State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–3729/P2 (P3)
GMM:kjf:jf

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 102.16 (1m) (a), 102.16 (2) and 102.18 (1) (bg) 1.; ***to renumber and amend*** 102.07 (12m), 102.125, 102.18 (1) (b), 102.23 (1) (a), 102.28 (2) (c), 102.28 (7) (b), 102.44 (1) (c) and 102.44 (4); ***to amend*** 20.445 (1) (ra), 101.654 (2) (b), 102.01 (2) (d), 102.03 (4), 102.04 (1) (a), 102.04 (2m), 102.07 (1) (a), 102.07 (1) (b), 102.07 (3), 102.07 (7) (a), 102.07 (10), 102.077 (1), 102.077 (2), 102.11 (1) (intro.), 102.125 (title), 102.13 (1) (e), 102.13 (2) (b), 102.13 (2) (c), 102.13 (2) (c), 102.16 (2) (d), 102.17 (1) (a) 3., 102.17 (4), 102.18 (3), 102.18 (4) (b), 102.21, 102.23 (1) (c), 102.23 (1) (cm), 102.28 (2) (a), 102.28 (2) (b) (title), 102.28 (2) (d), 102.28 (7) (a), 102.29 (1) (b) 2., 102.29 (8), 102.31 (2) (b) 2., 102.315 (2), 102.425 (3) (b), 102.425 (4) (a), 102.425 (4) (b), 102.425 (4m) (b), 102.43 (5) (c), 102.44 (1) (ag), 102.44 (1) (ag), 102.44 (1) (am), 102.44 (1) (b), 102.44 (3), 102.65 (4) (intro.), 102.75 (1), 102.75 (1m), 102.75 (2), 102.75 (4), 102.81 (1) (a), 108.10 (4), 165.066 and 165.60; and ***to create*** 102.07 (12m) (a), 102.125 (2), 102.28 (2) (bm), 102.28 (2) (c) 2., 102.28 (7) (bm), 102.423, 102.425 (3) (am), 102.44 (1) (c) 2., 102.44 (1) (c) 3., 102.44 (1m), 102.44 (4) (b), 102.44 (4m), 102.445, 102.75 (1g), 102.80 (1)

(f) and 102.81 (1) (c) of the statutes; **relating to:** various changes to the worker's compensation law, granting rule–making authority, and making an appropriation.

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).

GENERAL COVERAGE

Local governmental units

Under current law, each county, city, town, village, school district, sewer district, drainage district, long–term care district, and other public or quasi–public corporation (municipality) is liable for worker's compensation when an employee in the service of the municipality, whether elected, appointed, or under a contract of hire, is injured while performing services growing out of and incidental to his or her employment.

This bill changes the term "municipality" to "local governmental unit" for purposes of the worker's compensation law and redefines that term to mean a political subdivision of this state; a special purpose district or taxing jurisdiction in this state; an instrumentality, corporation, combination, or subunit of any of the foregoing; or any other public or quasi–public corporation. Under current law, cities, villages, towns, and counties are political subdivisions of this state; special purpose districts include school districts, sewer districts, drainage districts, long–term care districts, and other districts created for special purposes; and taxing jurisdictions are entities, not including the state, that are authorized by law to levy property taxes.

Postsecondary students participating in work study programs

Currently, a student of a public school or a private school, while he or she is engaged in performing services as part of a school work training, work experience, or work study program, who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employee of a school district or private school that elects to name the student as an employee for purposes of worker's compensation coverage. Also, under current law, a student who is named as an employee of a school district or private school for purposes of worker's compensation coverage and who makes a claim for worker's compensation against his or her school district or private school may not also make a claim for worker's compensation or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

This bill extends those provisions to a student of an institution within the University of Wisconsin System, a technical college, a tribally controlled college, a school approved by the Educational Approval Board, or a private, nonprofit institution of higher education located in this state (institution of higher education). Specifically, under the bill, a student of an institution of higher education, while he

controlled by an Indian Tribe that has elected to become subject to the worker's compensation law

or she is engaged in performing services as part of a school work training, work experience, or work study program, who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employee of an institution of higher education that elects to name the student as an employee for purposes of worker's compensation coverage. The bill also provides that a student who is named as an employee of an institution of higher education for purposes of worker's compensation coverage and who makes a claim for worker's compensation against that institution may not also make a claim for worker's compensation or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

PAYMENT OF BENEFITS

Maximum weekly compensation for permanent partial disability

Under current law, permanent partial disability benefits are subject to maximum weekly compensation rates specified by statute. Currently, the maximum weekly compensation rate for permanent partial disability is $322. This bill increases that maximum weekly compensation rate to $337 for injuries occurring before January 1, 2015, and to $352 for injuries occurring on or after that date.

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 January 1, 2001, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals $582. Those supplemental benefits are payable in the first instance by the employer or insurer, but the employer or insurer then is entitled to reimbursement for those supplemental benefits paid from the work injury supplemental benefit (WISB) fund, which is a fund that, among other things, is used to pay supplemental worker's compensation to injured employees with permanent total disability.

This bill makes an employee who is injured prior to January 1, 2003, eligible for those supplemental benefits beginning on the effective date of the bill and increases the maximum supplemental benefit amount for a week of disability occurring after the effective date of the bill to an amount that, when added to the employee's regular benefits, equals $669.

The bill also terminates reimbursement from the WISB fund for supplemental benefits paid by employers, beginning on the effective date of the bill ~~and reimbursement from that fund for supplemental benefits paid by insurers, beginning on July 1, 2015.~~ For supplemental benefits paid by an insurer, ~~during the interim between the effective date of the bill and~~ July 1, 2015, the bill provides that reimbursement of those benefits is from the worker's compensation operations fund and not from the WISB fund. To fund that reimbursement, the bill requires DWD to collect from each licensed worker's compensation carrier the proportion of reimbursement approved by DWD for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable by the carrier in worker's

compensation cases initially closed during the preceding calendar year bore to the total indemnity paid in cases closed the previous calendar year by all carriers.

Traumatic injuries

Under current law, an application for worker's compensation that is not filed within 12 years from the date of the injury or from the date that worker's compensation, other than for treatment or burial expenses, was last paid, whichever is later, is barred by the statute of limitations, except that in certain cases of traumatic injury ~~resulting in injury~~ there is no statute of limitations. In cases in which there is no statute of limitations, benefits or treatment expenses for traumatic injury becoming due 12 years after the date of injury or the date that compensation was last paid, whichever is later, are paid by DWD from the WISB fund if that date is before April 1, 2006.

This bill provides that benefits or treatment expenses for traumatic injury becoming due *nine* years after the date of injury or the date that compensation was last paid, whichever is later, are paid by DWD from the WISB fund, if that date is before April 1, 2006.

Indexing of benefits

Under current law, subject to certain exceptions, the amount of an injured employee's worker's compensation benefits is determined in accordance with the law that is in effect as of the date of injury, regardless of the length of time that has elapsed since that date.

This bill provides for the indexing of the weekly benefit for permanent total disability or continuous temporary total disability resulting from an injury that occurs on or after July 1, 2015. Specifically, under the bill, an injured employee who is receiving worker's compensation for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury that occurs on or after July 1, 2015, is entitled to receive the maximum rate that is in effect at the time the benefit accrues and becomes payable for periods of disability occurring more than six years after the date of injury.

The bill similarly provides for the indexing of the weekly benefit for permanent partial disability. Specifically, under the bill, an injured employee who is receiving worker's compensation for permanent partial disability more than 200 weeks after the ~~date of the injury~~ is entitled to receive the maximum rate that is in effect at the time the benefit accrues and becomes payable for periods of disability occurring more than 200 weeks after the ~~date of injury~~.

Vocational rehabilitation

Under current law, an injured employee is entitled to receive compensation for temporary disability while the employee is receiving vocational rehabilitation services under the federal Rehabilitation Act of 1973. If, however, the injury causes only partial disability, the employee's weekly indemnity is the proportion of the weekly indemnity rate for total disability that the actual wage loss of the injured employee bears to the injured employee's average weekly wage at the time of injury, *except* that compensation for temporary disability on account of receiving vocational rehabilitation services shall not be reduced on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is

receiving those services and only hours worked in excess of 24 during that week shall be offset against the employee's average weekly wage in calculating compensation for temporary disability. That exception, however, does not apply after April 30, 2014. This bill extends that exception to April 30, 2016.

Continuation of health care coverage

Currently, the family and medical leave law requires an employer to maintain group health insurance coverage during a period an employee takes family or medical leave under the conditions that applied immediately before the family or medical leave began. If the employee continues making any contribution required for participation in the group health insurance plan, the employer must continue making group health insurance premium contributions as if the employee has not taken the family or medical leave.

This bill similarly requires an employer that at the time of an injured employee's injury is providing the injured employee with group health care coverage to maintain that coverage during the injured employee's period of temporary disability under the conditions that applied at the time of injury, without regard to the injured employee's employment status during that period. Under the bill, if during an injured employee's period of temporary disability the injured employee continues making any contributions required of the injured employee for participation in the plan providing the employee's group health care coverage, the employer must continue making any contributions required of the employer for the injured employee's participation in that plan as if the injured employee were not in a period of temporary disability.

The bill provides that any employer that fails to maintain group health care coverage for an injured employee or the employer's worker's compensation insurer is liable to the injured employee for an amount that is equal to 100 percent of the contributions required of the employer that the employer failed to pay, in addition to any temporary disability benefits payable under the worker's compensation law. Under the bill, if an employer fails to maintain group health care coverage for an injured employee as required under the bill, the injured employee may, within 30 days after the violation occurred or the injured employee should reasonably have known that the violation occurred, whichever is later, request DWD to conduct a hearing on the violation. If, after hearing, the hearing examiner finds that the employer has failed to maintain group health care coverage as required under the bill, the hearing examiner, in addition to ordering the employer to pay the injured employee the contributions for group health care coverage that the employer failed to pay, may order the employer to take action to remedy the violation, including reinstating the injured employee's group health care coverage.

Prescription 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. Current law, however, 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 as quoted in the Drug Topics Red Book (average wholesale price).

This bill provides that if a prescription drug dispensed for outpatient use by an injured employee is a repackaged prescription drug, the liability of the employer or insurer for the cost of the repackaged prescription drug is limited to the average wholesale price of the prescription drug set by the original manufacturer of the prescription drug, except that if the National Drug Code number of the prescription drug as packaged by the original manufacturer cannot be determined from the billing statement submitted to the employer or insurer, that liability is limited to the average wholesale price of the lowest–priced drug product equivalent. That limitation of liability, however, does not apply to a repackaged prescription drug dispensed from a retail, mail–order, or institutional pharmacy.

HEARINGS AND PROCEDURES

Health care records in electronic format

Under current law, a physician, chiropractor, psychologist, podiatrist, dentist, physician assistant, advance practice nurse prescriber, hospital, or health service provider, upon request by an injured employee, employer, insurer, or DWD, must provide that person with any written material that is reasonably related to an injury for which the employee claims worker's compensation, upon payment of the actual cost of providing those materials, not to exceed the greater of 45 cents per page or $7.50 per request, plus the actual costs of postage.

This bill permits that material to be provided in electronic format upon payment of $26 per request.

Final practitioner's report

Under current law, if an injured employee has a period of temporary disability of more than three weeks or a permanent disability, has undergone surgery to treat an injury, other than surgery to correct a hernia, or sustains an eye injury requiring medical treatment on three or more occasions off the employer's premises, the employer or insurer must submit to DWD a final treating practitioner's report. Current law, however, prohibits DWD from requiring submission of that report when the employer or insurer denies the employee's claim for compensation and the employee does not contest that denial. This bill limits that prohibition to cases in which the employer or insurer denies the employee's claim for compensation *in its entirety.*

Prospective vocational rehabilitation training orders

Under current law, any party in interest may submit to DWD any controversy concerning worker's compensation and DWD, after hearing, must issue an order determining the rights of the parties regarding the controversy. Current law also permits DWD to issue interlocutory, *i.e.,* nonfinal, findings, orders, and awards, which may be enforced in the same manner as final awards. Current law specifically permits DWD to include in an interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve an injured employee from the effects of the employee's injury.

who is not employed

employment that is within the employee's permanent work restrictions and that pays not

This bill permits DWD to include in an interlocutory or final award or order an order directing the employer or insurer to pay for a future course of instruction or other rehabilitation training services provided under a rehabilitation training program to an injured employee ~~whose permanent work restrictions limit the employee to~~ employment with the employer for whom the employee worked at the time of injury at ~~a rate of pay that is~~ less than 85 percent of the employee's preinjury average weekly wage.

Administrative review of a worker's compensation decision

Under current law, a party to a worker's compensation proceeding may petition the Labor and Industry Review Commission (LIRC) for review of a DWD hearing examiner's decision awarding or denying worker's compensation (petition for review) if DWD or LIRC receives the petition for review within 21 days after DWD mailed a copy of the examiner's findings and order to the petitioner's last–known address. Currently, LIRC must dismiss a petition for review that is not timely filed unless the petitioner shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner's control. This bill requires a party to file a petition for review with LIRC, not DWD. The bill also requires LIRC to dismiss a petition for review that is not filed within those 21 days unless the petitioner shows that the petition was filed late for a reason that was beyond the petitioner's control.

Under current law, within 28 days after a decision of LIRC is mailed to the last–known address of each party to a worker's compensation proceeding, LIRC may, on its own motion, set aside the decision for further consideration. This bill permits LIRC to set aside a decision within 28 days after the date of the decision, not the date of its mailing.

Judicial review of a worker's compensation decision

Under current law, a party that is aggrieved by an order or award made by LIRC may commence an action against LIRC in circuit court for judicial review of the order or award (action for judicial review). Current law requires the adverse party to also be made a defendant in an action for judicial review. Recently, a concurring opinion in *Xcel Energy Services, Inc. v. LIRC,* 2013 WI 64, "unequivocally and firmly" recommended that the Council on Worker's Compensation propose legislative revisions to clarify who must be included as a party in an action for judicial review. *Id.* at p. 71. That concurring opinion further proposed that LIRC consider adopting the practice of providing information with its order or award instructing the parties as to who is to be named as an adverse party in an action for judicial review. *Id.* at p. 73.

This bill requires LIRC to identify in an order or award the persons that must be made parties to an action for judicial review. The bill also requires the summons and complaint in the action to name those persons as defendants. In addition, the bill permits the circuit court to join as a party to the action any other person determined necessary for the proper resolution of the action, unless joinder of the person would unduly delay the resolution of the action.

DWD must, when that schedule is established, notify the Legislative Reference Bureau (LRB), and the LRB must publish that notice in the Wisconsin Administrative Register. On publication of that notice, the health service fee dispute resolution process under current law no longer applies and instead

PROGRAM ADMINISTRATION

Health service fee disputes

Under current law, if a health service provider, injured employee, insurer, or employer submits to DWD a dispute over the reasonableness of a health service fee charged by the health service provider for services provided to the injured employee, DWD must determine the reasonableness of the disputed fee by comparing the disputed fee to the mean fee for the procedure for which the disputed fee was charged, as shown by data from a database certified by DWD. If the disputed fee is at or below the mean fee, plus 1.2 standard deviations from that mean, DWD must determine that the disputed fee is reasonable and order the fee to be paid. If the disputed fee is above the mean fee, plus 1.2 standard deviations from that mean, DWD must determine that the disputed fee is unreasonable and order that a reasonable fee be paid, unless the health service provider proves that a higher fee is justified. This bill lowers the standard deviations used to determine the reasonableness of a disputed health service fee to 0.7 standard deviations from the mean.

Health service fee schedule

This bill

~~The bill eliminates the health service fee dispute resolution procedure under current law on July 1, 2015, and instead~~ requires DWD to establish a schedule of the maximum fees that a health care provider may charge an employer or insurer for health services provided to an injured employee who claims worker's compensation benefits. Under the bill, the liability of an employer or insurer for a health service included in the fee schedule is limited to the maximum fee allowed under the schedule for that health service as of the date on which the health service was provided or the health care provider's actual fee for the health service as of that date, whichever is less.

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The bill requires DWD, in determining those maximum fees, to divide the state into five regions based on geographical and economical similarity, including similarity in the cost of health services, and, for each region, to: 1) determine the average payment made by insured and self–insured group health plans for each health service included in the schedule; and 2) set the maximum fee for each health service included in the schedule at 110 percent of that average payment.

The bill also requires DWD to adjust those maximum fees annually by the change in the consumer price index and, no less often than every two years, to redetermine the average payment made by group health plans for the services included in the schedule and revise those maximum fees based on that redetermined average.

For medical care services

and that average copayment, coinsurance, and deductible payment

Investigation and prosecution of fraudulent activity

Under current law, if an insurer or self–insured employer has evidence that a worker's compensation claim is false or fraudulent and if the insurer or self–insurer is satisfied that reporting the claim will not impede its ability to defend the claim, the insurer or self–insured employer must report the claim to DWD. DWD may then require the insurer or self–insured employer to investigate the claim and report the results of the investigation to DWD. If, based on the investigation, DWD has a

, any fee agreed to by contract between the employer or insurer and health care provider for the health service as of that date,

, and the average copayment, coinsurance, and deductible payment made by persons covered under those plans,

reasonable basis to believe that criminal insurance fraud has occurred, DWD must refer the matter to the district attorney for prosecution.

This bill permits DWD to request the Department of Justice (DOJ) to assist DWD in an investigation of a false or fraudulent worker's compensation claim of any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker's compensation. If, based on the investigation, DWD has a reasonable basis to believe that theft, forgery, fraud, or any other criminal violation has occurred, DWD must refer the matter to the district attorney *or* DOJ for prosecution.

Uninsured employers fund

Under current law, if an employee of an uninsured employer suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund, or, if DWD obtains excess or stop–loss reinsurance from a reinsurer, the reinsurer pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer.

This bill requires DWD to pay a claim of an employee of an uninsured employer in excess of $1,000,000 from the uninsured employers fund in the first instance, but provides that if the claim is not covered by excess or stop–loss reinsurance, the secretary of administration annually must transfer from the worker's compensation operations fund to the uninsured employers fund an amount equal to the amount by which payments from the uninsured employers fund on all such claims in the prior year are in excess of $1,000,000 per claim, subject to a $500,000 annual limit on the amount that the secretary of administration may transfer. If the amount to be transferred exceeds that $500,000 annual limit, the secretary of administration must transfer the amount in excess of $500,000 in the next calendar year or in subsequent calendar years until the amount in excess of $500,000 is transferred in full.

Self–insured employers

Election by governmental employer to self–insure. Under current law, every employer that is subject to the worker's compensation law must carry worker's compensation insurance from an insurer that is authorized to do business in this state (duty to insure), except that DWD may exempt an employer from the duty to insure if the employer shows that it can self–insure its worker's compensation liability and if the employer agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD. DWD rules, however, permit the state or a local governmental unit ~~(governmental employer)~~ to self–insure without further order of DWD.

This bill codifies ~~those~~ DWD rules into the statutes. Specifically, the bill permits ~~a governmental employer~~ to elect to self–insure its worker's compensation liability without further order of DWD if the governmental employer agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD. Under the bill, a local governmental unit that elects to self–insure its liability for the payment of worker's compensation must notify DWD of that election in writing before commencing to self–insure that liability, must notify DWD of its intent to continue to self–insure that liability every three years after that initial

the state or a local governmental ~~employer~~ unit that has independent taxing authority (governmental employer)

notice, and must notify DWD of its intent to withdraw that election not less than 30 days before the effective date of that withdrawal.

Revocation of governmental employer election to self–insure. Current law permits DWD, after seeking the advice of the Self–Insurer's Council, to revoke an exemption from the duty to insure if DWD finds that the employer's financial condition is inadequate to pay its employees' claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations according to the agreement contained in the application for exemption.

This bill permits DWD to revoke an election by a governmental employer to self–insure its liability for worker's compensation, without seeking the advice of the Self–Insurer's Council, if DWD finds that the governmental employer's financial condition is inadequate to pay its employees' claims for compensation, that the governmental employer has received an excessive number of claims for compensation, or that the governmental employer has failed to discharge faithfully its obligations under the worker's compensation law and the rules of DWD. Under the bill, once such an election is revoked, the governmental employer whose election is revoked may not elect to self–insure its liability for the payment of worker's compensation unless at least three calendar years have elapsed since the revocation and DWD finds that the governmental employer's financial condition is adequate to pay its employees' claims for compensation, that the governmental employer has not received an excessive number of claims for compensation, and that the governmental employer has faithfully discharged its obligations under the worker's compensation law and the rules of DWD.

Self–insured employer assessments. Current law establishes a self–insured employers liability fund, consisting of assessments paid into the fund by self–insured employers, that is used to pay the worker's compensation liability of current or former self–insured employers that cannot pay that liability. Under current law, on issuance of an order exempting an employer from the duty to insure, the exempt employer must pay into the fund an amount that is equal to the amount assessed upon each other exempt employer (initial assessment). Subsequent assessments, however, are prorated on the basis of the gross payroll for this state of the exempt employer, as reported to DWD for the previous calendar year for purposes of unemployment insurance.

This bill requires an initial assessment, as well as subsequent assessments, for the self–insurer's fund to be prorated on the basis of the gross payroll for this state of the exempt employer, as reported to DWD for the previous calendar year for purposes of unemployment insurance.

The bill also removes governmental employers from the coverage of the self–insurer's fund. Specifically, the bill prohibits DWD from: 1) requiring a governmental employer that elects to self–insure its liability for the payment of worker's compensation to pay into the self–insurer's fund; and 2) making payments from that fund for the liability under the worker's compensation law of such an employer, whether currently or formerly exempt from the duty to insure.

Study of treatment outcomes

Finally, the bill requires the secretary of workforce development to create a committee to review and evaluate the outcomes of treatment provided to injured employees by health care providers under the worker's compensation program. The committee must include representatives of employers, employees, health care providers, worker's compensation insurers authorized to do business in this state, and DWD. Upon completion of the study, the committee must report its findings, conclusions, and recommendations to DWD and the Council on Worker's Compensation, after which the committee ceases to exist.

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) (ra) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

20.445 **(1)** (ra) *Worker's compensation operations 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, for assistance to the department of justice in investigating and prosecuting fraudulent activity related to worker's compensation, for transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par. (rp) and sub. (2) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account. 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, an amount not to exceed $500,000 may be transferred in each fiscal year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the schedule under par. (rp) shall be transferred

to the appropriation account under par. (rp), and the amount in the schedule under sub. (2) (ra) shall be transferred to the appropriation account under sub. (2) (ra).

SECTION 2. 101.654 (2) (b) of the statutes is amended to read:

101.654 **(2)** (b) If the applicant is required under s. 102.28 (2) (a) to have in force a policy of worker's compensation insurance or if the applicant is self–insured in accordance with s. 102.28 (2) (b) or (bm), that the applicant has in force a policy of worker's compensation insurance issued by an insurer authorized to do business in this state or is self–insured in accordance with s. 102.28 (2) (b) or (bm).

SECTION 3. 102.01 (2) (d) of the statutes is amended to read:

102.01 **(2)** (d) ~~"Municipality" includes a county, city, town, village, school district, sewer district, drainage district and long–term care district and~~ "Local governmental unit" means a political subdivision of this state; a special purpose district or taxing jurisdiction, as defined in s. 70.114 (1) (f), in this state; an instrumentality, corporation, combination, or subunit of any of the foregoing; or any other public or quasi–public ~~corporations~~ corporation.

SECTION 4. 102.03 (4) of the statutes is amended to read:

102.03 **(4)** The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of law in effect as of the date of the injury except as to employees whose rate of compensation is changed as provided in ss. 102.43 (7) or 102.44 (1), (1m), (4m), or (5) or, before May 1, ~~2014~~ 2016, as provided in s. 102.43 (5) (c) and employees who are eligible to receive private rehabilitative counseling and rehabilitative training under s. 102.61 (1m) and except as provided in s. 102.555 (12) (b).

SECTION 5. 102.04 (1) (a) of the statutes is amended to read:

102.04 **(1)** (a) The state~~,~~ and each ~~county, city, town, village, school district, sewer district, drainage district, long-term care district and other public or quasi-public corporations therein~~ local governmental unit in this state.

SECTION 6. 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) 3. 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 7. 102.07 (1) (a) of the statutes is amended to read:

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

this paragraph does apply to claims for compensation filed on or after the date specified in that certificate.

SECTION 8. 102.07 (1) (b) of the statutes is amended to read:

102.07 **(1)** (b) Every person, including all officials, in the service of the state, or of any ~~municipality therein~~ local governmental unit in this state, whether elected or under any appointment~~,~~ or contract of hire, express or implied, and whether a resident of the state or employed or injured within or without the state. This paragraph first applies on the first day of the first July beginning after the day that the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for compensation filed on or after the date specified in that certificate.

SECTION 9. 102.07 (3) of the statutes is amended to read:

102.07 **(3)** Nothing ~~herein contained shall prevent municipalities~~ in this chapter prevents a local governmental unit from paying ~~teachers, police officers, fire fighters and other employees~~ a teacher, police officer, fire fighter, or any other employee his or her full ~~salaries~~ salary during a period of disability, nor ~~interfere~~ interferes with any pension ~~funds~~ fund, nor ~~prevent~~ prevents payment to ~~teachers, police officers or fire fighters therefrom~~ a teacher, police officer, fire fighter, or any other employee from a pension fund.

SECTION 10. 102.07 (7) (a) of the statutes is amended to read:

102.07 **(7)** (a) Every member of a volunteer fire company or fire department organized under ch. 213, a legally organized rescue squad, or a legally organized diving team is considered to be an employee of that company, department, squad, or team. Every member of a company, department, squad, or team described in this paragraph, while serving as an auxiliary police officer at an emergency, is also

considered to be an employee of that company, department, squad, or team. If a company, department, squad, or team described in this paragraph has not insured its liability for compensation to its employees, the ~~municipality or county~~ political subdivision within which that company, department, squad, or team was organized shall be liable for that compensation.

SECTION 11. 102.07 (10) of the statutes is amended to read:

102.07 **(10)** Further to effectuate the policy of the state that the benefits of this chapter shall extend and be granted to employees in the service of the state, or of any ~~municipality therein~~ local governmental unit in this state, on the same basis, in the same manner, under the same conditions, and with like right of recovery as in the case of employees of persons, firms, or private corporations, any question whether any person is an employee under this chapter shall be governed by and determined under the same standards, considerations, and rules of decision in all cases under subs. (1) to (9). Any ~~statutes, ordinances, or administrative regulations which~~ statute, ordinance, or rule that may be otherwise applicable to the classes of employees enumerated in sub. (1) shall not be controlling in deciding whether any person is an employee for the purposes of this chapter.

SECTION 12. 102.07 (12m) of the statutes is renumbered 102.07 (12m) (b) and amended to read:

102.07 **(12m)** (b) A student of a public school, ~~as described in s. 115.01 (1), or~~ a private school, ~~as defined in s. 115.001 (3r),~~ or an institution of higher education, while he or she is engaged in performing services as part of a school work training, work experience, or work study program, and who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess

premiums on that employer, is an employee of a school district ~~or~~, private school, or institution of higher education that elects under s. 102.077 to name the student as its employee. ~~that has elected~~ controlled by an Indian tribe that has elected under s. 102.05 (2) to become subject to this chapter

SECTION 13. 102.07 (12m) (a) of the statutes is created to read:

102.07 **(12m)** (a) In this subsection:

1. "Institution of higher education" means an institution within the University of Wisconsin System, a technical college, a tribally controlled college, a school approved under s. 38.50, or a private, nonprofit institution of higher education located in this state.

2. "Private school" has the meaning given in s. 115.001 (3r).

3. "Public school" means a school described in s. 115.01 (1).

SECTION 14. 102.077 (1) of the statutes is amended to read:

102.077 **(1)** A school district ~~or a~~, private school, ~~as defined in s. 115.001 (3r),~~ or institution of higher education may elect to name as its employee for purposes of this chapter a student described in s. 102.07 (12m) (b) by an endorsement on its policy of worker's compensation insurance or, if the school district ~~or~~, private school, or institution of higher education is exempt from the duty to insure under s. 102.28 (2) (a), by filing a declaration with the department in the manner provided in s. 102.31 (2) (a) naming the student as an employee of the school district ~~or~~, private school, or institution of higher education for purposes of this chapter. A declaration under this subsection shall list the name of the student to be covered under this chapter, the name and address of the employer that is providing the work training or work experience for that student, and the title, if any, of the work training, work experience, or work study program in which the student is participating.

SECTION 15. 102.077 (2) of the statutes is amended to read:

102.077 **(2)** A school district ~~or~~, private school, or institution of higher education may revoke a declaration under sub. (1) by providing written notice to the department in the manner provided in s. 102.31 (2) (a), the student, and the employer who is providing the work training or work experience for that student. A revocation under this subsection is effective 30 days after the department receives notice of that revocation.

SECTION 16. 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 percent 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 ~~April 17, 2012, and before January 1, 2013, not more than $468, resulting in a maximum compensation rate of $312, and, for permanent partial disability for injuries occurring on or after January 1, 2013, not more than $483, resulting in a maximum compensation rate of $322, except as provided in 2011 Wisconsin Act 183, section 30 (2) (a) 1~~ the effective date of this subsection .... [LRB inserts date], and before January 1, 2015, not more than $506, resulting in a maximum compensation rate of $337, and, for permanent partial disability for injuries occurring on or after January 1, 2015, not more than $528, resulting in a maximum compensation rate of $352. Between such limits the average weekly earnings shall be determined as follows:

SECTION 17. 102.125 (title) of the statutes is amended to read:

102.125 (title) ~~**Fraudulent claims**~~ **Fraud reporting ~~and~~, investigation, and prosecution.**

SECTION 18. 102.125 of the statutes is renumbered 102.125 (1) and amended to read:

102.125 **(1)** FRAUDULENT CLAIMS REPORTING AND INVESTIGATION. If an insurer or self–insured employer has evidence that a claim is false or fraudulent in violation of s. 943.395 and if the insurer or self–insured employer is satisfied that reporting the claim to the department will not impede its ability to defend the claim, the insurer or self–insured employer shall report the claim to the department. The department may require an insurer or self–insured employer to investigate an allegedly false or fraudulent claim and may provide the insurer or self–insured employer with any records of the department relating to that claim. An insurer or self–insured employer that investigates a claim under this ~~section~~ subsection shall report on the results of that investigation to the department.

(3) PROSECUTION. If based on ~~the~~ an investigation under sub. (1) or (2) the department has a reasonable basis to believe that a violation of s. 943.20, 943.38, 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the department shall refer the results of the investigation to the department of justice or to the district attorney of the county in which the alleged violation occurred for prosecution.

SECTION 19. 102.125 (2) of the statutes is created to read:

102.125 **(2)** ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce development may request the department of justice to assist the department of workforce development in an investigation under sub. (1) or in the investigation of

any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker's compensation.

SECTION 20. 102.13 (1) (e) of the statutes is amended to read:

102.13 **(1)** (e) No person may testify on the issue of the reasonableness of the fees of a licensed health care professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony. This paragraph does not apply to the fee dispute resolution process under s. 102.16 (2).

SECTION 21. 102.13 (2) (b) of the statutes is amended to read:

102.13 **(2)** (b) A physician, chiropractor, podiatrist, psychologist, dentist, physician assistant, advanced practice nurse prescriber, hospital, or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) in paper format upon payment of the actual costs of preparing the certified duplicate, not to exceed the greater of 45 cents per page or $7.50 per request, plus the actual costs of postage, or shall furnish a legible, certified duplicate of that material in electronic format upon payment of $26 per request. Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

SECTION 22. 102.13 (2) (c) of the statutes is amended to read:

102.13 **(2)** (c) Except as provided in this paragraph, if an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability, if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, or if the injured employee sustained an eye injury requiring

Subject to s. 102.16 (2)(i), am

medical treatment on 3 or more occasions off the employer's premises, 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. The department may not require an insurer or self–insured employer to submit to the department a final report of an employee's treating practitioner when the insurer or self–insured employer denies the employee's claim for compensation in its entirety and the employee does not contest that denial. 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 23. 102.13 (2) (c) of the statutes, as affected by 2013 Wisconsin Act .... (this act), is amended to read:

102.13 **(2)** (c) Except as provided in this paragraph, if an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability, if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, or if the injured employee sustained an eye injury requiring medical treatment on 3 or more occasions off the employer's premises, 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. The department may not require an insurer or self–insured employer to submit to the department a final report of an employee's treating practitioner when the insurer or self–insured employer denies the employee's claim for compensation in its entirety and the employee does not contest that denial. 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 24. 102.16 (1m) (a) of the statutes is repealed.~~

SECTION 25. 102.16 (2) ~~of the statutes, as affected~~ by 2013 Wisconsin Act .... (this act), ~~is~~ repealed.

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

102.16 **(2)** (d) The department shall analyze the information provided to the department under par. (c) according to the criteria provided in this paragraph to determine the reasonableness of the disputed fee. ~~Except as provided in 2011 Wisconsin Act 183, section 30 (2) (b), the~~ The department shall determine that a disputed fee is reasonable and order that the disputed fee be paid if that fee is at or below the mean fee for the health service procedure for which the disputed fee was charged, plus ~~1.2~~ 0.7 standard deviations from that mean, as shown by data from a database that is certified by the department under par. (h). ~~Except as provided in 2011 Wisconsin Act 183, section 30 (2) (b), the~~ The department shall determine that a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service procedure for which the disputed fee was charged, plus ~~1.2~~ 0.7 standard deviations from that mean, as shown by data from a database that is certified by the department under par. (h), unless the health service provider proves to the satisfaction of the department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

SECTION 27. 102.17 (1) (a) 3. of the statutes is amended to read:

and in the case of traumatic injury, that right shall not extend beyond 9 years after that date

102.17 **(1)** (a) 3. If a party in interest claims that the employer or insurer has acted with malice or bad faith as described in s. 102.18 (1) (b) 3. or (bp), that party shall provide written notice stating with reasonable specificity the basis for the claim to the employer, the insurer, and the department before the department schedules a hearing on the claim of malice or bad faith.

in the case of occupational disease,

SECTION 28. 102.17 (4) of the statutes is amended to read:

102.17 **(4)** Except as provided in this subsection and s. 102.555 (12) (b), the right of an employee, the employee's legal representative, or a dependent to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for 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 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 12 years after the date of injury or death or last payment of compensation, other than for treatment or burial expenses, 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 such a traumatic injury becoming due ~~12~~ 9 years after that date shall be paid from that fund and in that manner if the date of injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006. Payment of wages by the employer during disability or absence from work to obtain

treatment shall be considered 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 29. 102.18 (1) (b) of the statutes is renumbered 102.18 (1) (b) 1. and amended to read:

102.18 **(1)** (b) 1. Within 90 days after the final hearing and close of the record, the department shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the department may in its discretion after any hearing make interlocutory findings, orders, and awards, which may be enforced in the same manner as final awards.

2. The department may include in any interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve the employee from the effects of the injury or to pay for a future course of instruction or other rehabilitation training services provided under a rehabilitation training program developed under s. 102.61 (1) or (1m) to an employee ~~whose permanent work restrictions limit the employee to employment~~ who is not employed with the employer for whom the employee worked at the time of injury ~~at a rate of pay that is~~ less than 85 percent of the employee's preinjury average weekly wage.

3. If the department finds that the employer or insurer has not paid any amount that the employer or insurer was directed to pay in any interlocutory order or award and that the nonpayment was not in good faith, the department may include in its final award a penalty not exceeding ~~25%~~ 25 percent of each amount that was not paid as directed.

~~who has not returned to work with the employer for whom the employee worked at the time of injury or is not employed elsewhere~~ at employment that is within the employee's permanent work restrictions and that pays not ~~less than~~

4. When there is a finding that the employee is in fact suffering from an occupational disease caused by the employment of the employer against whom the application is filed, a final award dismissing the application upon the ground that the applicant has suffered no disability from the disease shall not bar any claim the employee may ~~thereafter~~ have after the date of the award for disability sustained after ~~the~~ that date ~~of the award~~.

SECTION 30. 102.18 ~~(1) (bg) 1.~~ of the statutes ~~is repealed~~.

SECTION 31. 102.18 (3) of the statutes is amended to read:

102.18 **(3)** A party in interest may petition the commission for review of an examiner's decision awarding or denying compensation if the ~~department or~~ commission receives the petition within 21 days after the department mailed a copy of the examiner's findings and order to the party's last–known address. The commission shall dismiss a petition ~~which~~ that is not ~~timely~~ filed within those 21 days unless the petitioner shows ~~probable good cause~~ that the petition was filed late for a reason ~~for failure to timely file~~ that was beyond the petitioner's control. If no petition is filed within those 21 days ~~from the date that a copy of the findings or order of the examiner is mailed to the last–known address of the parties in interest~~, the findings or order shall be considered final unless set aside, reversed, or modified by the examiner within that time. If the findings or order are set aside by the examiner, the status shall be the same as prior to the setting aside of the findings or order ~~set aside~~. If the findings or order are reversed or modified by the examiner, the time for filing a petition commences ~~with~~ on the date that notice of the reversal or modification is mailed to the last–known address of the parties in interest. The commission shall either affirm, reverse, set aside, or modify the findings or order in

whole or in part, or direct the taking of additional evidence. ~~This~~ The commission's action shall be based on a review of the evidence submitted.

SECTION 32. 102.18 (4) (b) of the statutes is amended to read:

102.18 **(4)** (b) Within 28 days after the date of a decision of the commission ~~is mailed to the last-known address of each party in interest~~, the commission may, on its own motion, set aside the decision for further consideration.

SECTION 33. 102.21 of the statutes is amended to read:

102.21 Payment of awards by municipalities. ~~Whenever~~ When an award is made by the department under this chapter or s. 66.191, 1981 stats., against any ~~municipality~~ local governmental unit, the person in whose favor ~~it~~ the award is made shall file a certified copy ~~thereof~~ of the award with the ~~municipal~~ clerk of the local governmental unit. Within 20 days ~~thereafter, unless an appeal is taken, such~~ after the filing of the award, the clerk shall draw an order on the ~~municipal~~ treasurer of the local governmental unit for the payment of the award, unless an appeal is taken. If upon appeal ~~such~~ the award is affirmed in whole or in part, the order for payment shall be drawn within 10 days after a certified copy of ~~such~~ the judgment on appeal is filed with the proper clerk. If more than one payment is provided for in the award or judgment, orders shall be drawn as the payments become due. No statute relating to the filing of claims against, ~~and~~ or the auditing, allowing ~~and~~, or payment of claims by ~~municipalities~~, local governmental units shall apply to the payment of an award or judgment under this section.

SECTION 34. 102.23 (1) (a) of the statutes is renumbered 102.23 (1) (a) 1. and amended to read:

102.23 **(1)** (a) 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or

denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. The commission shall identify in the order or award the persons that must be made parties to an action for the review of the order or award.

2. Within 30 days after the date of an order or award made by the commission ~~either originally or after the filing of a petition for review with the department under s. 102.18,~~ any party aggrieved ~~thereby~~ by the order or award may commence an action in circuit court for the review of the order or award by serving a complaint as provided in par. (b) and filing the summons and complaint with the clerk of the circuit court ~~commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant.~~ The summons and complaint shall name the party commencing the action as the plaintiff and shall name as defendants the commission and all persons identified by the commission under subd. 1. If the circuit court determines that any other person is necessary for the proper resolution of the action, the circuit court may join that person as a party to the action, unless joinder of the person would unduly delay the resolution of the action. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, ~~it~~ the circuit court may extend the time ~~in~~ within which an action may be commenced by an additional 30 days.

3. The proceedings shall be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees.

SECTION 35. 102.23 (1) (c) of the statutes is amended to read:

102.23 **(1)** (c) ~~Except as provided in par. (cm), the~~ The commission shall serve its answer within 20 days after the service of the complaint~~, and, within the like time, the adverse party~~. Except as provided in par. (cm), any other defendant may serve an answer to the complaint within 20 days after the service of the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if the ~~party~~ defendant had commenced a separate action for the review ~~thereof~~ of the order or award.

SECTION 36. 102.23 (1) (cm) of the statutes is amended to read:

102.23 **(1)** (cm) If ~~an adverse party to the proceeding~~ a defendant in an action brought under par. (a) is an insurance company, the insurance company may serve an answer to the complaint within 45 days after the service of the complaint.

SECTION 37. 102.28 (2) (a) of the statutes is amended to read:

102.28 **(2)** (a) *Duty to insure payment for compensation.* Unless exempted ~~by the department~~ under par. (b) or (bm) or sub. (3), every employer, as described in s. 102.04 (1), shall insure payment for ~~that~~ compensation under this chapter in an insurer authorized to do business in this state. A joint venture may elect to be an employer under this chapter and obtain insurance for payment of compensation. If a joint venture that is subject to this chapter only because the joint venture elected to be an employer under this chapter is dissolved and cancels or terminates its contract for the insurance of compensation under this chapter, that joint venture is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

SECTION 38. 102.28 (2) (b) (title) of the statutes is amended to read:

102.28 **(2)** (b) (title) *Exemption from duty to insure; employers generally.*

that has independent taxing authority

SECTION 39. 102.28 (2) (bm) of the statutes is created to read:

102.28 **(2)** (bm) *Exemption from duty to insure; governmental employers.* 1. Subject to subds. 2. to 4., if the state or a local governmental unit is not partially insured or fully insured for its liability for the payment of compensation under this chapter, or to the extent that the state or a local governmental unit is not partially insured for that liability under one or more contracts issued with the consent of the department under s. 102.31 (1) (b), and if the state or local governmental unit agrees to report faithfully all compensable injuries and to comply with this chapter and all rules of the department, the state or local governmental unit may elect to self–insure that liability without further order of the department.

2. Notwithstanding the absence of an order of exemption from the duty to insure under par. (a), the state or a local governmental unit that elects to self–insure as provided in subd. 1. is exempt from that duty. Notwithstanding that exemption, if the state or a local governmental unit that elects to self–insure as provided in subd. 1. desires partial insurance or divided insurance, the state or local governmental unit shall obtain the consent of the department under s. 102.31 (1) (b) to the issuance of a contract providing such insurance.

3. a. A local governmental unit that elects to self–insure its liability for the payment of compensation under this chapter shall notify the department of that election in writing before commencing to self–insure that liability and shall notify the department of its intent to continue to self–insure that liability every 3 years after that initial notice. A local government unit that wishes to withdraw that election shall notify the department of that withdrawal not less than 30 days before the effective date of that withdrawal.

b. A notice under subd. 3. a. shall be accompanied by a resolution adopted by the governing body of the local governmental unit and signed by the elected or appointed chief executive of the local governmental unit stating that the governing body intends and agrees to self–insure the liability of the local governmental unit for the payment of compensation under this chapter and that the local government unit agrees to report faithfully all compensable injuries and to comply with this chapter and all rules of the department.

4. An election to self–insure under subd. 1. is subject to revocation under par. (c) 2. Once such an election is revoked, the employer whose election is revoked may not elect to self–insure its liability for the payment of compensation under this chapter unless at least 3 calendar years have elapsed since the revocation and the department finds that the employer's financial condition is adequate to pay its employees' claims for compensation, that the employer has not received an excessive number of claims for compensation, and that the employer has faithfully discharged its obligations under this chapter and the rules of the department.

SECTION 40. 102.28 (2) (c) of the statutes is renumbered 102.28 (2) (c) 1. and amended to read:

102.28 **(2)** (c) *Revocation of exemption* <u>*or election*</u>. 1. The department, after seeking the advice of the self–insurers council, may revoke an exemption granted to an employer under par. (b), upon giving the employer 10 days' written notice, if the department finds that the employer's financial condition is inadequate to pay its employees' claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations according to the agreement contained in the application for exemption. ~~The employer may, within~~

3. Within 10 days after receipt of ~~the~~ a notice of revocation~~,~~ under subd. 1. or 2., the employer may request in writing a review of the revocation by the secretary or the secretary's designee and the secretary or the secretary's designee shall review the revocation within 30 days after receipt of the request for review. If the employer is aggrieved by the determination of the secretary or the secretary's designee, the employer may, within 10 days after receipt of notice of that determination, request a hearing under s. 102.17. If the secretary or the secretary's designee determines that the employer's exemption or election should be revoked, the employer shall obtain insurance coverage as required under par. (a) immediately upon receipt of notice of that determination and, notwithstanding the pendency of proceedings under ss. 102.17 to 102.25, shall keep that coverage in force until another exemption under par. (b) is granted or another election under par. (bm) is made.

SECTION 41. 102.28 (2) (c) 2. of the statutes is created to read:

102.28 **(2)** (c) 2. The department may revoke an election made by an employer under par. (bm), upon giving the employer 10 days' written notice, if the department finds that the employer's financial condition is inadequate to pay its employees' claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations under this chapter and the rules of the department.

SECTION 42. 102.28 (2) (d) of the statutes is amended to read:

102.28 **(2)** (d) *Effect of insuring with unauthorized insurer.* ~~An employer who procures an exemption under par. (b) and thereafter~~ If an employer that is exempted under par. (b) or (bm) from the duty to insure under par. (a) enters into any agreement for excess insurance coverage with an insurer not authorized to do business in this

state, the employer shall report that agreement to the department immediately. The placing of such coverage shall not by itself be grounds for revocation of the exemption.

SECTION 43. 102.28 (7) (a) of the statutes is amended to read:

102.28 **(7)** (a) If an employer who is currently or was formerly exempted by written order of the department under sub. (2) (b) is unable to pay an award, judgment is rendered in accordance with s. 102.20 against that employer, and execution is levied and returned unsatisfied in whole or in part, payments for the employer's liability shall be made from the fund established under sub. (8). If a currently or formerly exempted employer files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the employer's liability from the fund established under sub. (8). The secretary of administration shall proceed to recover ~~such~~ those payments from the employer or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim ~~therefor~~ for those payments. The attorney general shall appear on behalf of the secretary of administration in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established under sub. (8).

SECTION 44. 102.28 (7) (b) of the statutes is renumbered 102.28 (7) (b) 1. and amended to read:

102.28 **(7)** (b) 1. Each employer exempted by written order of the department under sub. (2) (b) shall pay into the fund established by sub. (8) ~~a sum equal to that assessed against each of the other such exempt employers upon the issuance of an initial order. The order~~ an initial assessment based on orders of the department as provided in subd. 2. An order of the department requiring exempt employers to pay

into that fund shall provide for ~~a sum~~ an amount that is sufficient to secure estimated payments of ~~the~~ an insolvent exempt employer due for the period up to the date of the order and for one year following the date of the order and to pay the estimated cost of insurance carrier or insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days after the date of the order. If additional moneys are required, further assessments shall be made based on orders of the department ~~with~~ as provided under subd. 2.

2. An initial or further assessment under subd. 1. shall be prorated on the basis of the gross payroll for this state of the exempt employer, as reported to the department for the previous calendar year for unemployment insurance purposes under ch. 108. ~~If the~~ or, if an exempt employer is not covered under ch. 108, ~~then the department shall determine~~ on the basis of the comparable gross payroll for the exempt employer as determined by the department. If payment of any assessment made under ~~this subsection~~ subd. 1. is not made within 30 days ~~of~~ after the date of the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

SECTION 45. 102.28 (7) (bm) of the statutes is created to read:

102.28 **(7)** (bm) The department may not do any of the following:

1. Require an employer that elects under sub. (2) (bm) to self–insure its liability for the payment of compensation under this chapter to pay into the fund established under sub. (8).

2. Make any payments from the fund established under sub. (8) for the liability under this chapter of an employer that elects under sub. (2) (bm) to self–insure its

liability for the payment of compensation under this chapter, whether currently or formerly exempt from the duty to insure under sub. (2) (a).

SECTION 46. 102.29 (1) (b) 2. of the statutes is amended to read:

102.29 **(1)** (b) 2. Out of the balance remaining after the deduction and payment specified in subd. 1., the employer, the insurance carrier, or, if applicable, the uninsured employers fund or the work injury supplemental benefit fund shall be reimbursed for all payments made by the employer, insurance carrier, or department, or which the employer, insurance carrier, or department may be obligated to make in the future, under this chapter, except that the employer, insurance carrier, or department shall not be reimbursed for any payments made or to be made under s. 102.18 (1) (b) 3. or (bp), 102.22, 102.35 (3), 102.57, or 102.60.

SECTION 47. 102.29 (8) of the statutes is amended to read:

102.29 **(8)** No student of a public school, ~~as described in s. 115.01 (1), or~~ a private school, ~~as defined in s. 115.001 (3r),~~ or an institution of higher education who is named under s. 102.077 as an employee of the school district ~~or~~, private school, or institution of higher education for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

SECTION 48. 102.31 (2) (b) 2. of the statutes is amended to read:

102.31 **(2)** (b) 2. Regardless of whether the notices required under par. (a) have been given, a cancellation or termination is effective upon the effective date of replacement insurance coverage obtained by the employer ~~or~~, of an order under s. 102.28 (2) (b) exempting the employer from ~~carrying~~ the duty to carry insurance

When that schedule is established, the department shall notify the legislative reference bureau and the legislative reference bureau shall publish that notice in the Wisconsin Administrative Register.

under s. 102.28 (2) (a), or of an election by an employer under s. 102.28 (2) (bm) to self–insure its liability for the payment of compensation under this chapter.

SECTION 49. 102.315 (2) of the statutes is amended to read:

102.315 **(2)** EMPLOYEE LEASING COMPANY LIABLE. An employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, an employee leasing company may not seek or receive reimbursement from another employer for any payments made as a result of that liability. An employee leasing company is not liable under s. 102.03 for any compensation payable under this chapter to an employee of a client who is not a leased employee.

SECTION 50. 102.423 of the statutes is created to read:

102.423 Health service fee schedule. (1) ESTABLISHMENT OF SCHEDULE. (a) By July 1, 2015, the department shall establish a schedule of the maximum fees that a health care provider may charge an employer or insurer for health services provided to an injured employee who claims benefits under this chapter. In determining those maximum fees, the department shall divide the state into 5 regions based on geographical and economical similarity, including similarity in the cost of health services, and, for each region, shall do all of the following:

1. Determine the average payment made by group health benefit plans, as defined in s. 632.745 (9), group health plans, as defined in s. 632.745 (10), and self–insured health plans, as defined in s. 632.745 (24), for each health service included in the schedule based on health service payment data obtained from the Wisconsin Health Information Organization, the Workers Compensation Research Institute, health insurers and health plan sponsors, the group health insurance plan

and the average copayment, coinsurance, and deductible payment made by persons covered under those plans,

under subch. IV of ch. 40, and other sources determined by the department to be credible.

2. Set the maximum fee for each health service included in the schedule at 110 percent of the average payment for that service as determined under subd. 1.

(b) 1. In this paragraph, "consumer price index" means the average of the consumer price index for medical care services over each 12–month period for all urban consumers, U.S. city average, as determined by the bureau of labor statistics of the federal department of labor.

2. On each July 1, beginning on July 1, 2016, the department shall adjust the maximum fees established under par. (a) by the percentage difference between the consumer price index for the 12–month period ending on December 31 of the preceding year and the consumer price index for the 12–month period ending on December 31 of the year before the preceding year.

(c) No less often than every 2 years, the department shall obtain health service payment data from the sources specified in par. (a) 1., redetermine the average payments specified in par. (a) 1., and revise the maximum fees established under par. (a) 2. based on that redetermined average.

(d) The department may not implement the fee schedule established under par. (a) or revise that schedule under par. (c) unless the schedule or revised schedule is approved by the council on worker's compensation.

(e) The department shall post a link to the fee schedule established under par. (a) on the department's Internet site. Notwithstanding s. 227.10 (1), the fee schedule need not be promulgated as a rule.

(2) LIABILITY OF EMPLOYER OR INSURER. The liability of an employer or insurer for a health service included in the fee schedule established under sub. (1) (a) is

This subsection first applies to a health service provided to an injured employee on the date on which the notice under sub. (1)(a) is published in the Wisconsin Administrative Register.

limited to the maximum fee allowed under the schedule for that health service as of the date on which the health service was provided, or the health care provider's actual fee for the health service as of that date, whichever is less. A health care provider that provides health services to an injured employee under this chapter may not collect, or bring an action to collect, from the injured employee any charge that is in excess of the liability of the employer or insurer under this subsection.

(3) RULES. The department shall promulgate rules to implement this section.

SECTION 51. 102.425 (3) (am) of the statutes is created to read:

102.425 **(3)** (am) 1. Subject to subd. 2., if a prescription drug dispensed under sub. (2) (a) for outpatient use by an injured employee is a repackaged prescription drug, the liability of an employer or insurer for the cost of the repackaged prescription drug is limited to the average wholesale price, as determined under par. (a) 1., of the prescription drug set by the original manufacturer of the prescription drug, plus any dispensing fee that may be payable under par. (a) 2. and any taxes that may be applicable under par. (a) 3., except that if the national drug code number of the prescription drug as packaged by the original manufacturer of the prescription drug cannot be determined from the billing statement under par. (c), that liability is limited to the average wholesale price, as determined under par. (a) 1., of the lowest–priced drug product equivalent, plus any dispensing fee under par. (a) 2. and any taxes under par. (a) 3. that would be payable for the drug product equivalent.

2. Subdivision 1. does not apply to a repackaged prescription drug dispensed from a retail, mail–order, or institutional pharmacy.

SECTION 52. 102.425 (3) (b) of the statutes is amended to read:

102.425 **(3)** (b) In addition to the liability under par. (a) or (am), whichever is applicable, an employer or insurer is also liable for reimbursement to an injured

, any fee agreed to by contract between the employer or insurer and health care provider for that health service as of that date,

employee for all out–of–pocket expenses incurred by the injured employee in obtaining the prescription drug dispensed.

SECTION 53. 102.425 (4) (a) of the statutes is amended to read:

102.425 **(4)** (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) or (am), whichever is applicable.

SECTION 54. 102.425 (4) (b) of the statutes is amended to read:

102.425 **(4)** (b) If an employer or insurer 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) or (am), whichever is applicable. If an employer or insurer concedes liability for the cost of a drug prescribed to an injured employee under sub. (2), but disputes the reasonableness of the amount charged for the prescription drug, the employer or insurer shall provide notice under sub. (4m) (b) to the pharmacist or practitioner that the reasonableness of the amount charged is in dispute and the pharmacist or practitioner who dispensed the drug may not collect, or bring an action to collect, from the injured employee the cost of the prescription drug dispensed after receiving that notice.

SECTION 55. 102.425 (4m) (b) of the statutes is amended to read:

102.425 **(4m)** (b) An employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee or the department under sub. (4) (b) or s. 102.16 (1m) (c)

or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a completed bill for the prescription drug, reasonable written notice to the pharmacist or practitioner that the charge is being disputed. After receiving reasonable written notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) ~~1.~~ 3. that a prescription drug charge is being disputed, a pharmacist or practitioner may not collect the disputed charge from, or bring an action for collection of the disputed charge against, the employee who received the prescription drug.

SECTION 56. 102.43 (5) (c) of the statutes is amended to read:

102.43 **(5)** (c) Compensation for temporary disability on account of receiving instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving that instruction. If an employee performs more than 24 hours of work during a week in which the employee is receiving that instruction, all wages earned for hours worked in excess of 24 during that week shall be offset against the employee's average weekly wage in calculating compensation for temporary disability under sub. (2). An employee who is receiving compensation for temporary disability on account of receiving instruction under s. 102.61 (1) or (1m) shall report any wages earned during the period in which the employee is receiving that instruction to the insurance carrier or self–insured employer paying that compensation. This paragraph does not apply after April 30, ~~2014~~ 2016.

SECTION 57. 102.44 (1) (ag) of the statutes is amended to read:

102.44 **(1)** (ag) 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 that occurred prior to January 1, ~~2001~~ 2003,

shall receive supplemental benefits that shall be payable ~~in the first instance~~ by the employer or, subject to par. (c), by 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. Those supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~2003~~ 2005, and shall continue during the period of such total disability subsequent to that date.

SECTION 58. 102.44 (1) (ag) of the statutes, as affected by 2013 Wisconsin Act .... (this act), is amended to read:

102.44 **(1)** (ag) 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 that occurred prior to January 1, 2003, shall receive supplemental benefits that shall be payable by the employer or~~, subject to par. (c), by~~ 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. Those supplemental benefits shall be paid only for weeks of disability occurring after January 1, 2005, and shall continue during the period of such total disability subsequent to that date.

SECTION 59. 102.44 (1) (am) of the statutes is amended to read:

102.44 **(1)** (am) If the 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 ~~May 1, 2010~~ the effective date of this paragraph .... [LRB inserts date], shall be an amount that, when added to the regular benefit established for the case, shall equal ~~$582~~ $669.

SECTION 60. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If the employee is receiving a weekly benefit that is less than the maximum benefit that was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after ~~May 1, 2010~~ the effective date of this paragraph .... [LRB inserts date], shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~$582~~ $669 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 61. 102.44 (1) (c) of the statutes is renumbered 102.44 (1) (c) 1. and amended to read:

102.44 **(1)** (c) 1. ~~Subject to any certificate filed under s. 102.65 (4), an employer or~~ An insurance carrier paying the supplemental benefits required under this subsection shall be entitled to reimbursement for each such case from the ~~fund established by s. 102.65~~ worker's compensation operations fund, commencing one year after the date of the first payment of those benefits and annually thereafter while those payments continue. To receive reimbursement under this paragraph, an ~~employer or~~ insurance carrier must file a claim for that reimbursement with the department by no later than 12 months after the end of the year in which the supplemental benefits were paid and the claim must be approved by the department.

SECTION 62. 102.44 (1) (c) 2. of the statutes is created to read:

102.44 **(1)** (c) 2. After the expiration of the deadline for filing a claim under subd. 1., the department shall determine the total amount of all claims filed by that deadline and shall use that total to determine the amount to be collected under s. 102.75 (1g) from each licensed worker's compensation insurance carrier, deposited in the worker's compensation operations fund, and used to provide reimbursement to insurance carriers paying supplemental benefits under this subsection. The department shall pay a claim for reimbursement approved by the department by no

later than 16 months after the end of the year in which the claim was received by the department.

SECTION 63. 102.44 (1) (c) 3. of the statutes is created to read:

102.44 **(1)** (c) 3. This paragraph does not apply to supplemental benefits paid on or after July 1, 2015.

SECTION 64. 102.44 (1m) of the statutes is created to read:

102.44 **(1m)** Notwithstanding any other provision of this chapter, for an 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 that occurs on or after July 1, 2015, payment of compensation under this chapter for periods of disability occurring more than 6 years after the date of injury shall be made as follows:

(a) If the employee was entitled to the maximum weekly benefit that was in effect at the time of the injury, payment of the weekly benefit for a week of disability occurring more than 6 years after the date of injury shall be at the maximum rate that is in effect at the time the benefit accrues and becomes payable.

(b) If the employee was entitled to less than the maximum weekly benefit that was in effect at the time of the injury, payment of the weekly benefit for a week of disability occurring more than 6 years after the date of injury shall be in an amount that bears the same proportion to the maximum rate that is in effect at the time the benefit accrues and becomes payable as the employee's weekly benefit at the time of the injury bore to the maximum weekly benefit that was in effect at the time of the injury.

SECTION 65. 102.44 (3) of the statutes is amended to read:

102.44 **(3)** For permanent partial disability not covered by ss. 102.52 to 102.56, the aggregate number of weeks of indemnity shall bear such relation to 1,000 weeks as the nature of the injury bears to one causing permanent total disability ~~and.~~ Subject to sub. (4m), the weekly indemnity for such permanent partial disability shall be payable at the rate of two–thirds of the average weekly earnings of the employee, the earnings to be computed as provided in s. 102.11. ~~The weekly indemnity,~~ shall be in addition to compensation for the healing period, and shall be for the period that the employee may live, not to exceed 1,000 weeks.

SECTION 66. 102.44 (4) of the statutes is renumbered 102.44 (4) (intro.) and amended to read:

102.44 **(4)** (intro.) ~~Where the~~ When a permanent disability is covered by ss. 102.52, 102.53, and 102.55, ~~such~~ those sections shall govern~~; provided, that in no case shall the~~ except as follows:

(a) The percentage of permanent total disability may not be taken as more than 100 percent.

(Use twice)

the first week of permanent partial disability

SECTION 67. 102.44 (4) (b) of the statutes is created to read:

102.44 **(4)** (b) The weekly indemnity for periods of disability occurring more than 200 weeks after the ~~date of injury~~ shall be as provided in sub. (4m).

SECTION 68. 102.44 (4m) of the statutes is created to read:

102.44 **(4m)** Notwithstanding any other provision of this chapter, for an employee who is receiving compensation under this chapter for permanent partial disability, whether or not covered by ss. 102.52, 102.53, or 102.55, payment of compensation under this chapter for periods of disability occurring more than 200 weeks after the ~~date of injury~~ shall be made as follows:

(a) If the employee was entitled to the maximum weekly benefit that was in effect at the time of the injury, payment of the weekly benefit for a week of disability occurring more than 200 weeks after the ~~date of injury~~ shall be at the maximum rate that is in effect at the time the benefit accrues and becomes payable.

(b) If the employee was entitled to less than the maximum weekly benefit that was in effect at the time of the injury, payment of the weekly benefit for a week of disability occurring more than 200 weeks after the ~~date of injury~~ shall be in an amount that bears the same proportion to the maximum rate that is in effect at the time the benefit accrues and becomes payable as the employee's weekly benefit at the time of the injury bore to the maximum weekly benefit that was in effect at the time of the injury.

SECTION 69. 102.445 of the statutes is created to read:

102.445 Continuation of health care coverage. (1) In this section, "group health care coverage" means health care coverage of an employee, or of an employee and his or her dependents, under a group health benefit plan, as defined in s. 632.745 (9), a group health plan, as defined in s. 632.745 (10), or a self–insured health plan, as defined in s. 632.745 (24).

(2) If at the time of injury the employer of an injured employee is providing the injured employee with group health care coverage, the employer shall maintain that coverage during the injured employee's period of temporary disability ~~under the same conditions that applied at the time of injury~~, without regard to the injured employee's employment status during that period. If during an injured employee's period of temporary disability the injured employee continues making any contributions required of the injured employee for participation in the plan providing that coverage, the employer shall continue making any contributions required of the

employer for the injured employee's participation in that plan as if the injured employee were not in a period of temporary disability.

(3) Any employer that fails to maintain group health care coverage for an injured employee as required under sub. (2) or such an employer's worker's compensation insurance carrier is liable to the injured employee for an amount that is equal to 100 percent of the contributions required of the employer under sub. (2) that the employer failed to pay. That liability is in addition to any temporary disability benefits payable under this chapter and may not be considered in computing the employee's average weekly earnings under s. 102.11, actual wage loss, or benefits for temporary disability.

(4) Any injured employee whose employer fails to maintain group health care coverage for the injured employee as required under sub. (2) may, ~~within 30 days after the violation occurred or the injured employee should reasonably have known that the violation occurred, whichever is later,~~ request a hearing on the violation under s. 102.17. If, after hearing, the examiner finds that the employer has violated sub. (2), the examiner, ~~in addition to ordering~~ may order the employer to pay the injured employee the amount for which the employer is liable under sub. (3), ~~may order the employer to take action to remedy the violation, including reinstating the injured employee's group health care coverage.~~

(5) If an injured employee ends his or her employment with an employer during or at the end of a period of temporary disability, the time for conversion to individual coverage under s. 632.897 (6) shall be calculated as beginning on the date on which the injured employee began the period of temporary disability.

SECTION 70. 102.65 (4) (intro.) of the statutes is amended to read:

102.65 **(4)** (intro.) The secretary shall monitor the cash balance in, and incurred losses to, the work injury supplemental benefit fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the work injury supplemental benefit fund on known claims exceed 85 percent of the cash balance in that fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the work injury supplemental benefit fund may become inadequate to fund all claims under ss. ~~102.44 (1) (c),~~ 102.49, 102.59, and 102.66, the secretary shall file with the secretary of administration a certificate attesting that the cash balance in that fund is likely to become inadequate to fund all claims under ss. ~~102.44 (1) (c),~~ 102.49, 102.59, and 102.66 and specifying one of the following:

SECTION 71. 102.75 (1) of the statutes is amended to read:

102.75 **(1)** The department shall assess upon and collect from each licensed worker's compensation insurance carrier and from each employer exempted under s. 102.28 (2) ~~by special order or by rule,~~ (b) or (bm) from the duty to carry insurance under s. 102.28 (2) (a) the proportion of total costs and expenses incurred by the council on worker's compensation for travel and research and by the department and the commission in the administration of this chapter for the current fiscal year, plus any deficiencies in collections and anticipated costs from the previous fiscal year, that the total indemnity paid or payable under this chapter by each such carrier and exempt employer in worker's compensation cases initially closed during the preceding calendar year, other than for increased, double, or treble compensation, bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers and exempt employers, other than for increased, double, or

treble compensation. The council on worker's compensation and the commission shall annually certify any costs and expenses for worker's compensation activities to the department at such time as the secretary requires.

SECTION 72. 102.75 (1g) of the statutes is created to read:

102.75 **(1g)** The department shall collect from each licensed worker's compensation carrier the proportion of reimbursement approved by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable under this chapter by the carrier in worker's compensation cases initially closed during the preceding calendar year, other than for increased, double, or treble compensation, bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers, other than for increased, double, or treble compensation. This subsection does not apply to claims for reimbursement under s. 102.44 (1) (c) 1. ~~received after December 31, 2016~~ for supplemental benefits paid for injuries that occur on or after July 1, 2015.

SECTION 73. 102.75 (1m) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

102.75 **(1m)** The moneys collected under ~~sub.~~ subs. (1) and (1g) 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 (2) (ra) and may not be used for any other purpose of the state.

SECTION 74. 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) (b) or (bm) from the duty to insure under s. 102.28 (2) (a) to make the payments required under sub. (1) for each fiscal year on such dates as the department prescribes. The department shall also require each licensed worker's compensation insurance carrier to make the payments required under sub. (1g) for each fiscal year on those dates. 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 30 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 75. 102.75 (4) of the statutes is amended to read:

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

SECTION 76. 102.80 (1) (f) of the statutes is created to read:

102.80 **(1)** (f) Amounts transferred to the uninsured employers fund from the appropriation under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

SECTION 77. 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) 3. and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

SECTION 78. 102.81 (1) (c) of the statutes is created to read:

102.81 **(1)** (c) 1. The department shall pay a claim under par. (a) in excess of $1,000,000 from the uninsured employers fund in the first instance. If the claim is not covered by excess or stop–loss reinsurance under sub. (2), the secretary of administration shall transfer from the appropriation account under s. 20.445 (1) (ra) to the uninsured employers fund as provided in subds. 2. ~~to 4.~~ and 3, an amount equal to the amount by which payments from the uninsured employers fund on the claim are in excess of $1,000,000.

2. Each calendar year the department shall file with the secretary of administration a certificate setting forth the number of claims in excess of $1,000,000 in the preceding year paid from the uninsured employers fund, the payments made from the uninsured employers fund on each such claim, and the total payments made from the uninsured employers fund on all such claims.

~~3. The secretary of administration shall determine the amount to be transferred under subd. 1. in a calendar year by multiplying the number of claims set forth under subd. 2. by 1,000,000 and subtracting that product from the total payments set forth under subd. 2.~~

3. ~~4.~~ The maximum amount that the secretary of administration may transfer under subd. 1. in a calendar year is $500,000. If the amount determined under subd. ~~3.~~ 2. is $500,000 or less, the secretary of administration shall transfer the amount determined under subd. ~~3.~~ 2. If the amount determined under subd. ~~3.~~ 2. exceeds $500,000, the secretary of administration shall transfer $500,000 in the calendar year in which the determination is made and, subject to the maximum transfer

And, based on that information, the secretary of administration shall determine the amount to be transferred under subd. 1. in that calendar year

amount of $500,000 per calendar year, shall transfer that excess in the next calendar year or in subsequent calendar years until that excess is transferred in full.

SECTION 79. 108.10 (4) of the statutes is amended to read:

108.10 **(4)** The department or the employing unit may commence action for the judicial review of a commission decision under this section, provided the department, or the employing unit, after exhausting the remedies provided under this section, has commenced such action within 30 days after such decision was mailed to the employing unit's last–known address. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In an action commenced by an employing unit under this section, the department shall be ~~an adverse party~~ a defendant under s. 102.23 (1) (a) and shall be named as a ~~party~~ defendant in the complaint commencing the action.

SECTION 80. ~~165.066 of the statutes is amended to read:~~

165.066 Assistant attorney general; unemployment insurance and worker's ~~compensation~~ law enforcement. The attorney general shall assign at least 0.5 assistant attorney general position to assist in the investigation and prosecution of noncompliance with ch. 108 and at ~~least~~ 1.0 assistant attorney general position to assist in the investigation and ~~prosecution of suspected fraudulent activity related to worker's compensation.~~

SECTION 81. 165.60 of the statutes is amended to read:

165.60 Law enforcement. The department of justice is authorized to enforce ss. 101.123 (2), (2m), and (8), 175.60 (17) (e), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and, with respect to a false statement submitted or made under s. 175.60 (7) (b) or (15) (b) 2. or as described under s. 175.60 (17) (c), to enforce s. 946.32, is authorized to assist the department of workforce

development in the investigation and prosecution of suspected fraudulent activity related to worker's compensation as provided in s. 102.125, and is invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of those duties. This section does not deprive or relieve sheriffs, constables, and other local police officers of the power and duty to enforce those sections, and those officers shall likewise enforce those sections.

SECTION 82. Nonstatutory provisions.

(1) FRAUD INVESTIGATION AND PROSECUTION; DEPARTMENT OF JUSTICE POSITION AUTHORIZATION. The authorized FTE positions for the department of justice are increased by 1.0 PR–S position, to be funded from the appropriation under section 20.455 (2) (k) of the statutes, for the purpose of investigating and prosecuting fraudulent activity related to worker's compensation.

(2) MEDICAL EXPERT; DEPARTMENT OF WORKFORCE DEVELOPMENT POSITION AUTHORIZATION. The authorized FTE positions for the department of workforce development are increased by 1.0 SEG position, to be funded from the appropriation under s. 20.445 (1) (ra) of the statutes, for the purpose of providing a medical expert to assist in the administration of the worker's compensation program.

(3) STUDY OF TREATMENT OUTCOMES. The secretary of workforce development shall create a committee under section 15.04 (1) (c) of the statutes to review and evaluate the outcomes of treatment provided to injured employees by health care providers under the worker's compensation program. The committee shall include representatives of employers, employees, health care providers, worker's compensation insurers authorized to do business in this state, and the department of workforce development. Upon completion of the study, the committee shall report its findings, conclusions, and recommendations to the department of workforce

development and the council on worker's compensation, after which the committee shall terminate its activities and cease to exist.

SECTION 83. Fiscal changes.

(1) TRANSFER TO UNINSURED EMPLOYERS FUND. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (ra) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $500,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to provide funding for transfer to the uninsured employers fund in reimbursement of claims paid from that fund in excess of $1,000,000 in 2013. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (ra) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $500,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect to provide funding for transfer to the uninsured employers fund in reimbursement of claims paid from that fund in excess of $1,000,000 in 2014.

(2) INDEXING OF PERMANENT PARTIAL DISABILITY PAYMENTS; INFORMATION TECHNOLOGY. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (ra) of the statutes, as affected by the acts of 2013, the dollar amount is increased by $160,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect for the purpose of updating the department's information technology system to enable that system to monitor the payment of permanent partial disability benefits under section 102.44 (4m) of the statutes, as created by this act.

SECTION 84. Initial applicability.

(1) TRANSFER TO UNINSURED EMPLOYERS FUND. The treatment of sections 20.445 (1) (ra) (with respect to the transfer of moneys to the uninsured employers fund) and 102.81 (1) (c) of the statutes first applies to claims paid from the uninsured employers fund in 2013.

(2) FEE DISPUTES. The treatment of section 102.16 (2) (d) of the statutes first applies to a fee dispute submitted to the department of workforce development on the effective date of this subsection.

(3) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS PAID. The renumbering and amendment of section 102.44 (1) (c) of the statutes and the creation of section 102.44 (1) (c) 2. and 3. of the statutes first apply to supplemental benefits paid under section 102.44 (1) (ag) of the statutes on the effective date of this subsection.

~~(4) HEALTH SERVICE FEE SCHEDULE. The treatment of sections 102.13 (1) (e) and (2) (c) (by SECTION 23), 102.16 (1m) (a), 102.18 (1) (bg) 1., and 102.423 of the statutes and the repeal of section 102.16 (2) of the statutes first apply to a health service provided on the effective date of this subsection.~~

(4) ~~(5)~~ CONTINUATION OF HEALTH CARE COVERAGE. The treatment of section 102.445 of the statutes first applies to injuries occurring on the effective date of this subsection.

SECTION 85. Effective dates. This act takes effect on the day after publication, except as follows:

(1) HEALTH SERVICE FEE SCHEDULE. The treatment of sections 102.13 (1) (e) and (2) (c) (by SECTION 23), 102.16 (1m) (a), 102.18 (1) (bg) 1., and 102.423 of the statutes, the repeal of section 102.16 (2) of the statutes, and SECTION 84 (4) of this act take effect on July 1, 2015.

(INSERT 21–6)

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

102.16 **(1m)** (a) If an insurer or self–insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self–insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but disputes the reasonableness of the fee charged by the health service provider, the department may include in its order confirming the compromise or stipulation a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self–insured employer to notify, the health service provider under sub. (2) (b) that the reasonableness of the fee is in dispute. The department shall deny payment of a health service fee that the department determines under this paragraph to be unreasonable. A health service provider and an insurer or self–insured employer that are parties to a fee dispute under this paragraph are bound by the department's determination under this paragraph on the reasonableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under sub. (2) (f) or is set aside on judicial review as provided in sub. (2) (f). This paragraph does not apply to a health service provided to an injured employee beginning on the date on which the notice under s. 102.423 (1) (a) is published in the Wisconsin Administrative Register.

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185; 2009 a. 206; 2011 a. 183.

SECTION 2. 102.16 (2) (i) of the statutes is created to read:

102.16 **(2)** (i) This subsection does not apply to a health service provided to an injured employee beginning on the date on which the notice under s. 102.423 (1) (a) is published in the Wisconsin Administrative Register.

(END OF INSERT)

(INSERT 24–7)

SECTION 3. 102.18 (1) (bg) 1. of the statutes is amended to read:

102.18 **(1)** (bg) 1. If the department finds under par. (b) that an insurer or self–insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but that the reasonableness of the fee charged by the health service provider is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the fee or the department may notify, or direct the insurer or self–insured employer to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute. The department shall deny payment of a health service fee that the department determines under this subdivision to be unreasonable. An insurer or self–insured employer and a health service provider that are parties to a fee dispute under this subdivision are bound by the department's determination under this subdivision on the reasonableness of the disputed fee, unless that determination is set aside, reversed, or modified by the department under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23. This subdivision does not apply to a health service provided to an injured employee

beginning on the date on which the notice under s. 102.423 (1) (a) is published in the Wisconsin Administrative Register.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185.

(END OF INSERT)

(INSERT 44–7)

That liability also applies to an employer that fails to maintain group health care coverage provided at the time of injury for an injured employee or to such an employer's worker's compensation insurance carrier in a case in which the employer's liability under this chapter for the employee's injury or the period of the employee's temporary disability is in dispute, if the injured employee submits the dispute to the department and the injury or period of disability is found to be compensable under this chapter.

(END OF INSERT

(INSERT 52–18)

(5) JUDICIAL REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of sections 102.23 (1) (a), (c), and (cm) and 108.10 (4) of the statutes first applies to an action for the review of an order or award of the labor and industry review commission commenced in circuit court on the effective date of this subsection.

(6) ADMINISTRATIVE REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of section 102.18 (3) and (4) (b) of the statutes first applies to a petition for the review of a decision of a department of workforce development hearing examiner filed with the labor and industry review commission on the effective date of this subsection.

(END OF INSERT)

(INSERT 53–1)

(1) JUDICIAL REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of sections 102.23 (1) (a), (c), and (cm) and 108.10 (4) of the statutes and SECTION * (5) of this act take effect on July 1, 2014.

(2) ADMINISTRATIVE REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of section 102.18 (3) and (4) (b) of the statutes and SECTION * (6) of this act take effect on January 1, 2015.

(END OF INSERT)

(INSERT A)

~~[No new paragraph]~~ That liability also applies to an employer that fails to maintain group health care coverage provided at the time of injury for an injured employee or to the employer's worker's compensation insurer in a case in which the employer's liability for worker's compensation for the employee's injury or the period of the employee's temporary disability is in dispute, if the injured employee submits the dispute to DWD and the injury or period of disability is found to be compensable under the worker's compensation law. ~~[New paragraph follows]~~

(END OF INSERT)

(2) CONTINUATION OF HEALTH CARE COVERAGE. The treatment of section 102.445 of the statutes and SECTION 84 (3) take effect on July 1, 2015.

(3) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS. The treatment of section 102.44 (1) (ag) of the statutes (by SECTION 58) takes effect on July 1, 2015.

(END)

Insert S3-1

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3729/P3dn
GMM...kf...

Date

Jim:

I think we're getting there. In reviewing this redraft, please note all of the following:

1. ***Tribal colleges.*** I agree that because Indian tribes are sovereign nations with sovereign immunity we need a qualification that the tribe controlling the tribal college must have elected under s. 102.05 to become subject to the worker's compensation law.

2. ***Fee schedule.*** Our Drafting Manual tells us that when the implementation of a provision is contingent on a future event, we should key that implementation date to publication of a notice in the Wisconsin Administrative Register. Accordingly, the redraft requires DWD to notify the LRB when the fee schedule has been established and LRB to publish that notice. On publication of that notice, ~~in text language in the applicable provisions provide that~~ the fee schedule goes into effect and the fee dispute resolution process no longer applies.

You also asked about a good term to use to describe deductibles and copayments. Throughout ch. 49, stats., relating to health care there are references to "copayments, coinsurance, and deductibles." Accordingly, this redraft uses that reference.

3. ***Continuation of health care coverage.*** The federal Family and Medical Leave Act has a slick phrase to cover the scenario in which an employer changes health coverage for its employees while an employee is out on family or medical leave. That phrase is, "coverage at the level and under the conditions that the employer *would have* provided coverage if the employee had continued in employment." Accordingly, the redraft uses that phrase.

4. ***DOJ positions.*** The redraft simply deletes the treatment of s. 165.066, stats., from the draft. It is not needed anyway ~~in that~~ because the Nonstatutory Provision authorizes the position.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3729/P3dn
GMM:kjf:jf

January 21, 2014

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Gordon M. Malaise
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Malaise, Gordon

From: O'Malley, Jim T - DWD <Jim.OMalley@dwd.wisconsin.gov>
Sent: Thursday, January 23, 2014 11:20 AM
To: Malaise, Gordon
Subject: MODIFICATION OF DRAFT AMENDMENTS OF CHAPTER 102, STATS., REQUESTED BY THE WCAC

13-3729_P3.pdf

A meeting of the Worker's Compensation Advisory Council (WCAC) by telephone conference call was completed earlier this morning. The members of the WCAC agreed to all of the changes made in the last draft except for Section 27, s. 102.18 (1) (b) 2., lines 17-21, on page 23. The WCAC agreed that lines 18-21 should be deleted and the following language used for lines 15-17:

"necessary to cure and relieve the employee from the effects of the injury or to pay for a future course of instruction or other rehabilitation training services provided under a rehabilitation training program developed under s. 102.61 (1) or (1m). ~~to an~~"

The WCAC agreed this change would make the language for this amendment less complicated.

On page 7 of the analysis under **Prospective vocational rehabilitation training orders** the language in the second paragraph should be changed to reflect the language used in the amendment. The sentence could end after "program" in the fourth line.

After these changes are made please prepare the bill for introduction in the Assembly and Senate as a companion bill. We would also appreciate if the bills prepared for introduction are noted as number 1.

Feel free to contact me if you have any questions.

Thank you for your assistance.

agrees to report faithfully all compensable injuries and to comply with this chapter and all rules of the department.

4. An election to self–insure under subd. 1. is subject to revocation under par. (c) 2. Once such an election is revoked, the employer whose election is revoked may not elect to self–insure its liability for the payment of compensation under this chapter unless at least 3 calendar years have elapsed since the revocation and the department finds that the employer's financial condition is adequate to pay its employees' claims for compensation, that the employer has not received an excessive number of claims for compensation, and that the employer has faithfully discharged its obligations under this chapter and the rules of the department.

SECTION #. 102.28(2)(c)(title); AM

SECTION 38. 102.28 (2) (c) of the statutes is renumbered 102.28 (2) (c) 1. and amended to read:

102.28 **(2)** (c) *Revocation of exemption or election.* 1. The department, after seeking the advice of the self–insurers council, may revoke an exemption granted to an employer under par. (b), upon giving the employer 10 days' written notice, if the department finds that the employer's financial condition is inadequate to pay its employees' claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations according to the agreement contained in the application for exemption. ~~The employer may, within~~

3. Within 10 days after receipt of ~~the~~ a notice of revocation~~,~~ under subd. 1. or 2., the employer may request in writing a review of the revocation by the secretary or the secretary's designee and the secretary or the secretary's designee shall review the revocation within 30 days after receipt of the request for review. If the employer is aggrieved by the determination of the secretary or the secretary's designee, the