☒ Original ☐ Updated ☐ Corrected ☐ Supplemental **FISCAL ESTIMATE** **DOA-2048 N(R10/94)**	**1999 Session** LRB or Bill No. -- Adm. Rule No. SB-194 --2497/1 Amendment No. if Applicable

Subject

THE FORMULA FOR DISTRIBUTING THE PROCEEDS OF A 3RD PARTY CLAIM BETWEEN AN EMPLOYE OR THE EMPLOYE'S PERSONAL REPRESENTATIVE OR OTHER PERSON ENTITLED BRING ACTION AND THE EMPLOYER THE EMPLOYER'S WORKER'S COMPENSATION INSURER OR THE DEPARTMENT OF WORKFORCE DEVELOPMENT.

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- ☐ Increase Existing Appropriation ☐ Increase Existing Revenues
- ☐ Decrease Existing Appropriation ☒ Decrease Existing Revenues
- ☐ Create New Appropriation

☒ Increase Costs - May be possible to Absorb Within Agency's Budget ☒ Yes ☐ No

☐ Decrease Costs

Local: ☐ No local government costs

1. ☒ Increase Costs
   ☐ Permissive ☒ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory
5. Types of Local Government Units Affected
   ☐ Towns ☐ Villages ☐ Cities
   ☐ Counties ☒ Others Local units of government that self-insure for purposes of paying worker's compensation benefits may be affected.
   ☐ School Districts ☐ WTCS Districts

Fund Sources Affected:

☐ GPR ☐ FED ☒ PRO ☐ PRS ☒ SEG ☐ SEG-S

Affected Ch. 20 Appropriations:
20.505(2)(k) and 20.445(1)(sm)

(DWD)(06/22/99)

Assumptions Used in Arriving at Fiscal Estimate

Generally, worker's compensation is the exclusive remedy for an injured worker to pursue against his or her employer, insurer or co-workers. However, where a third-party caused the injury (e.g., a pizza delivery person hurt in auto accident), the employee may sue the third-party for damages. Just like any other tort claim, these third-party actions are in circuit court, not the worker's compensation system. However, by law, the worker's compensation insurer is entitled to recover its costs (e.g., medical payments and wage reimbursement) out of the proceeds of the 3rd-party settlement. In fact, worker's compensation insurers may participate in the prosecution of the third-party claim.

Currently, in a worker's compensation claim in which there is also a third-party settlement, s. 102.29(1), Stats., distributes the settlement proceeds between the injured employee and the worker's compensation insurer as follows; from the settlement amount:

(1) pay the reasonable costs of collecting the settlement;

(2) from the remainder, pay one-third to the injured worker;

(3) from what remains, reimburse the insurer for payments already made or which it may be obligated to make in the future;

(4) pay any balance to the employee.

(Continued on next page...)

Long-Range Fiscal Implications

Unknown.

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Assumptions Used in Arriving at Fiscal Estimate (Continued)

The amount remaining after the first two steps and after reimbursing the carrier for payments already made to the employe is commonly called the "cushion." Under current law, insurers are entitled to use interest on the cushion to offset the cost of future payments. See Sutton v. Kaarakka, 168 Wis. 2d 160 (Ct. App. 1992). The court held that the principal and interest earned on that principal are a "unitary fund" intended to serve the purpose of the statute--reimbursing the employer or insurer for those worker's compensation payments the employer or insurer must make in the future.

In the Sutton case, the principal amount of the cushion was $1,001,416. Assuming an annual 6% rate of return, the insurer would be entitled to use $60,000 per year in interest to offset its future obligations. If there were significant medical payments, the principal (and related interest) would decline over time. However, if there were few medical payments, the amount of the interest might completely offset the insurer's permanent disability benefits forever.

This bill shifts the custody of the cushion from the insurer to the employee. It also tolls the insurer's responsibility to pay benefits until the future worker's compensation benefits accrued exceed the amount in the cushion. However, the insurance carrier would not be entitled to use interest earned on the principal amount of the cushion to further delay the date on which its obligation to reinstate benefits begins. The effect is that interest on the cushion will go to the employee, not the insurer or self-insured employer.

Section 102.29, Stats., authorizes both the courts and the Department to approve 3rd-party settlement distributions under the four-step formula outlined above. The Department does not keep records of how many 3rd-party settlements it approves, nor does it have any systematic information about how many are approved by courts (typically, the court in which the 3rd-party tort action is pending). Each year, there are about 65,000 serious injuries reported to the Department. The Department estimates that it annually approves about 500 3rd-party distributions, and that the Wisconsin courts approve another 250 or so.

In the overwhelming majority of 3rd-party settlements, the principal is under $10,000 and the interest relatively small. At the other extreme, the Department estimates that 5 or 10 each year might involve significant dollar amounts as in the Sutton case. Since these larger distributions are typically approved by the courts handling the 3rd-party tort claims rather than by the Department, the actual number is unknown.

The State of Wisconsin and 45 local units of government self-insure for purposes of paying worker's compensation benefits. The fiscal impact on the State and local units of goverment would be same as on any private insurance carrier or private self-insured employer. They could no longer use the interest from the cushion to defer their liability for future worker's compensation benefit payments.

The Department's Uninsured Employers Fund (UEF) also pays claims to employees who were hurt while working for employers who were illegally uninsured. The UEF then attempts to collect reimbursement from the uninsured employer for any benefits paid out. This bill would not have an impact on the UEF if the UEF successfully recovers payments from the illegally uninsured employer. However, often the illegally uninsured employers have no assets to cover the UEF loses and the UEF is not reimbursed. In this situation, this bill would impact the UEF just like any other insurer. They could no longer use the interest from the cushion to defer their liability for future worker's compensation benefit payments.

Since it is not known how many 3rd-party settlements will involve the State, local units of goverment, or the Uninsured Employers Fund; how often there will be any future liability; and how often the interest amount will be significant, the actual fiscal impact is unknown.

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect DOA-2047(R10/94)	☒ Original ☐ Corrected	☐ Updated ☐ Supplemental	LRB or Bill No./Adm Rule No. SB-194 / 2497/1	Amendment No.

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I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
	Increased Costs	**Decreased Costs**
A. State Costs by Category		
State Operations - Salaries and Fringes	$0	- $0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	$0	- $0
Local Assistance	$0	- $0
Aids to Individuals or Organizations	$0	- $0
TOTAL State Costs by Category	$0	- $0
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	$0	- $0
FED	$0	- $0
PRO/PRS	$0	- $0
SEG/SEG-S	$0	- $0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	$0	- $0
GPR Earned	$0	- $0
FED	$0	- $0
PRO/PRS	$0	- $0
SEG/SEG-S	$0	- $0
TOTAL State Revenues:	$0	- $0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
Net Change in Costs:	$0	$0
Net Change in Revenues:	$0	$0

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