recreate* 102.42 (2) (a); and *to create* 49.124 (1m) (d), 102.04 (2m), 102.16 (1m), 102.18 (1) (bg) and 102.29 (8r) of the statutes; **relating to**: various changes to the worker's compensation law.

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

**SECTION 1.** 20.445 (3) (jb) of the statutes is amended to read:

20.445 (3) (jb) *Fees for administrative services.* All moneys received from fees charged for providing state mailings, special computer services, training programs, worker's compensation coverage for persons participating in employment and training programs under ch. 49, printed materials and publications relating to economic support, for the purpose of providing state mailings, special computer services, training programs, worker's compensation coverage for persons participating in employment and training programs under ch. 49, printed materials and publications relating to economic support.

**SECTION 2.** 49.124 (1m) (d) of the statutes is created to read:

49.124 (1m) (d) A participant in an employment and training program under this section administered by the department is an employe of the department for purposes of worker's compensation coverage, except to the extent

that the person for whom the participant is performing work provides worker's compensation coverage. A participant in an employment and training program under this section administered by a Wisconsin works agency is an employe of the Wisconsin works agency for purposes of worker's compensation coverage, except to the extent that the person for whom the participant is performing work provides worker's compensation coverage.

**SECTION 3.** 102.04 (2m) of the statutes is created to read:

102.04 (2m) A temporary help agency is the employer of an employe whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employe's services. A temporary help agency is liable under s. 102.03 for all compensation payable under this chapter to that employe, including any payments required under s. 102.16 (3), 102.18 (1) (b) or (bp), 102.22 (1), 102.35 (3), 102.57 or 102.60. Except as permitted under s. 102.29, a temporary help agency may not seek or receive reim-

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

bursement from another employer for any payments made as a result of that liability.

**SECTION 4.** 102.07 (8) (b) 2. of the statutes is amended to read:

102.07 (8) (b) 2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year.

**SECTION 5.** 102.07 (12m) of the statutes is amended to read:

102.07 (12m) A student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), while he or she is engaged in performing services as part of a school work training, work experience or work study program, and who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employe of a school district or private school that elects under s. 102.077 to name the student as its employe. This subsection does not apply after December 31, ~~1997~~ 1999.

**SECTION 6.** 102.076 (1) of the statutes is amended to read:

102.076 (1) Not more than 2 officers of a corporation having not more than 10 stockholders may elect not to be subject to this chapter. If the corporation has been issued a policy of worker's compensation insurance, an officer of the corporation may elect not to be subject to this chapter and not to be covered under the policy at any time during the period of the policy. Except as provided in sub. (2), the election shall be made by an endorsement, on the policy of worker's compensation insurance issued to that corporation, naming each officer who has so elected. The election is effective for the period of the policy and may not be reversed during the period of the policy. An officer who so elects is an employe for the purpose of determining whether the corporation is an employer under s. 102.04 (1) (b).

**SECTION 7.** 102.077 (3) of the statutes is amended to read:

102.077 (3) This section does not apply after December 31, ~~1997~~ 1999.

**SECTION 8.** 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, except that the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, ~~1996~~ 1998, and

before January 1, ~~1997~~ 1999, shall be not more than \$741 ~~\$784.50~~, resulting in a maximum compensation rate of \$494 ~~\$523~~, and the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, ~~1997~~ 1999, and before January 1, ~~1998~~ 2000, shall be not more than \$763.50 ~~\$807~~, resulting in a maximum compensation rate of \$509 ~~\$538~~. The average weekly earnings for permanent partial disability shall be not less than \$30 and, for permanent partial disability for injuries occurring on or after January 1, ~~1996~~ 1998, and before January 1, 1999, not more than \$253.50 ~~\$268.50~~, resulting in a maximum compensation rate of \$169 ~~\$179~~, and, for permanent partial disability for injuries occurring on or after January 1, ~~1997~~ 1999, not more than \$261 ~~\$276~~, resulting in a maximum compensation rate of \$174 ~~\$184~~. Between such limits the average weekly earnings shall be determined as follows:

**SECTION 9.** 102.11 (1) (d) of the statutes is amended to read:

102.11 (1) (d) Except in situations where par. (b) applies, average weekly earnings shall in no case be less than actual average weekly earnings of the employe for the ~~4-calendar quarters~~ 52 calendar weeks before his or her injury within which the employe has been employed in the business, in the kind of employment and for the employer for whom the employe worked when injured. Calendar weeks within which no work was performed shall not be considered under this paragraph. This paragraph applies only if the employe has worked within a total of at least 6 calendar weeks during the ~~4-calendar quarters~~ 52 calendar weeks before his or her injury in the business, in the kind of employment and for the employer for whom the employe worked when injured. For purposes of this section, earnings for part-time services performed for a labor organization pursuant to a collective bargaining agreement between the employer and that labor organization shall be considered as part of the total earnings in the preceding ~~4-calendar quarters~~ 52 calendar weeks, whether payment is made by the labor organization or the employer.

**SECTION 10.** 102.13 (1) (a) of the statutes is amended to read:

102.13 (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, dentists 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, dentist 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, dentist or podiatrist.

**SECTION 11.** 102.13 (1) (b) (intro.) of the statutes is amended to read:

102.13 (1) (b) (intro.) An employer or insurer who requests that an employe submit to reasonable examination under par. (a) or (am) shall tender to the employe, before the examination, all necessary expenses including transportation expenses. The employe is entitled to have a physician, chiropractor, psychologist, dentist or podiatrist provided by himself or herself present at the examination and to ~~request and~~ receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, podiatrist, dentist or vocational expert immediately upon receipt of those reports by the employer or worker's compensation insurer. The employe is also entitled to have a translator provided by himself or herself present at the examination if the employe has difficulty speaking or understanding the English language. The employer's or insurer's written request for examination shall notify the employe of all of the following:

**SECTION 12.** 102.13 (1) (b) 1. of the statutes is amended to read:

102.13 (1) (b) 1. The proposed date, time and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert.

**SECTION 13.** 102.13 (1) (b) 3. of the statutes is amended to read:

102.13 (1) (b) 3. The employe's right to have his or her physician, chiropractor, psychologist, dentist or podiatrist present at the examination.

**SECTION 14.** 102.13 (1) (b) 4. of the statutes is amended to read:

102.13 (1) (b) 4. The employe's right to ~~request and~~ receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist, dentist, podiatrist or vocational expert immediately upon receipt of these reports by the employer or worker's compensation insurer.

**SECTION 15.** 102.13 (1) (d) 1. of the statutes is amended to read:

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

**SECTION 16.** 102.13 (1) (d) 2. of the statutes is amended to read:

102.13 (1) (d) 2. Any physician, chiropractor, psychologist, dentist 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.

**SECTION 17.** 102.13 (1) (d) 3. of the statutes is amended to read:

102.13 (1) (d) 3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist, dentist 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.

**SECTION 18.** 102.13 (1) (d) 4. of the statutes is amended to read:

102.13 (1) (d) 4. The testimony of any physician, chiropractor, psychologist, dentist or podiatrist who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

**SECTION 19.** 102.13 (2) (a) of the statutes is 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, dentist, 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 20.** 102.13 (2) (b) of the statutes is amended to read:

102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) 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 21.** 102.13 (3) of the statutes is amended to read:

102.13 (3) If 2 or more physicians, chiropractors, psychologists, dentists 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 physi-

cian, chiropractor, psychologist, dentist 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 the employe determined by the department after receipt of the opinion.

**SECTION 22.** 102.16 (1m) of the statutes is created to read:

102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any health services provided to an injured employe by a health service provider, but disputes the reasonableness of the fee charged by the health service provider, the department may include in its order confirming the compromise or stipulation a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2) (b) that the reasonableness of the fee is in dispute.

(b) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any treatment provided to an injured employe by a health service provider, but disputes the necessity of the treatment, the department may include in its order confirming the compromise or stipulation a determination as to the necessity of the treatment or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2m) (b) that the necessity of the treatment is in dispute.

**SECTION 23.** 102.16 (2) (a) of the statutes is amended to read:

102.16 (2) (a) The department has jurisdiction under this subsection, sub. (1m) (a) and s. 102.17 to resolve a dispute between a health service provider and an insurer or self-insured employer over the reasonableness of a fee charged by the health service provider for health services provided to an injured employe who claims benefits under this chapter. The department shall deny payment of a health service fee that the department determines under this subsection, sub. (1m) (a) or s. 102.18 (1) (b) to be unreasonable. A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this subsection are bound by the department's determination under this subsection on the reasonableness of the disputed fee, unless that determination is set aside on judicial review under par. (f) as provided in par. (f). A health service provider and an insurer or self-insured em-

ployer that are parties to a fee dispute under sub. (1m) (a) are bound by the department's determination under sub. (1m) (a) on the reasonableness of the disputed fee, unless that determination is set aside or modified by the department under sub. (1). An insurer or self-insured employer that is a party to a fee dispute under s. 102.17 and a health service provider are bound by the department's determination under s. 102.18 (1) (b) on the reasonableness of the disputed fee, unless that determination is set aside, reversed or modified by the department under s. 102.18 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.

**SECTION 24.** 102.16 (2) (b) of the statutes is amended to read:

102.16 (2) (b) An insurer or self-insured employer that disputes the reasonableness of a fee charged by a health service provider or the department under sub. (1m) (a) or s. 102.18 (1) (bg) 1, shall provide reasonable notice to the health service provider that the fee is being disputed. After receiving reasonable notice under this paragraph or under sub. (1m) (a) or s. 102.18 (1) (bg) 1, that a health service fee is being disputed, a health service provider may not collect the disputed fee from, or bring an action for collection of the disputed fee against, the employe who received the services for which the fee was charged.

**SECTION 25.** 102.16 (2) (d) of the statutes is amended to read:

102.16 (2) (d) For fee disputes that are submitted to the department before July 1, ~~1998~~ 2000, the department shall analyze the information provided to the department under par. (c) according to the criteria provided in this paragraph to determine the reasonableness of the disputed fee. The department shall determine that a disputed fee is reasonable and order that the disputed fee be paid if that fee is at or below the mean fee for the health service procedure for which the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown by data from a data base that is certified by the department under par. (h). The department shall determine that a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service procedure for which the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown by data from a data base that is certified by the department under par. (h), unless the health service provider proves to the satisfaction of the department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

**SECTION 26.** 102.16 (2) (f) of the statutes is amended to read:

102.16 (2) (f) The department may set aside, reverse or modify a determination under this subsection within 30 days after the date of the determination. A health service provider, insurer or self-insured employer that is

aggrieved by a determination of the department under this subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

**SECTION 27.** 102.16 (2m) (a) of the statutes is amended to read:

102.16 (2m) (a) The department has jurisdiction under this subsection, sub. (1m) (b) and s. 102.17 to resolve a dispute between a health service provider and an insurer or self-insured employer over the necessity of treatment provided for an injured employe who claims benefits under this chapter. The department shall deny payment for any treatment that the department determines under this subsection, sub. (1m) (b) or s. 102.18 (1) (b) to be unnecessary. A health service provider and an insurer or self-insured employer that are parties to a dispute under this subsection over the necessity of treatment are bound by the department's determination under this subsection on the necessity of that treatment, unless that determination is set aside on judicial review under par. (e) as provided in par. (e). A health service provider and an insurer or self-insured employer that are parties to a dispute under sub. (1m) (b) over the necessity of treatment are bound by the department's determination under sub. (1m) (b) on the necessity of that treatment, unless that determination is set aside or modified by the department under sub. (1). An insurer or self-insured employer that is a party to a dispute under s. 102.17 over the necessity of treatment and a health service provider are bound by the department's determination under s. 102.18 (1) (b) on the necessity of that treatment, unless that determination is set aside, reversed or modified by the department under s. 102.18 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.

**SECTION 28.** 102.16 (2m) (b) of the statutes is amended to read:

102.16 (2m) (b) An insurer or self-insured employer that disputes the necessity of treatment provided by a health service provider or the department under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable notice to the health service provider that the necessity of that treatment is being disputed. After receiving reasonable notice under this paragraph or under sub. (1m) (b) or s. 102.18 (1) (bg) 2. that the necessity of treatment is being disputed, a health service provider may not collect a fee for that disputed treatment from, or bring an action for collection of the fee for that disputed treatment against, the employe who received the treatment.

**SECTION 29.** 102.16 (2m) (e) of the statutes is amended to read:

102.16 (2m) (e) The department may set aside, reverse or modify a determination under this subsection within 30 days after the date of the determination. A health service provider, insurer or self-insured employer that is aggrieved by a determination of the department under this subsection may seek judicial review of that de-

termination in the same manner that compensation claims are reviewed under s. 102.23.

**SECTION 30.** 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, dental or hospital tickets or contracts for medical, surgical, hospital or other health care treatment which is required to be furnished by that employer.

**SECTION 31.** 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, dentist 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 32.** 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, dentist, psychologist or podiatrist be obtained without examination or autopsy, by an impartial, competent physician, chiropractor, dentist, 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 department 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 33.** 102.18 (1) (bg) of the statutes is created to read:

102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for any health services provided to an

injured employe by a health service provider, but that the reasonableness of the fee charged by the health service provider is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self-insured employer to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute.

2. If the department finds under par. (b) that an employer or insurance carrier is liable under this chapter for any treatment provided to an injured employe by a health service provider, but that the necessity of the treatment is in dispute, the department may include in its order under par. (b) a determination as to the necessity of the treatment or the department may notify, or direct the employer or insurance carrier to notify, the health service provider under s. 102.16 (2m) (b) that the necessity of the treatment is in dispute.

**SECTION 34.** 102.28 (3) (a) (intro.) of the statutes is amended to read:

102.28 (3) (a) (intro.) An employer may file with the department an application for exemption from the duty to pay compensation under this chapter with respect to any employe who signs the waiver described in subd. 1. and the affidavit described in subd. 2. if an authorized representative of the religious sect to which the employe belongs signs the affidavit specified in subd. 3. and signs the agreement and provides the proof of financial ability described in subd. 4. An application for exemption under this paragraph shall include all of the following:

**SECTION 35.** 102.28 (3) (a) 4. of the statutes is amended to read:

102.28 (3) (a) 4. An agreement signed by an authorized representative of the religious sect to which the employe belongs to provide the financial and medical assistance described in subd. 3. to the employe and to the employe's dependents if the employe sustains an injury which, but for the waiver under subd. 1., the employer would be liable for under s. 102.03, and proof of the financial ability of the religious sect to provide that financial and medical assistance which the religious sect may establish by maintaining, in an amount determined by the department, a surety bond issued by a company authorized to do business in this state, an irrevocable letter of credit from a financial institution, as defined in s. 705.01 (3), or some other financial commitment approved by the department.

**SECTION 36.** 102.28 (3) (b) 4. of the statutes is amended to read:

102.28 (3) (b) 4. The religious sect to which the employe belongs has agreed to provide the financial and medical assistance described in subd. 3. to the employe and to the dependents of the employe if the employe sustains an injury that, but for the waiver under par. (a) 1., the employer would be liable for under s. 102.03 and that the

religious sect has the financial ability to provide that financial and medical assistance.

**SECTION 37.** 102.28 (3) (c) of the statutes is amended to read:

102.28 (3) (c) An employe who has signed a waiver under par. (a) 1. and an affidavit under par. (a) 2., who sustains an injury that, but for that waiver, the employer would be liable for under s. 102.03, who at the time of the injury was a member of a religious sect whose authorized representative has filed an affidavit under par. (a) 3. and an agreement and proof of financial responsibility under par. (a) 4. and who as a result of the injury becomes dependent on the religious sect for financial and medical assistance, or the employe's dependent, may request a hearing under s. 102.17 (1) to determine if the religious sect has provided the employe and his or her dependents with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect. If, after hearing, the department determines that the religious sect has not provided that standard of living or medical treatment, or both, the department may order the religious sect to provide alternative benefits to that employe or his or her dependent, or both, in an amount that is reasonable under the circumstances, but not in excess of the benefits that the employe or dependent could have received under this chapter but for the waiver under par. (a) 1. ~~If the religious sect does not provide the alternative benefits as ordered by the department, the department may use the financial commitment under par. (a) 4. to pay the alternative benefits ordered, including any penalties that may be appropriate.~~

**SECTION 38.** 102.28 (3) (d) of the statutes is amended to read:

102.28 (3) (d) The department shall provide a form for the application for exemption of an employer under par. (a) (intro.), the waiver and affidavit of an employe under par. (a) 1. and 2., the affidavit of a religious sect under par. (a) 3. and the agreement and proof of financial responsibility of a religious sect under par. (a) 4. A properly completed form is prima facie evidence of satisfaction of the conditions under par. (b) as to the matter contained in the form.

**SECTION 39.** 102.29 (3) of the statutes is amended to read:

102.29 (3) Nothing in this chapter shall prevent an employe from taking the compensation he or she may be entitled to under it and also maintaining a civil action against any physician, chiropractor, psychologist, dentist or podiatrist for malpractice.

**SECTION 40.** 102.29 (8) of the statutes is amended to read:

102.29 (8) No student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an

employee of the school district or private school for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose. This subsection does not apply to injuries occurring after December 31, 1997 1999.

**SECTION 41.** 102.29 (8r) of the statutes is created to read:

102.29 (8r) No participant in a food stamp employment and training program under s. 49.124 (1m) who, under s. 49.124 (1m) (d), is provided worker's compensation coverage by the department or by a Wisconsin works agency, as defined in s. 49.001 (9), and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the employment and training from which the claim arose.

**SECTION 42.** 102.29 (9) of the statutes is amended to read:

102.29 (9) No participant in a work experience component of a job opportunities and basic skills program who, under s. 49.193 (6) (a), is considered to be an employe of the agency administering that program, or who, under s. 49.193 (6) (a), is provided worker's compensation coverage by the person administering the work experience component, and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the work experience from which the claim arose. This subsection does not apply to injuries occurring after ~~December 31, 1997~~ February 28, 1998.

**SECTION 43.** 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, dentist 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 licensed to practice and practicing in this state on referral from another practitioner is deemed to be treatment by one practitioner. Except by mutual agreement, an employer or worker's compensation insurer is not liable for treatment provided by a practitioner not licensed to prac-

lice and practicing in this state on referral from another practitioner.

**SECTION 44.** 102.42 (2) (a) of the statutes, as affected by 1997 Wisconsin Act .... (this act), is repealed and recreated 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, dentist 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.

**SECTION 45.** 102.42 (6) of the statutes is amended to read:

102.42 (6) TREATMENT REJECTED BY EMPLOYEE. Unless the employe shall have elected Christian Science treatment in lieu of medical, surgical, dental, hospital or sanatorium treatment, no compensation shall be payable for the death or disability of an employe, if the death be caused, or insofar as the disability may be aggravated, caused or continued ~~(a)~~ by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical ~~or~~ surgical or dental treatment, ~~(b)~~ or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or sanatorium treatment when found by the department to be necessary. The right to compensation accruing during a period of refusal or neglect under (b) to submit to or follow hospital or sanatorium treatment when found by the department to be necessary in the case of tuberculosis shall be barred, irrespective of whether disability was aggravated, caused or continued thereby.

**SECTION 46.** 102.82 (1) of the statutes is amended to read:

102.82 (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). The reimbursement owed under this subsection is due within 30 days after the date on which the department notifies the uninsured employer that the reimbursement is owed. Interest shall accrue on amounts not paid when due at the rate of 1% per month.

**SECTION 47.** 102.83 (8) of the statutes is amended to read:

102.83 (8) Any officer or director of an uninsured employer that is a corporation and any member or manager of an uninsured employer that is a limited liability company may be found individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those amounts from the corporation or limited liability company, as provided in this section, the corporation or limited liability company is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation or of the members and managers of a limited liability company as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation or limited liability company and shall be set forth in a determination or decision issued under s. 102.82.

**SECTION 48. Initial applicability.**

(1) TEMPORARY HELP AGENCIES. The treatment of section 102.04 (2m) of the statutes first applies to reimbursement sought or received by a temporary help agency, as defined in section 102.01 (2) (f) of the statutes, on the effective date of this subsection, notwithstanding that the reimbursement is of a payment made before the effective date of this subsection.

(2) ELECTIONS BY CORPORATE OFFICERS. The treatment of section 102.076 (1) of the statutes first applies to elections under that subsection that are in effect on the effective date of this subsection.

(3) COMPUTATIONS OF EARNINGS. The treatment of section 102.11 (1) (d) of the statutes first applies to inju-

ries or deaths occurring on the effective date of this subsection.

(4) FEE AND NECESSITY OF TREATMENT DISPUTES.

(a) The treatment of sections 102.16 (1m) and 102.18 (1) (bg) of the statutes first applies to orders under section 102.16 (1) and 102.18 (1) (b) of the statutes issued on the effective date of this paragraph.

(b) The treatment of section 102.16 (2) (f) and (2m) (e) of the statutes first applies to determinations under section 102.16 (2) and (2m) of the statutes made 30 days before the effective date of this paragraph.

(5) OUT-OF-STATE TREATMENT.

(a) The amendment of section 102.42 (2) (a) of the statutes first applies to referrals made to a practitioner not licensed and practicing in this state on referral by another practitioner on the effective date of this paragraph.

(b) The repeal and recreation of section 102.42 (2) (a) of the statutes first applies to referrals made to a practitioner by another practitioner on the effective date of this paragraph.

(6) UNINSURED EMPLOYERS.

(a) The treatment of section 102.82 (1) of the statutes first applies to reimbursements of which the department of workforce development provides notice on the effective date of this paragraph.

(b) The treatment of section 102.83 (8) of the statutes first applies to the members and managers of a limited liability company that is unable to pay an amount owed to the uninsured employers fund on the effective date of this paragraph.

**SECTION 49. Effective dates.** This act takes effect on January 1, 1998, or on the day after publication whichever is later, except as follows:

(1) OUT-OF-STATE TREATMENT. The repeal and recreation of section 102.42 (2) (a) of the statutes and SECTION 48 (5) (b) this act take effect on January 1, 2000.