State of Wisconsin
2005 – 2006 LEGISLATURE

LRB-3474/P3
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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 102.60 (9); ***to renumber and amend*** 20.445 (1) (ha), 20.445 (1) (hb), 20.445 (1) (hp), 102.60 (intro.), 102.60 (1), 102.60 (2), 102.60 (3) and 102.60 (4); ***to amend*** 20.445 (1) (t), 102.03 (1) (c) 3., 102.04 (2m), 102.11 (1) (intro.), 102.16 (1m) (b), 102.16 (2m) (c), 102.16 (2m) (g), 102.17 (1) (h), 102.17 (4), 102.18 (1) (bg) 2., 102.18 (1) (bp), 102.23 (5), 102.28 (8), 102.29 (1), 102.31 (7), 102.32 (6) (b), 102.32 (6m), 102.33 (2) (a), 102.33 (2) (b) (intro.), 102.33 (2) (b) 1., 102.33 (2) (b) 2., 102.33 (2) (b) 4., 102.33 (2) (c), 102.35 (1), 102.42 (2) (b), 102.44 (1) (intro.), 102.44 (1) (intro.), 102.44 (1) (a), 102.44 (1) (b), 102.49 (5) (a), 102.49 (5) (e), 102.59 (2), 102.60 (title), 102.60 (5) (a), 102.60 (5) (b), 102.60 (6), 102.60 (7), 102.60 (8), 102.61 (1), 102.61 (1m) (c), 102.62, 102.65 (1), 102.66 (1), 102.66 (2), 102.75 (2), 102.75 (4), 102.81 (1) (a), 102.81 (2), 102.87 (4) and 103.78 (4); ***to repeal and recreate*** 102.44 (1) (a) and 102.44 (1) (b); and ***to create*** 25.17 (1) (zd), 102.13 (2) (c), 102.17 (1) (d) 4., 102.31 (2m), 102.33 (2) (d), 102.42 (1m) (title), 102.425, 102.43 (9), 102.75 (1m), 102.80 (1m) and 814.75 (24m) of the statutes; **relating to:** making various changes in the worker's

compensation law, requiring the exercise of rule–making authority, and making appropriations.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development (DWD).

Payment of benefits

Temporary disability exceptions. Under current DWD rules, worker's compensation (compensation) is payable for temporary disability during an employee's healing period, even though the employee could return to a restricted type of work during that period, unless suitable employment within the physical and mental limitations of the employee is furnished by the employer or some other employer. Also, current law does not provide an exception to an employer's liability for temporary disability benefits for when an employee's employment is suspended or terminated during the employee's healing period due to misconduct. *Brakebush Bros. Inc. v. LIRC*, 210 Wis. 2d 623 (1997).

This bill codifies in statute that DWD rule and clarifies that if an employee refuses without reasonable cause to accept a good faith offer of suitable employment that is within the employee's physical and mental limitations, the employee is considered to have returned to work as of the date of the offer at the earnings the employee would have received but for the refusal. The bill also provides two additional circumstances under which an employer is not liable for temporary disability benefits:

1. When the employee's employment with the employer is suspended or terminated due to the employee's alleged commission of a crime, the circumstances of which substantially relate to that employment, and the employee is charged with the commission of that crime. If, however, the employee is not found guilty of the crime, compensation for temporary disability is payable in full.

2. When the employee's employment with the employer is suspended or terminated due to the employee's violation of the employer's drug policy during the period when the employee could return to a restricted type or work, if prior to the date of injury that policy was established in writing and regularly enforced by the employer.

Prescription and nonprescription drug treatment. Under current law, an employer or insurer is liable for providing medicines as may be reasonably required to cure and relieve an injured employee from the effects of an injury sustained while performing services growing out of and incidental to employment. This bill makes the following changes relating to the liability of an employer or insurer for the cost of drugs used to treat an injured employee:

1. The bill requires a pharmacist or other person licensed to prescribe and administer drugs (practitioner) to substitute in place of a prescribed drug a drug product equivalent, which is defined as a drug that has been designated as the therapeutic equivalent of another drug by the federal Food and Drug

Administration, if in the professional judgment of the pharmacist or practitioner the drug product equivalent is therapeutically equivalent to the prescribed drug and if the charge for the drug product equivalent is less than the charge for the prescribed drug. A drug product equivalent may not be substituted, however, if the prescribed drug is a single–source patented drug for which there is no drug product equivalent or if the prescriber determines that the prescribed drug is medically necessary and indicates that no substitution may be made for the prescribed drug. A drug product equivalent also may not be substituted if the injured employee requests that a specific brand name drug be used to treat the employee's injury and pays the difference between the average wholesale price of the lowest–priced drug product equivalent that the pharmacist or practitioner has in stock and the average wholesale price of the brand name drug.

2. The bill limits the liability of an employer or insurer for the cost of a prescription drug dispensed for outpatient use by an injured employee to the average wholesale price of the prescription drug, plus a dispensing fee of $3 per prescription order and any applicable state or federal taxes. In addition, the employer or insurer is liable for reimbursement to the injured employee for any out–of–pocket expenses incurred by the injured employee in obtaining the prescription drug.

3. The bill prohibits a pharmacist or practitioner from collecting from an injured employee any charge that is in excess of the liability of the employee for a brand name drug under the bill or the liability of the employer or insurer for a prescription drug under the bill, but permits a pharmacist or practitioner to collect from an injured employee the cost of a prescription drug dispensed to the employee, subject to the liability limits under the bill, if the employer or insurer denies or disputes liability for the cost of the prescription drug.

4. The bill limits the liability of an employer or insurer for the cost of a nonprescription drug to the usual and customary charge to the general public for the nonprescription drug.

Compensation pending judicial review. Under current law, a party that is aggrieved by an order or award made by the Labor and Industry Review Commission (LIRC) may commence an action in circuit court for a review of the order or award. The commencement of an action for review does not relieve the employer from paying compensation when the action involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies. Recently, in *Bosco v. LIRC*, 2004 WI 77, 272 Wis. 2d 586, the Wisconsin Supreme Court held that the worker's compensation law unambiguously requires the employer, not the employer's insurer, to pay compensation pending judicial review when the employer's liability is not is dispute and the only issue on appeal is who will pay the benefits and that the employer, independent from the insurer, is subject to penalties for failing in bad faith to pay compensation in that situation. This bill requires a party that has been ordered by DWD, LIRC, or a court to pay compensation to continue paying compensation as ordered when an action for judicial review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies.

Travel for treatment or rehabilitation. Under current law, when the employer has notice of an injury and its relationship to the employee's employment, the employer must offer to the employee his or her choice of certain types of practitioners licensed to practice and practicing in this state for treatment of the injury. The employer may also agree to the employee choosing a qualified practitioner not licensed in this state. Similarly, under current law, an injured employee may be entitled to receive vocational rehabilitation services from DWD under the federal Rehabilitation Act of 1973 or, if DWD cannot provide those services, from a private rehabilitation counselor. Currently, an employee who travels to receive treatment or vocational rehabilitation instruction is entitled to reimbursement for the expense of that travel. This bill sets the rate of reimbursement for that travel at the same rate as is provided for state officers and employees.

Permanent disability payments. Current law requires compensation for permanent disability to begin within 30 days after the end of the employee's healing period, if the employer or insurer concedes liability for the injury and if the extent of the permanent disability can be determined based on a minimum permanent disability rating promulgated by DWD by rule. This bill requires compensation for permanent disability to begin in that situation within 30 days after the end of the employee's healing period or the date on which compensation for temporary disability ends due to the employee's return to work, whichever is earlier.

Under current law, DWD may direct an employer or insurer to pay unaccrued compensation for permanent disability or death benefits to an injured employee or the employee's dependents in advance if DWD determines that the advance payment is in the best interest of the injured employee or the employee's dependents. This bill permits an injured employee or the employee's dependents to receive not more than three advance payments per calendar year.

Maximum compensation amounts

Maximum weekly compensation rates. Under current law, temporary and permanent disability benefits and death benefits are subject to maximum weekly compensation rates specified in statute. Specifically, the maximum weekly compensation rate for temporary disability, permanent total disability, or death benefits is 110 percent of the state's average weekly earnings as of June 30 of the previous year for injuries occurring before January 1, 2006, and 100 percent of the state's average weekly earnings as of June 30 of the previous year for injuries occurring on or after January 1, 2006. This bill continues the maximum weekly compensation rate for temporary disability, permanent total disability, and death benefits at 110 percent of the state's average weekly earnings as of June 30 of the previous year for injuries occurring on or after January 1, 2006.

Currently, the maximum weekly compensation rate for permanent partial disability is $242. This bill increases that maximum weekly compensation rate to $252 for injuries occurring in ~~2006~~, $262 for injuries occurring ~~in 2007, $272 for injuries occurring in 2008, and $282 for injuries occurring in 2009~~.

Supplemental benefits. Under current law, an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for

permanent total disability or continuous temporary total disability resulting from an injury that occurred before May 13, 1980, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals $233. This bill makes an employee who is injured prior to January 1, 1985, eligible for those supplemental benefits beginning on January 1, 2006, and an employee who is injured prior to January 1, 1987, eligible for those supplemental benefits beginning on January 1, 2007. The bill also increases the maximum supplemental benefit amount for a week of disability occurring after January 1, 2006, to an amount that, when added to the employee's regular benefits, equals $321 and increases the maximum supplemental benefit for a week of disability occurring after January 1, 2007, to an amount, that when added to the employee's regular benefits, equals $338.

Work injury supplemental benefit fund

Death or disability payments. Current law requires an employer to pay into the state treasury $10,000 in each case of injury resulting in death or in the loss or total impairment of a hand, arm, foot, leg, or eye. Those payments are deposited in the work injury supplemental benefit (WISB) fund, which is a fund that is used to pay compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy. This bill increases those payments to $20,000.

Traumatic injuries. Under current law, an application for compensation that is not filed within 12 years from the date of the injury or from the date that compensation, other than treatment expenses, was last paid, whichever is later, is barred by the statute of limitations, except that in cases of occupational disease or in cases of traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to, that is, toward the trunk from, the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for a total or partial knee or hip replacement (traumatic injury) there is no statute of limitations. In cases in which there is no statute of limitations, benefits or treatment expenses becoming due 12 years after the date of the injury or after the date that compensation was last paid, whichever is later, are paid not by the employer or insurer, but rather by DWD from the WISB fund. This bill requires the employer or insurer, rather than DWD from the WISB fund, to pay benefits or treatment expenses becoming due 12 years after that date in cases of traumatic injury. The bill also includes among the traumatic injuries that are not barred by the statute of limitations any traumatic injury that causes the need for an artificial spinal disc.

Illegally employed minors. Under current law, if an injury is sustained by a minor who is permitted to work without a work permit, the employer is liable for double the amount of compensation otherwise recoverable, up to $7,500, and if a minor is injured while employed in employment that is prohibited to minors generally or to minors of the minor's age, the employer is liable for treble the amount of compensation otherwise recoverable, up to $15,000 (increased compensation). If, however, the employer is misled into employing a minor illegally because of

fraudulent written evidence of age presented by the minor, the employer is required to pay the increased compensation to the WISB fund rather than to the minor.

This bill eliminates the requirement that an employer pay increased compensation to a minor who is illegally employed. Instead, the bill requires the employer of an injured minor who is permitted to work without a work permit to pay an amount equal to the amount recoverable by the minor, but not to exceed $7,500, to the WISB fund. Similarly, the bill requires the employer of a minor who is injured while employed in employment that is prohibit to minors generally or to minors of the minor's age to pay double the amount recoverable by the minor, but not to exceed $15,000, to the WISB fund. In addition, the bill eliminates the requirement that an employer pay increased compensation to the WISB fund when the employer is misled into employing a minor illegally because of fraudulent written evidence of age presented by the minor.

Surcharges and assessments. Current law requires employers that are subject to the worker's compensation law to keep records of all accidents causing death or disability of an employee while performing services growing out of and incidental to the employee's employment, requires insurers and self–insured employers to keep records of all payments made under the worker's compensation law, and requires reports based on those records to be furnished to DWD at the times and in the manner as DWD may require by rule or general order. An employer or insurer that fails to keep those records or to make those reports is subject to a forfeiture of not less than $10 nor more than $100 for each offense, which under the Wisconsin Constitution must be deposited in the school fund.

This bill requires an employer or insurer that fails to keep those records or to make those reports to pay a surcharge, instead of a forfeiture, and directs those surcharges to be deposited in the WISB fund. The bill also provides that interest shall accrue on the amount of a surcharge that is not paid within 90 days after the date on which notice of the surcharge is mailed to an employer or insurer at the rate of 1 percent per month and that all interest payments received shall be deposited in the WISB fund.

Under current law, each insurer and self–insured employer is required to pay to DWD an annual assessment that is used to cover the costs and expenses incurred by the Council on Worker's Compensation, DWD, and LIRC in the administration of the worker's compensation law (annual assessment). Current law requires those annual assessments to be paid on such dates as DWD prescribes. This bill provides that interest shall accrue on annual assessments that are not paid within 90 days after the date prescribed by DWD for payment at the rate of 1 percent per month and that all interest payments received shall be deposited in the WISB fund.

Hearings and procedures

Reports considered substantial evidence. Under current law, the circuit court may set aside an order or award made by LIRC if the order or award depends on any material or controverted finding of fact that is not supported by credible and substantial evidence, which has been defined in case law as "that quantity and quality of evidence which a reasonable man could accept as adequate to support a conclusion." *DeGayner v. DNR*, 70 Wis. 2d 936 (1975). Recently, the Wisconsin

Supreme Court held, in *Gehin v. Wis. Group Ins. Bd.*, 2005 WI 16, 278 Wis. 2d 111, that medical reports that are not corroborated by in–person testimony do not constitute substantial evidence.

This bill provides that certified medical reports and records, certified reports of experts concerning loss of earning capacity, and certified reports of industrial safety specialists that are admitted or received into evidence by a DWD hearing examiner constitute substantial evidence as to the matter contained in those reports or records.

Necessity of treatment standards. Under current law, DWD has jurisdiction to resolve disputes between health care providers and insurers or self–insured employers over the necessity of treatment provided to an injured employee. DWD may exercise that jurisdiction when confirming a compromise or stipulation agreed to between the insurer or self–insured employer and the employee, when making its findings following a hearing on a contested case, or when exercising its jurisdiction under a necessity of treatment dispute resolution process set forth in the statutes. Before determining necessity of treatment under the statutory necessity of treatment dispute resolution process, DWD must obtain a written opinion on the necessity of the treatment in dispute from an expert selected by DWD. Before determining necessity of treatment when confirming a compromise or stipulation or when making its findings of fact on a contested case, DWD may obtain such a written opinion.

This bill requires DWD to promulgate rules establishing standards for determining the necessity of treatment provided to an injured employee and requires those standards to be applied by experts in rendering opinions as to necessity of treatment and by DWD in determining necessity of treatment.

Penalties for bad faith. Under current law, if DWD determines that the employer or insurer suspended, terminated, or failed to make payments or failed to report an injury as a result of malice or bad faith, DWD may include a penalty not to exceed the lesser of 200 percent of total compensation due or $15,000. Current law also permits DWD to increase the payment that is due an injured employee by 10 percent if the employer or insurer inexcusably delays in making payment (increased payment).

This bill increases the maximum penalty for malice or bad faith to the lesser of 200 percent of total compensation due or $30,000 and permits that penalty to be imposed for each event or occurrence of malice or bad faith. The bill also prohibits DWD from ordering an increased payment on an inexcusably delayed payment if DWD imposes a penalty for an event or occurrence of malice or bad faith that causes the delayed payment. In addition, the bill prohibits DWD from ordering interest on an overdue payment if DWD imposes such a penalty.

Program administration

Separate funds for worker's compensation purposes. Under current law, annual assessments paid by insurers and self–insured employers are deposited in the general fund and credited to certain program revenue appropriations of DWD. This bill provides that those annual assessments paid shall constitute a separate nonlapsible fund designated as the worker's compensation operations fund and that

moneys in that fund may be expended only for worker's compensation purposes and may not be used for any other purpose of the state. The bill similarly provides that moneys in the self insured employers liability fund, the WISB fund, and the uninsured employers fund under current law may be expended only for the purposes of those funds and not for any other purpose of the state.

Final practitioner's report fees. Under current DWD rules, if an injured employee has a period of temporary disability of more than three weeks or a permanent disability, the insurer or self–insured employer must submit to DWD a final treating practitioner's report. This bill also requires that report to be submitted when an injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia. The bill permits a treating practitioner to charge a reasonable fee for the completion of that report, but prohibits a treating practitioner from requiring prepayment of that fee. The bill also permits an insurer or self–insured employer that disputes the reasonableness of such a fee to submit that dispute to DWD for resolution under the statutory health service fee dispute resolution process.

Confidentiality of records. Under current law, the records of DWD relating to the administration of the worker's compensation law are subject to inspection and copying under the open records law, except that records that reveal the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability, the amount, type, and duration of any benefits paid to the employee, or any financial information provided to DWD by a self–insured employer are confidential and may not be disclosed except to the employee who is the subject of the record, to an insurance carrier or employer that is a party to any worker's compensation claim involving the same employee, to a court of competent jurisdiction, to the subunit of DWD that administers child support or a county child support agency, or to the Department of Revenue. Also, under current law, a record maintained by DWD that contains employer or insurer information obtained from the Wisconsin Compensation Rating Bureau (bureau) is confidential and not open to inspection or copying unless the bureau authorizes inspection or copying of that information.

This bill extends the confidentiality and disclosure provisions that are applicable to the records of DWD under current law to the records of LIRC. The bill also permits DWD and LIRC to release confidential information to a government unit, an institution of higher education, or a nonprofit research agency for purposes of research, prohibits a government unit, institution of higher education, or nonprofit research agency from permitting inspection or disclosure of that information unless authorized by DWD or LIRC (and by the bureau if the information was obtained from the bureau), and requires a government unit, institution of higher education, or nonprofit research agency that obtains such information for purposes of research to provide the results of that research to DWD or LIRC (and to the bureau if the information was obtained from the bureau) free of charge.

Professional employer organization and employee leasing organization reports. Under current unemployment insurance law, a

"professional employer organization" is defined in part as any person who contracts to provide the nontemporary, ongoing employee workforce of a client under a written leasing contract. This bill requires a professional employer organization or an employee leasing organization that enters into an employee leasing agreement with a client to submit to DWD, within ten working days after the effective date of the agreement, a report disclosing the identity of the client, the effective date of the agreement, and such other information as DWD prescribes and a professional employer organization or an employee leasing organization that intends to terminate an employee leasing agreement to notify DWD of that termination no later than 30 days prior to the termination date of the agreement. Under the bill, when an employee leasing agreement is terminated, termination of the client's coverage under the worker's compensation insurance policy of the professional employer organization or employee leasing organization is not effective until 30 days after the professional employer organization or employee leasing organization has given notice of the termination of that agreement to DWD.

General coverage

Employee wellness events or activities. Finally, current law specifies that an employer is not liable for compensation when an employee sustains an injury while engaging in a program designed to improve the employee's physical well–being, if participation in the program is voluntary and uncompensated. This bill extends that exception to exclude from coverage injuries sustained while an employee is engaging in an event or activity, as well as a program, designed to improve the employee's physical well–being.

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

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

SECTION 1. 20.445 (1) (ha) of the statutes is renumbered 20.445 (1) (ra) and amended to read:

20.445 **(1)** (ra) *Worker's compensation operations.* ~~The~~ *fund; administration.* From the worker's compensation operations fund, the amounts in the schedule for the administration of the worker's compensation program by the department. All moneys received under ss. 102.28 (2) (b) and 102.75 for the department's activities and not appropriated under par. ~~(hp)~~ (rp) shall be credited to this appropriation. From this appropriation, an amount not to exceed $5,000 may be expended each

fiscal year for payment of expenses for travel and research by the council on worker's compensation.

SECTION 2. 20.445 (1) (hb) of the statutes is renumbered 20.445 (1) (rb) and amended to read:

20.445 **(1)** (rb) *Worker's compensation operations fund; contracts.* ~~All~~ From the worker's compensation operations fund, all moneys received in connection with contracts entered into under s. 102.31 (7) for the purpose of carrying out those contracts.

SECTION 3. 20.445 (1) (hp) of the statutes is renumbered 20.445 (1) (rp) and amended to read:

20.445 **(1)** (rp) ~~*Uninsured*~~ *Worker's compensation operations fund; uninsured employers program; administration.* From the ~~moneys received under s. 102.75~~ worker's compensation operations fund, the amounts in the schedule for the administration of ss. 102.28 (4) and 102.80 to 102.89.

SECTION 4. 20.445 (1) (t) of the statutes is amended to read:

20.445 **(1)** (t) *Work injury supplemental benefit fund.* All moneys paid into the work injury supplemental benefit fund under ss. 102.35 (1), 102.47, 102.49 ~~and~~, 102.59, 102.60, and 102.75 (2), to be used for the discharge of liabilities payable under ss. 102.44 (1), 102.49, 102.59, 102.63, 102.64 (2), and 102.66.

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

25.17 **(1)** (zd) Worker's compensation operations fund (s. 102.75).

SECTION 6. 102.03 (1) (c) 3. of the statutes is amended to read:

102.03 **(1)** (c) 3. An employee is not performing service growing out of and incidental to his or her employment while going to or from employment in a private or group or employer–sponsored car pool, van pool, commuter bus service, or other

ride–sharing program in which the employee participates voluntarily and the sole purpose of which is the mass transportation of employees to and from employment. An employee is not performing service growing out of and incidental to employment while engaging in a program, event, or activity designed to improve the physical well–being of the employee, whether or not the program, event, or activity is located on the employer's premises, if participation in the program, event, or activity is voluntary and the employee receives no compensation for participation.

SECTION 7. 102.04 (2m) of the statutes is amended to read:

102.04 **(2m)** A temporary help agency is the employer of an employee whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employee's services. A temporary help agency is liable under s. 102.03 for all compensation and other payments payable under this chapter to or with respect to that employee, 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 reimbursement from another employer for any payments made as a result of that liability.

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 that results in a maximum compensation rate of ~~110%~~ 110 percent 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, 2006, shall~~

~~be not more than the wage rate that 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 and, for permanent partial disability for injuries occurring on or after ~~January 1, 2002~~ the effective date of this subsection .... [revisor inserts date], and before January 1, ~~2003~~ 2007, not more than ~~$318~~ $378, resulting in a maximum compensation rate of ~~$212~~ $252, for permanent partial disability for injuries occurring on or after January 1, ~~2003~~ 2007, and before January 1, ~~2004~~ 2008, not more than ~~$333~~ $393, resulting in a maximum compensation rate of ~~$222~~ $262, for permanent partial disability for injuries occurring on or after January 1, ~~2004~~ 2008, and before January 1, ~~2005~~ 2009, not more than ~~$348~~ $408, resulting in a maximum compensation rate of ~~$232~~ $272, and, for permanent partial disability for injuries occurring on or after January 1, ~~2005~~ 2009, and before January 1, ~~2006~~ 2010, not more than ~~$363~~ $423, resulting in a maximum compensation rate of ~~$242~~ $282. Between such limits the average weekly earnings shall be determined as follows:

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SECTION 9. 102.13 (2) (c) of the statutes is created to read:

102.13 **(2)** (c) If an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability or if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, the department may by rule require the insurer or self–insured employer to submit to the department a final report of the employee's treating practitioner. A treating practitioner may charge a reasonable fee for the completion of the final report, but may not require prepayment of that fee. An insurer or self–insured employer that disputes the reasonableness of a fee charged for the completion of a treatment

practitioner's final report may submit that dispute to the department for resolution under s. 102.16 (2).

SECTION 10. 102.16 (1m) (b) of the statutes is amended to read:

102.16 **(1m)** (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 employee 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. The department shall apply the standards promulgated under sub. (2m) (g) in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment.

SECTION 11. 102.16 (2m) (c) of the statutes is amended to read:

102.16 **(2m)** (c) Before determining under this subsection the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. Before determining under sub. (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department may, but is not required to, obtain such an expert opinion. To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing

services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The standards promulgated under par. (g) shall be applied by an expert in rendering an opinion as to necessity of treatment under this paragraph and by the department in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department shall adopt the written opinion of the expert as the department's determination on the issues covered in the written opinion, unless the health service provider or the insurer or self–insured employer present clear and convincing written evidence that the expert's opinion is in error.

SECTION 12. 102.16 (2m) (g) of the statutes is amended to read:

102.16 **(2m)** (g) The department shall promulgate rules establishing procedures and requirements for the necessity of treatment dispute resolution process under this subsection, including rules setting the fees under par. (f) and rules establishing standards for determining the necessity of treatment provided to an injured employee. The rules establishing those standards shall, to the greatest extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as amended to January 1, 2006. Before the department may amend the rules establishing those standards, the department shall establish an advisory committee under s. 227.13 composed of health care providers providing treatment under s. 102.42 to advise the department and the council on worker's compensation ~~and to assist the department in the drafting of those amended~~ rules.

SECTION 13. 102.17 (1) (d) 4. of the statutes is created to read:

on amending those

102.17 **(1)** (d) 4. A report or record described in subd. 1., 2., or 3. that is admitted or received into evidence by the department constitutes substantial evidence under s. 102.23 (6) as to the matter contained in the report or record.

SECTION 14. 102.17 (1) (h) of the statutes is amended to read:

102.17 **(1)** (h) The contents of certified reports of investigation, made by industrial safety specialists who are employed, contracted, or otherwise secured by the department and available for cross–examination, served upon the parties 15 days prior to hearing, shall constitute prima facie evidence as to matter contained in those reports. A report described in this paragraph that is admitted or received into evidence by the department constitutes substantial evidence under s. 102.23 (6) as to the matter contained in the report.

SECTION 15. 102.17 (4) of the statutes is amended to read:

102.17 **(4)** ~~The~~ Except as provided in this subsection, the right of an employee, the employee's legal representative, or a dependent to proceed under this section shall not extend beyond 12 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. In the case of occupational disease~~,~~; a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury~~,~~; or ~~any~~ a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement, there shall be no statute of limitations, except that benefits or treatment expense for an occupational disease becoming due after 12 years from the date of injury or death or last payment of compensation shall be paid from the work injury supplemental benefit fund under

s. 102.65 and in the manner provided in s. 102.66 and benefits or treatment expense for a traumatic injury becoming due after 12 years from that date shall be paid by the employer or insurer. Payment of wages by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment.

SECTION 16. 102.18 (1) (bg) 2. of the statutes is amended to read:

102.18 **(1)** (bg) 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 employee 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. The department shall apply the standards promulgated under s. 102.16 (2m) (g) in determining necessity of treatment under this paragraph. In cases in which no standards promulgated under s. 102.16 (2m) (g) apply, the department shall find the facts regarding necessity of treatment.

SECTION 17. 102.18 (1) (bp) of the statutes is amended to read:

102.18 **(1)** (bp) ~~The department may include a penalty in an award to an employee if it~~ If the department determines that the ~~employer's or insurance carrier's suspension of, termination of or failure~~ employer or insurance carrier suspended, terminated, or failed to make payments or ~~failure~~ failed to report an injury ~~resulted from~~ as a result of malice or bad faith, the department may include a penalty in an award to an employee for each event or occurrence of malice or bad

faith. This penalty is the exclusive remedy against an employer or insurance carrier for malice or bad faith. If this penalty is imposed for an event or occurrence of malice or bad faith that causes a payment that is due an injured employee to be delayed in violation of s. 102.22 (1) or overdue in violation of s. 628.46 (1), the department may not also order an increased payment under s. 102.22 (1) or the payment of interest under s. 628.46 (1). The department may award an amount ~~which~~ that it considers just, not to exceed the lesser of ~~200%~~ 200 percent of total compensation due or ~~$15,000~~ $30,000 for each event or occurrence of malice or bad faith. The department may assess the penalty against the employer, the insurance carrier or both. Neither the employer nor the insurance carrier is liable to reimburse the other for the penalty amount. The department may, by rule, define actions which demonstrate malice or bad faith.

SECTION 18. 102.23 (5) of the statutes is amended to read:

102.23 **(5)** ~~The commencement of~~ When an action for review ~~shall not relieve the employer from paying compensation as directed, when such action~~ involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, the commission, or a court to pay compensation is not relieved from paying compensation as ordered.

SECTION 19. 102.28 (8) of the statutes is amended to read:

102.28 **(8)** SELF–INSURED EMPLOYERS LIABILITY FUND. The moneys paid into the state treasury under sub. (7), together with all accrued interest, shall constitute a separate nonlapsible fund designated as the "self–insured employers liability fund". Moneys in the fund may be expended only as provided in s. 20.445 (1) (s) and may not be used for an other purpose of the state.

SECTION 20. 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, 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, 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 21. 102.31 (2m) of the statutes is created to read:

102.31 **(2m)** (a) A professional employer organization or employee leasing organization that enters into an employee leasing agreement with a client shall submit to the department, within 10 working days after the effective date of the agreement, a report disclosing the identity of the client, the effective date of the leasing agreement, and such other information as the department prescribes. The

notification shall be on a form prescribed by the department and shall include all of the following information:

1. The name and mailing address of the professional employer organization or employee leasing organization.

2. The name and mailing address of the worker's compensation insurance carrier of the professional employer organization or employee leasing organization.

3. The names and mailing addresses of all clients of the professional employer organization or employee leasing organization.

(b) If a professional employer organization or employee leasing organization and client intend to terminate an employee leasing agreement, the professional employer organization or employee leasing organization shall notify the department no later than 30 days prior to the termination date of the leasing agreement. The notification to the department shall be on a form prescribed by the department.

(c) When an employee leasing agreement is terminated, termination of the client's coverage under the worker's compensation insurance policy of the professional employer organization or employee leasing organization is not effective until 30 days after the professional employer organization or employee leasing organization has given notice of the termination of the employee leasing agreement to the department under par. (b), and coverage under that policy of the employees providing services to the client under that agreement shall remain in effect until 30 days after the date of that notice.

SECTION 22. 102.31 (7) of the statutes is amended to read:

102.31 **(7)** If the department by one or more written orders specifically consents to the issuance of one or more contracts covering only the liability incurred on a construction project and if the construction project owner designates the insurance

carrier and pays for each such contract, the construction project owner shall reimburse the department for all costs incurred by the department in issuing the written orders and in ensuring minimum confusion and maximum safety on the construction project. All moneys received under this subsection shall be deposited in the worker's compensation operations fund and credited to the appropriation account under s. 20.445 (1) (rb).

SECTION 23. 102.32 (6) (b) of the statutes is amended to read:

102.32 **(6)** (b) Subject to par. (d), if the employer or the employer's insurer concedes liability for an injury that results in permanent disability and if the extent of the permanent disability can be determined based on a minimum permanent disability rating promulgated by the department by rule, compensation for permanent disability shall begin within 30 days after the end of the employee's healing period or the date on which compensation for temporary disability ends due to the employee's return to work, whichever is earlier.

SECTION 24. 102.32 (6m) of the statutes is amended to read:

102.32 **(6m)** The department may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits if the department determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, the department shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at ~~7%.~~ 7 percent. An injured employee or dependent may receive no more than 3 advance payments per calendar year.

SECTION 25. 102.33 (2) (a) of the statutes is amended to read:

102.33 **(2)** (a) Except as provided in pars. (b) and (c), the records of the department, and the records of the commission, related to the administration of this chapter are subject to inspection and copying under s. 19.35 (1).

SECTION 26. 102.33 (2) (b) (intro.) of the statutes is amended to read:

102.33 **(2)** (b) (intro.) ~~Notwithstanding par. (a)~~ Except as provided in this paragraph and par. (d), a record maintained by the department or by the commission that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability, or the amount, type, or duration of benefits paid to the employee ~~or~~ and a record maintained by the department that reveals any financial information provided to the department by a self–insured employer or by an applicant for exemption under s. 102.28 (2) (b) ~~is~~ are confidential and not open to public inspection or copying under s. 19.35 (1). The department or commission may deny a request made under s. 19.35 (1) or, subject to s. 102.17 (2m) and (2s), refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to inspect and copy a record that is confidential under this paragraph, unless one of the following applies:

SECTION 27. 102.33 (2) (b) 1. of the statutes is amended to read:

102.33 **(2)** (b) 1. The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of an employee who is the subject of a record shall provide a written authorization for inspection and copying from the employee if requested by the department or the commission.

SECTION 28. 102.33 (2) (b) 2. of the statutes is amended to read:

102.33 **(2)** (b) 2. The record that is requested contains confidential information concerning a worker's compensation claim and the requester is an insurance carrier or employer that is a party to any worker's compensation claim involving the same employee or an attorney or authorized agent of that insurance carrier or employer, except that the department or the commission is not required to do a random search of its records and may require the requester to provide the approximate date of the injury and any other relevant information that would assist the department or the commission in finding the record requested. An attorney or authorized agent of an insurance carrier or employer that is a party to an employee's worker's compensation claim shall provide a written authorization for inspection and copying from the insurance carrier or employer if requested by the department or the commission.

SECTION 29. 102.33 (2) (b) 4. of the statutes is amended to read:

102.33 **(2)** (b) 4. A court of competent jurisdiction in this state orders the department or the commission to release the record.

SECTION 30. 102.33 (2) (c) of the statutes is amended to read:

102.33 **(2)** (c) ~~Notwithstanding par. (a), a~~ A record maintained by the department or the commission that contains employer or insurer information obtained from the Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is confidential and not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin compensation rating bureau authorizes public inspection or copying of that information.

SECTION 31. 102.33 (2) (d) of the statutes is created to read:

102.33 **(2)** (d) 1. In this paragraph:

a. "Government unit" has the meaning given in s. 108.02 (17) and also includes a corresponding unit in the government of another state or a unit of the federal government.

b. "Institution of higher education" has the meaning given in s. 108.02 (18).

c. "Nonprofit research organization" means an organization that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code and whose mission is to engage in research.

2. The department or the commission may release information that is confidential under par. (b) to a government unit, an institution of higher education, or a nonprofit research organization for purposes of research and may release information that is confidential under par. (c) to those persons for that purpose if the Wisconsin compensation rating bureau authorizes that release. A government unit, institution of higher education, or nonprofit research organization may not permit inspection or disclosure of any information released to it under this subdivision that is confidential under par. (b) unless the department or commission authorizes that inspection or disclosure and may not permit inspection or disclosure of any information released to it under this subdivision that is confidential under par. (c) unless the department or commission, and the Wisconsin compensation rating bureau, authorize the inspection or disclosure. A government unit, institution of higher education, or nonprofit research organization that obtains any confidential information under this subdivision for purposes of research shall provide the results of that research free of charge to the person that released or authorized the release of that information.

SECTION 32. 102.35 (1) of the statutes is amended to read:

102.35 **(1)** Every employer and every insurance company that fails to keep the records or to make the reports required by this chapter or that knowingly falsifies such records or makes false reports shall ~~forfeit~~ pay a work injury supplemental benefit surcharge to the state of not less than $10 nor more than $100 for each offense. The department may waive or reduce a ~~forfeiture~~ surcharge imposed under this subsection if the employer or insurance company that violated this subsection requests a waiver or reduction of the ~~forfeiture~~ surcharge within 45 days after the date on which notice of the ~~forfeiture~~ surcharge is mailed to the employer or insurance company and shows that the violation was due to mistake or an absence of information. A surcharge imposed under this subsection is due within 90 days after the date on which notice of the surcharge is mailed to the employer or insurance company. Interest shall accrue on amounts that are not paid when due at the rate of 1 percent per month. All surcharges and interest payments received under this subsection shall be deposited in the fund established under s. 102.65.

SECTION 33. 102.42 (1m) (title) of the statutes is created to read:

102.42 **(1m)** (title) LIABILITY FOR UNNECESSARY TREATMENT.

SECTION 34. 102.42 (2) (b) of the statutes is amended to read:

102.42 **(2)** (b) The employer is liable for the expense of reasonable travel to obtain treatment at the same rate as is provided for state officers and employees under s. 20.916 (8). The employer is not liable for the expense of unreasonable travel to obtain treatment.

SECTION 35. 102.425 of the statutes is created to read:

102.425 Prescription and nonprescription drug treatment. (1) DEFINITIONS. In this section:

(a) "Dispense" has the meaning given in s. 450.01 (7).

(b) "Drug" has the meaning given in s. 450.01 (10).

(c) "Drug product equivalent" has the meaning given in s. 450.13 (1).

(d) "Nonprescription drug product" has the meaning given in s. 450.01 (13m).

(e) "Pharmacist" has the meaning given in s. 450.01 (15).

(f) "Practitioner" has the meaning given in s. 450.01 (17).

(g) "Prescription" has the meaning given in s. 450.01 (19).

(h) "Prescription drug" has the meaning given in s. 450.01 (20).

(i) "Prescription order" has the meaning given in s. 450.01 (21).

(2) SUBSTITUTION OF DRUG PRODUCT EQUIVALENTS. (a) Except as provided in pars. (b) and (c), when a drug is prescribed to treat an injury for which an employer or insurer is liable under this chapter, the pharmacist or practitioner dispensing the drug shall substitute a drug product equivalent in place of the prescribed drug if all of the following apply:

1. In the professional judgment of the dispensing pharmacist or practitioner, the drug product equivalent is therapeutically equivalent to the prescribed drug.

2. The charge for the drug product equivalent is less than the charge for the prescribed drug.

(b) A pharmacist or practitioner may not substitute a drug product equivalent under par. (a) in place of a prescribed drug if any of the following apply:

1. The prescribed drug is a single–source patented drug for which there is no drug product equivalent.

2. The prescriber determines that the prescribed drug is medically necessary and indicates that no substitution may be made for that prescribed drug by writing on the face of the prescription order or, in the case of a prescription order that is transmitted electronically, by designating in electronic format the phrase "No

substitutions" or "Dispense as written" or words of similar meaning or the initials "N.S." or "D.A.W."

(c) Unless par. (b) applies, if an injured employee requests that a specific brand name drug be used to treat the employee's injury, the pharmacist or practitioner dispensing the prescription shall dispense the specific brand name drug as requested. If a specific brand name drug is dispensed under this paragraph, the employer or insurer and the employee shall share the cost of the prescription as follows:

1. The employer or insurer shall be liable in an amount equal to the average wholesale price, as determined under sub. (3) (a) 1., of the lowest–priced drug product equivalent that the pharmacist or practitioner has in stock on the day on which the brand name drug is dispensed, plus the dispensing fee under sub. (3) (a) 2. and any applicable taxes under sub. (3) (a) 3. that would be payable for that drug product equivalent.

2. The employee shall be liable in an amount equal to the difference between the amount for which the employer or insurer is liable under subd. 1. and an amount equal to the average wholesale price, as determined under sub. (3) (a) 1., of the brand name drug on the day on which the brand name drug is dispensed, plus any applicable taxes under sub. (3) (a) 3. that are payable for that brand name drug.

(3) LIABILITY OF EMPLOYER OR INSURER. (a) The liability of an employer or insurer for the cost of a prescription drug dispensed under sub. (2) for outpatient use by an injured employee is limited to the sum of all of the following:

1. The average wholesale price of the prescription drug as of the date on which the prescription drug is dispensed, as quoted in the American Druggist Blue Book, published by Hearst Corporation, Inc. or its successor, or in the Drug Topics Red

Book, published by Medical Economics Company, Inc. or its successor, whichever is less.

2. A dispensing fee of $3 per prescription order, which shall be payable for all prescription drugs dispensed under sub. (2) regardless of the location from which the prescription drug is dispensed, but which shall be payable only to a pharmacist who dispenses the prescription drug.

3. Any state or federal taxes that may be applicable to the prescription drug dispensed.

(b) In addition to the liability under par. (a), an employer or insurer is also liable for reimbursement to an injured employee for all out–of–pocket expenses incurred by the injured employee in obtaining the prescription drug dispensed.

(c) A billing statement submitted to an employer or insurer for a prescription drug dispensed under sub. (2) shall include the national drug code number of the prescription as listed in the national drug code directory maintained by the federal food and drug administration and shall state separately the price of the prescription drug and the dispensing fee.

(4) LIABILITY OF EMPLOYEE. (a) Except as provided in par. (b), a pharmacist or practitioner who dispenses a prescription drug under sub. (2) to an injured employee may not collect, or bring an action to collect, from the injured employee any charge that is in excess of the liability of the injured employee under sub. (2) (c) 2. or the liability of the employer or insurer under sub. (3) (a).

(b) If an employer denies or disputes liability for the cost of a drug prescribed to an injured employee under sub. (2), the pharmacist or practitioner who dispensed the drug may collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed, subject to the limitations specified in sub. (3) (a).

(5) NONPRESCRIPTION DRUG PRODUCTS. The liability of an employer or insurer for the cost of a nonprescription drug product used to treat an injured employee is limited to the usual and customary charge to the general public for the nonprescription drug product.

SECTION 36. 102.43 (9) of the statutes is created to read:

102.43 **(9)** Temporary disability, during which compensation shall be payable for loss of earnings, shall include the period during which an employee could return to a restricted type of work during the healing period, unless any of the following apply:

(a) Suitable employment that is within the physical and mental limitations of the employee is furnished to the employee by the employer or some other employer. For purposes of this paragraph, if the employer or some other employer makes a good faith offer of suitable employment that is within the physical and mental limitations of the employee and if the employee refuses without reasonable cause to accept that offer, the employee is considered to have returned to work as of the date of the offer at the earnings that the employee would have received but for the refusal. In case of a dispute as to the extent of an employee's physical or mental limitations or as to what employment is suitable within those limitations, the employee may file an application under s. 102.17 and ss. 102.17 to 102.26 shall apply.

(b) The employee's employment with the employer has been suspended or terminated due to the employee's alleged commission of a crime, the circumstances of which are substantially related to that employment, and the employee has been charged with the commission of that crime. If the employee is not found guilty of the crime, compensation for temporary disability shall be payable in full.

(c) The employee's employment with the employer has been suspended or terminated due to the employee's violation of the employer's policy concerning employee drug use during the period when the employee could return to a restricted type of work during the healing period. Compensation for temporary disability may be denied under this paragraph only if prior to the date of injury the employer's policy concerning employee drug use was established in writing and regularly enforced by the employer.

SECTION 37. 102.44 (1) (intro.) of the statutes is amended to read:

102.44 **(1)** (intro.) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to ~~May 13, 1980~~ January 1, 1985, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~1982~~ 1987, and shall continue during the period of such total disability subsequent to that date.

SECTION 38. 102.44 (1) (intro.) of the statutes, as affected by 2005 Wisconsin Act .... (this act), is amended to read:

102.44 **(1)** (intro.) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, ~~1985~~ 1987, shall receive supplemental benefits which shall be payable in the first instance by

the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~1987~~ 1989, and shall continue during the period of such total disability subsequent to that date.

SECTION 39. 102.44 (1) (a) of the statutes is amended to read:

102.44 **(1)** (a) If such employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after ~~March 30, 2004~~ the effective date of this paragraph .... [revisor inserts date], shall be an amount which, when added to the regular benefit established for the case, shall equal ~~$233~~ $321.

SECTION 40. 102.44 (1) (a) of the statutes, as affected by 2005 Wisconsin Act .... (this act), is repealed and recreated to read:

102.44 **(1)** (a) If such employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after January 1, 2007, shall be an amount which, when added to the regular benefit established for the case, shall equal $338.

SECTION 41. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If such employee is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after ~~March 30, 2004~~ the effective date of this paragraph .... [revisor inserts date], shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~$233~~ $321 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 42. 102.44 (1) (b) of the statutes, as affected by 2005 Wisconsin Act .... (this act), is repealed and recreated to read:

102.44 **(1)** (b) If such employee is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after January 1, 2007, shall be an amount sufficient to bring the total weekly benefits to the same proportion of $338 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 43. 102.49 (5) (a) of the statutes is amended to read:

102.49 **(5)** (a) In each case of injury resulting in death, the employer or insurer shall pay into the state treasury the sum of ~~$10,000~~ $20,000.

SECTION 44. 102.49 (5) (e) of the statutes is amended to read:

102.49 **(5)** (e) The adjustments in ~~compensation~~ liability provided in ss. 102.57, 102.58, and 102.60 do not apply to payments made under this section.

SECTION 45. 102.59 (2) of the statutes is amended to read:

102.59 **(2)** In the case of the loss or of the total impairment of a hand, arm, foot, leg, or eye, the employer shall pay ~~$10,000~~ $20,000 into the state treasury. The payment shall be made in all such cases regardless of whether the employee or the employee's dependent or personal representative commences action against a 3rd party as provided in s. 102.29.

SECTION 46. 102.60 (title) of the statutes is amended to read:

102.60 (title) **Minor illegally employed~~, compensation~~.**

SECTION 47. 102.60 (intro.) of the statutes is renumbered 102.60 (1m) (intro.) and amended to read:

102.60 **(1m)** (intro.) When the injury is sustained by a minor who is illegally employed, the employer, in addition to paying compensation or wage loss under sub.

(6) to the minor and death benefits to the dependents of the minor, shall ~~be as follows~~ pay the following amounts into the state treasury, for deposit in the fund established under s. 102.65:

SECTION 48. 102.60 (1) of the statutes is renumbered 102.60 (1m) (a) and amended to read:

102.60 **(1m)** (a) ~~Double~~ An amount equal to the amount ~~otherwise~~ recoverable by the injured employee, but not to exceed $7,500, if the injured employee is a minor of permit age~~,~~ and at the time of the injury is employed, required, suffered, or permitted to work without a written permit issued ~~pursuant to~~ under ch. 103, except as provided in ~~sub. (2)~~ pars. (b) to (d).

SECTION 49. 102.60 (2) of the statutes is renumbered 102.60 (1m) (b) and amended to read:

102.60 **(1m)** (b) ~~Treble~~ An amount equal to double the amount ~~otherwise~~ recoverable by the injured employee, but not to exceed $15,000, if the injured employee is a minor of permit age~~,~~ and at the time of the injury is employed, required, suffered, or permitted to work without a permit in any place of employment or at any employment in or for which the department acting under ~~authority of~~ ch. 103, has adopted a written resolution providing that permits shall not be issued.

SECTION 50. 102.60 (3) of the statutes is renumbered 102.60 (1m) (c) and amended to read:

102.60 **(1m)** (c) ~~Treble~~ An amount equal to double the amount ~~otherwise~~ recoverable by the injured employee, but not to exceed $15,000, if the injured employee is a minor of permit age~~,~~ and at the time of the injury is employed, required, suffered, or permitted to work at prohibited employment.

SECTION 51. 102.60 (4) of the statutes is renumbered 102.60 (1m) (d) and amended to read:

102.60 **(1m)** (d) ~~Treble~~ An amount equal to double the amount ~~otherwise~~ recoverable by the injured employee, but not to exceed $15,000, if the injured employee is a minor under permit age and is illegally employed.

SECTION 52. 102.60 (5) (a) of the statutes is amended to read:

102.60 **(5)** (a) A permit or certificate of age that is unlawfully issued by an officer specified in ch. 103, or that is unlawfully altered after issuance, without fraud on the part of the employer, shall be ~~deemed~~ considered a permit ~~within the provisions~~ for purposes of this section.

SECTION 53. 102.60 (5) (b) of the statutes is amended to read:

102.60 **(5)** (b) If the employer is misled in employing a minor illegally because of fraudulent written evidence of age presented by the minor, the ~~increased compensation provided by this section shall not be paid to the employee, but shall be paid into the fund established by s. 102.65~~ employer is not required to pay the amounts specified in sub. (1m).

SECTION 54. 102.60 (6) of the statutes is amended to read:

102.60 **(6)** If the amount recoverable ~~under this section~~ by a minor employee for temporary disability ~~shall be~~ is less than the actual loss of wage sustained by the minor employee, then liability shall exist for ~~such~~ that loss of wage.

SECTION 55. 102.60 (7) of the statutes is amended to read:

102.60 **(7)** ~~Subsections (1) to (6) shall~~ This section does not apply to ~~employees~~ an employee, as defined in s. 102.07 (6), if the agency or publisher ~~shall establish~~ establishes by affirmative proof that at the time of the injury the employee was not employed with the actual or constructive knowledge of ~~such~~ the agency or publisher.

SECTION 56. 102.60 (8) of the statutes is amended to read:

102.60 **(8)** This section ~~shall~~ does not apply to liability arising under s. 102.06 unless the employer sought to be charged knew or should have known that the minor was illegally employed by the contractor or subcontractor.

SECTION 57. 102.60 (9) of the statutes is repealed.

SECTION 58. 102.61 (1) of the statutes is amended to read:

102.61 **(1)** Subject to subs. (1g) and (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instructions under 29 USC 701 to 797b, as administered by the state in which the employee resides or in which the employee resided at the time of becoming physically disabled, shall, in addition to other indemnity, be paid the actual and necessary expenses of travel at the same rate as is provided for state officers and employees under s. 20.916 (8) and, if the employee receives instructions elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r).

SECTION 59. 102.61 (1m) (c) of the statutes is amended to read:

102.61 **(1m)** (c) The employer or insurance carrier shall pay the reasonable cost of any services provided for an employee by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including the cost of tuition, fees, books, ~~and~~ maintenance, and travel ~~expenses~~ at the same rate as is provided for state officers and employees under s. 20.916 (8). Notwithstanding that the department may authorize under s. 102.43 (5) a rehabilitative training program that lasts longer than

80 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to be reasonable.

SECTION 60. 102.62 of the statutes is amended to read:

102.62 Primary and secondary liability; unchangeable. In case of liability ~~for the increased compensation or increased death benefits provided for by~~ under s. 102.57~~, or included in s.~~ or 102.60, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. ~~In case~~ If proceedings are had before the department for the recovery of ~~such increased compensation or increased death benefits~~ that liability, the department shall set forth in its award the amount and order of liability as ~~herein~~ provided in this section. Execution shall not be issued against the insurance carrier to satisfy any judgment covering ~~such increased compensation or increased death benefits~~ that liability until execution has first been issued against the employer and has been returned unsatisfied as to any part ~~thereof~~ of that liability. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for ~~such increased compensation or increased death benefits shall be~~ a liability under s. 102.57 or 102.60 is void. ~~In case~~ If the employer ~~shall have~~ has been adjudged bankrupt~~,~~ or ~~have~~ has made an assignment for the benefit of creditors, or if the employer, other than an individual, ~~have~~ has gone out of business or ~~have~~ has been dissolved, or if the employer is a corporation~~,~~ and its charter ~~have~~ has been forfeited or revoked, the insurer shall be liable for the payment of ~~increased compensation and death benefits~~ that liability without judgment or execution against the employer, but without altering the primary liability of the employer.

SECTION 61. 102.65 (1) of the statutes is amended to read:

102.65 **(1)** The moneys payable to the state treasury under ss. 102.35 (1), 102.47, 102.49 ~~and~~, 102.59, and 102.60, together with all accrued interest on those moneys, and all interest payments received under s. 102.75 (2), shall constitute a ~~fund to be known as the "Work Injury Supplemental Benefit Fund"~~ separate nonlapsible fund designated as the work injury supplemental benefit fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (t) and may not be used for any other purpose of the state.

SECTION 62. 102.66 (1) of the statutes is amended to read:

102.66 **(1)** In the event that there is an otherwise meritorious claim for occupational disease, ~~a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for a total or partial knee or hip replacement,~~ and the claim is barred solely by the statute of limitations under s. 102.17 (4), the department may, in lieu of worker's compensation benefits, direct payment from the work injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

SECTION 63. 102.66 (2) of the statutes is amended to read:

102.66 **(2)** In the case of occupational disease, ~~a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent brain injury, or any injury causing the need for a total or partial knee or hip replacement,~~ appropriate benefits may be awarded from the work injury supplemental benefit fund when the status or existence of the employer or its insurance carrier cannot be determined or when there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

SECTION 64. 102.75 (1m) of the statutes is created to read:

102.75 **(1m)** The moneys collected under sub. (1) and under ss. 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a separate nonlapsible fund designated as the worker's compensation operations fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (ra), (rb), and (rp) and may not be used for any other purpose of the state.

SECTION 65. 102.75 (2) of the statutes is amended to read:

102.75 **(2)** The department shall require that payments for costs and expenses for each fiscal year shall be made on such dates as the department prescribes by each licensed worker's compensation insurance carrier and employer exempted under s. 102.28 (2). Each such payment shall be a sum equal to a proportionate share of the annual costs and expenses assessed upon each carrier and employer as estimated by the department. Interest shall accrue on amounts not paid within 90 days after the date prescribed by the department under this subsection at the rate of 1 percent per month. All interest payments received under this subsection shall be deposited in the fund established under s. 102.65.

SECTION 66. 102.75 (4) of the statutes is amended to read:

102.75 **(4)** From the appropriation under s. 20.445 (1) ~~(ha)~~ (ra), the department shall allocate the amounts that it collects in application fees from employers applying for exemption under s. 102.28 (2) and the annual amount that it collects from employers that have been exempted under s. 102.28 (2) to fund the activities of the department under s. 102.28 (2) (b) and (c).

SECTION 67. 102.80 (1m) of the statutes is created to read:

102.80 **(1m)** The moneys collected or received under sub. (1), together with all accrued interest, shall constitute a separate nonlapsible fund designated as the uninsured employers fund. Moneys in the fund may be expended only as provided in s. 20.445 (1) (sm) and may not be used for any other purpose of the state.

SECTION 68. 102.81 (1) (a) of the statutes is amended to read:

102.81 **(1)** (a) If an employee of an uninsured employer, other than an employee who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for which the uninsured employer is liable under s. 102.03, the department or the department's reinsurer shall pay to or on behalf of the injured employee or to the employee'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 (6).

SECTION 69. 102.81 (2) of the statutes is amended to read:

102.81 **(2)** The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop–loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. 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~~ 20.930 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) ~~(hp)~~ (rp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

SECTION 70. 102.87 (4) of the statutes is amended to read:

102.87 **(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, crime laboratories and drug law enforcement assessment, any applicable uninsured employers assessment and~~ costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit.

SECTION 71. 103.78 (4) of the statutes is amended to read:

103.78 **(4)** ~~Treble the amount of compensation otherwise recoverable as provided in s. 102.60 (4) and wage~~ Wage loss as provided in s. 102.60 (6) ~~are~~ is payable to a minor injured during the course of the minor's employment or appearance in violation of this section.

SECTION 72. 814.75 (24m) of the statutes is created to read:

814.75 **(24m)** The work injury supplemental benefit fund surcharge under s. 102.35 (1).

SECTION 73. Initial applicability.

Insert 40-22

(1) REPORTS CONSIDERED SUBSTANTIAL EVIDENCE. The treatment of section 102.17 (1) (d) 4. and (h) of the statutes first applies to a disputed claim in which a final hearing is held on the effective date of this subsection.

(2) TRAUMATIC INJURIES. The treatment of sections 102.17 (4) and 102.66 (1) and (2) of the statutes first applies to benefits or treatment expenses that are payable on the effective date of this subsection, regardless of the date of injury.

(3) MALICE OR BAD FAITH. The treatment of section 102.18 (1) (bp) of the statutes first applies to events or occurrences of malice or bad faith that take place of the effective date of this subsection.

(4) COMPENSATION PENDING JUDICIAL REVIEW. The treatment of section 102.23 (5) of the statutes first applies to actions for judicial review that are commenced under section 102.23 (1) of the statutes on the effective date of this subsection.

(5) PROFESSIONAL EMPLOYER ORGANIZATIONS AND EMPLOYEE LEASING ORGANIZATION.

(a) The treatment of section 102.31 (2m) (a) of the statutes first applies to an employee leasing agreement whose effective date is 10 working days before the effective date of this paragraph.

(b) The treatment of section 102.31 (2m) (b) and (c) of the statutes first applies to an employee leasing agreement whose termination date is 30 days after the effective date of this paragraph.

(6) PERMANENT DISABILITY PAYMENTS. The treatment of section 102.32 (6) (b) of the statutes first applies to compensation for permanent disability that becomes due on the effective date of this subsection.

(7) WORK INJURY SUPPLEMENTAL BENEFITS FUND SURCHARGES AND ASSESSMENTS. The treatment of sections 102.35 (1) and 102.75 (2) of the statutes first applies to surcharges and assessments imposed on the effective date of this subsection.

(8) TRAVEL FOR TREATMENT OR REHABILITATION. The treatment of sections 102.42 (2) (b) and 102.61 (1) and (1m) (c) of the statutes first applies to travel to obtain treatment or rehabilitation that takes place on the effective date of this subsection.

(9) PRESCRIPTION DRUG TREATMENT. The treatment of section 102.425 of the statutes first applies to a drug, as defined in section 102.425 (1) (b) of the statutes, as created by this act, that is prescribed on the effective date of this subsection.

SECTION 74. Effective dates. This act takes effect on January 1, 2006, or on the day after publication, whichever is later, except as follows:

(1) SUPPLEMENTAL BENEFITS. The treatment of section 102.44 (1) (intro.) (by SECTION 38) of the statutes and the repeal and recreation of section 102.44 (1) (a) and (b) of the statutes take effect on January 1, 2007.

(END)

(2) (cs) PERMANENT PARTIAL DISABILITY MAXIMUM COMPENSATION RATE. ~~The treatment of~~ (cs) SECTION (LPS: AR A (use) (autoref to Nonstat provision)) (1) & this act takes effect retroactively to January 1, 2006. (useAR B.)

Insert 12-15

Section #. 102.11 (1) (intro.) of the statutes is amended to read:

110 percent

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 that results in a maximum compensation rate of ~~110%~~ 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, 2006, shall be not more than the wage rate that 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 and, for permanent partial disability for injuries occurring ~~on or after January 1, 2002, and before January 1, 2003, not more than $318, resulting in a maximum compensation rate of $212, for permanent partial disability for injuries occurring on or after January 1, 2003, and before January 1, 2004, not more than $333, resulting in a maximum compensation rate of $222, for permanent partial disability for injuries occurring on or after January 1, 2004, and before January 1, 2005, not more than $348, resulting in a maximum compensation rate of $232, and, for permanent partial disability for injuries occurring on or after January 1, 2005, and before January 1, 2006, not more than $363, resulting in a maximum compensation rate of $242~~. Between such limits the average weekly earnings shall be determined as follows:

Keep

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81, 492; 1995 a. 117; 1997 a. 38, 253; 2001 a. 37, 107.

on or after the effective date of this subsection [revisor inserts date], and before January 1, 2007, not more than $378, resulting in a maximum compensation rate of $252, and, for permanent partial disability for injuries occurring on or after January 1, 2007, not more than $393, resulting in a maximum compensation rate of $262

end of insert

2003

Nonstat File Sequence: A A A

LRB _____/_____

_____ : _____ : _____

NONSTAT SESSLAW Insert 40-22

1. In the component bar:
   - For the action phrase, execute: ..... **create → action: → *NS: → nonstat**
   - For the budget action phrase, execute: ..... **create → action: → *NS: → 91XX**
   - For a subsection, execute: ..... **create → text: → *NS: → sub**
   - For a paragraph, execute: ..... **create → text: → *NS: → par**
   - For a subdivision, execute: ..... **create → text: → *NS: → subd**
   - For a subdivision paragraph, execute: ..... **create → text: → *NS: → subpar**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the **9100** department code.

create Auto Ref A

SECTION # ___ [91]. Nonstatutory provisions;

create Auto ref B

(#1) PERMANENT PARTIAL DISABILITY MAXIMUM COMPENSATION RATE. Notwithstanding section 102.03 (4) of the statutes, the average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 2006, and before the effective date of this subsection [revisor inserts date], shall be not more than $363, resulting in a maximum compensation rate of $242. If this act takes effect on January 1, 2006, this subsection does not apply.

the treatment of section 102.11 (1)(intro.) of the statutes

(end of unit)