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1 **SECTION 62.** 102.44 (1) (c) 3. of the statutes is created to read:

2 102.44 (1) (c) 3. This paragraph does not apply to supplemental benefits paid
3 for an injury that occurs on or after July 1, 2015.

4 **SECTION 63.** 102.44 (1m) of the statutes is created to read:

5 102.44 (1m) Notwithstanding any other provision of this chapter, for an
6 employee who is receiving compensation under this chapter for permanent total
7 disability or continuous temporary total disability more than 24 months after the
8 date of injury resulting from an injury that occurs on or after July 1, 2015, payment
9 of compensation under this chapter for periods of disability occurring more than 6
10 years after the date of injury shall be made as follows:

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

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

22 **SECTION 64.** 102.44 (3) of the statutes is amended to read:

23 102.44 (3) For permanent partial disability not covered by ss. 102.52 to 102.56,
24 the aggregate number of weeks of indemnity shall bear such relation to 1,000 weeks
25 as the nature of the injury bears to one causing permanent total disability and,

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1 Subject to sub. (4m), the weekly indemnity for such permanent partial disability
2 shall be payable at the rate of two-thirds of the average weekly earnings of the
3 employee, the earnings to be computed as provided in s. 102.11.—~~The weekly~~
4 ~~indemnity,~~ shall be in addition to compensation for the healing period, and shall be
5 for the period that the employee may live, not to exceed 1,000 weeks.

6 **SECTION 65.** 102.44 (4) of the statutes is renumbered 102.44 (4) (intro.) and
7 amended to read:

8 102.44 (4) (intro.) ~~Where the~~ When a permanent disability is covered by ss.
9 102.52, 102.53, and 102.55, ~~such those~~ sections shall govern; ~~provided, that in no case~~
10 ~~shall the~~ except as follows:

11 (a) The percentage of permanent total disability may not be taken as more than
12 100 percent.

13 **SECTION 66.** 102.44 (4) (b) of the statutes is created to read:

14 102.44 (4) (b) The weekly indemnity for periods of disability occurring more
15 than 200 weeks after the first week of permanent partial disability shall be as
16 provided in sub. (4m).

17 **SECTION 67.** 102.44 (4m) of the statutes is created to read:

18 102.44 (4m) Notwithstanding any other provision of this chapter, for an
19 employee who is receiving compensation under this chapter for permanent partial
20 disability, whether or not covered by ss. 102.52, 102.53, or 102.55, payment of
21 compensation under this chapter for periods of disability occurring more than 200
22 weeks after the first week of permanent partial disability shall be made as follows:

23 (a) If the employee was entitled to the maximum weekly benefit that was in
24 effect at the time of the injury, payment of the weekly benefit for a week of disability
25 occurring more than 200 weeks after the first week of permanent partial disability

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1 shall be at the maximum rate that is in effect at the time the benefit accrues and
2 becomes payable.

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

10 **SECTION 68.** 102.445 of the statutes is created to read:

11 **102.445 Continuation of health care coverage.** (1) In this section, "group
12 health care coverage" means health care coverage of an employee, or of an employee
13 and his or her dependents, under a group health benefit plan, as defined in s. 632.745
14 (9), a group health plan, as defined in s. 632.745 (10), or a self-insured health plan,
15 as defined in s. 632.745 (24).

16 (2) If at the time of injury the employer of an injured employee is providing the
17 injured employee with group health care coverage, the employer shall maintain that
18 coverage during the injured employee's period of temporary disability at the level
19 and under the conditions that the employer would have provided coverage if the
20 injured employee had continued in employment continuously during that period of
21 temporary disability, without regard to the injured employee's employment status
22 during that period. If during an injured employee's period of temporary disability
23 the injured employee continues making any contributions required of the injured
24 employee for participation in the plan providing that coverage, the employer shall
25 continue making any contributions required of the employer for the injured

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

3 (3) Any employer that fails to maintain group health care coverage for an
4 injured employee as required under sub. (2) or such an employer's worker's
5 compensation insurance carrier is liable to the injured employee for an amount that
6 is equal to 100 percent of the contributions required of the employer under sub. (2)
7 that the employer failed to pay. That liability also applies to an employer that fails
8 to maintain group health care coverage provided at the time of injury for an injured
9 employee or to such an employer's worker's compensation insurance carrier in a case
10 in which the employer's liability under this chapter for the employee's injury or the
11 period of the employee's temporary disability is in dispute, if the injured employee
12 submits the dispute to the department and the injury or period of disability is found
13 to be compensable under this chapter. That liability is in addition to any temporary
14 disability benefits payable under this chapter and may not be considered in
15 computing the employee's average weekly earnings under s. 102.11, actual wage loss,
16 or benefits for temporary disability.

17 (4) Any injured employee whose employer fails to maintain group health care
18 coverage for the injured employee as required under sub. (2) may request a hearing
19 on the violation under s. 102.17. If, after hearing, the examiner finds that the
20 employer has violated sub. (2), the examiner may order the employer to pay the
21 injured employee the amount for which the employer is liable under sub. (3).

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

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1 **SECTION 69.** 102.65 (4) (intro.) of the statutes is amended to read:

2 102.65 (4) (intro.) The secretary shall monitor the cash balance in, and incurred
3 losses to, the work injury supplemental benefit fund using generally accepted
4 actuarial principles. If the secretary determines that the expected ultimate losses
5 to the work injury supplemental benefit fund on known claims exceed 85 percent of
6 the cash balance in that fund, the secretary shall consult with the council on worker's
7 compensation. If the secretary, after consulting with the council on worker's
8 compensation, determines that there is a reasonable likelihood that the cash balance
9 in the work injury supplemental benefit fund may become inadequate to fund all
10 claims under ss. ~~102.44 (1) (e)~~, 102.49, 102.59, and 102.66, the secretary shall file
11 with the secretary of administration a certificate attesting that the cash balance in
12 that fund is likely to become inadequate to fund all claims under ss. ~~102.44 (1) (e)~~,
13 102.49, 102.59, and 102.66 and specifying one of the following:

14 **SECTION 70.** 102.75 (1) of the statutes is amended to read:

15 102.75 (1) The department shall assess upon and collect from each licensed
16 worker's compensation insurance carrier and from each employer exempted under
17 s. 102.28 (2) ~~by special order or by rule, (b) or (bm) from the duty to carry insurance~~
18 under s. 102.28 (2) (a) the proportion of total costs and expenses incurred by the
19 council on worker's compensation for travel and research and by the department and
20 the commission in the administration of this chapter for the current fiscal year, plus
21 any deficiencies in collections and anticipated costs from the previous fiscal year,
22 that the total indemnity paid or payable under this chapter by each such carrier and
23 exempt employer in worker's compensation cases initially closed during the
24 preceding calendar year, other than for increased, double, or treble compensation,
25 bore to the total indemnity paid in cases closed the previous calendar year under this

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1 chapter by all carriers and exempt employers, other than for increased, double, or
2 treble compensation. The council on worker's compensation and the commission
3 shall annually certify any costs and expenses for worker's compensation activities
4 to the department at such time as the secretary requires.

5 **SECTION 71.** 102.75 (1g) of the statutes is created to read:

6 102.75 (1g) The department shall collect from each licensed worker's
7 compensation carrier the proportion of reimbursement approved by the department
8 under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year before the
9 previous year that the total indemnity paid or payable under this chapter by the
10 carrier in worker's compensation cases initially closed during the preceding calendar
11 year, other than for increased, double, or treble compensation, bore to the total
12 indemnity paid in cases closed the previous calendar year under this chapter by all
13 carriers, other than for increased, double, or treble compensation. This subsection
14 does not apply to claims for reimbursement under s. 102.44 (1) (c) 1. for supplemental
15 benefits paid for injuries that occur on or after July 1, 2015.

16 **SECTION 72.** 102.75 (1m) of the statutes, as affected by 2013 Wisconsin Act 20,
17 is amended to read:

18 102.75 (1m) The moneys collected under sub. ~~subs.~~ (1) (1g) and under ss.
19 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a
20 separate nonlapsible fund designated as the worker's compensation operations fund.
21 Moneys in the fund may be expended only as provided in s. 20.445 (1) (ra), (rb), and
22 (rp) and (2) (ra) and may not be used for any other purpose of the state.

23 **SECTION 73.** 102.75 (2) of the statutes is amended to read:

24 102.75 (2) The department shall require ~~that payments for costs and expenses~~
25 ~~for each fiscal year shall be made on such dates as the department prescribes by each~~

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1 licensed worker's compensation insurance carrier and employer exempted under s.
2 102.28 (2) (b) or (bm) from the duty to insure under s. 102.28 (2) (a) to make the
3 payments required under sub. (1) for each fiscal year on such dates as the
4 department prescribes. The department shall also require each licensed worker's
5 compensation insurance carrier to make the payments required under sub. (1g) for
6 each fiscal year on those dates. Each such payment shall be a sum equal to a
7 proportionate share of the annual costs and expenses assessed upon each carrier and
8 employer as estimated by the department. Interest shall accrue on amounts not paid
9 within 30 days after the date prescribed by the department under this subsection at
10 the rate of 1 percent per month. All interest payments received under this subsection
11 shall be deposited in the fund established under s. 102.65.

12 **SECTION 74.** 102.75 (4) of the statutes is amended to read:

13 102.75 (4) From the appropriation under s. 20.445 (1) (ra), the department
14 shall allocate the amounts that it collects in application fees from employers
15 applying for exemption under s. 102.28 (2) (b) and the annual amount that it collects
16 from employers that have been exempted under s. 102.28 (2) (b) to fund the activities
17 of the department under s. 102.28 (2) (b) and (c) with respect to those employers.

18 **SECTION 75.** 102.80 (1) (f) of the statutes is created to read:

19 102.80 (1) (f) Amounts transferred to the uninsured employers fund from the
20 appropriation under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

21 **SECTION 76.** 102.81 (1) (a) of the statutes is amended to read:

22 102.81 (1) (a) If an employee of an uninsured employer, other than an employee
23 who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for
24 which the uninsured employer is liable under s. 102.03, the department or the
25 department's reinsurer shall pay to or on behalf of the injured employee or to the

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1 employee's dependents an amount equal to the compensation owed them by the
2 uninsured employer under this chapter except penalties and interest due under ss.
3 102.16 (3), 102.18 (1) (b) 3. and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

4 **SECTION 77.** 102.81 (1) (c) of the statutes is created to read:

5 102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of
6 \$1,000,000 from the uninsured employers fund in the first instance. If the claim is
7 not covered by excess or stop-loss reinsurance under sub. (2), the secretary of
8 administration shall transfer from the appropriation account under s. 20.445 (1) (ra)
9 to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to
10 the amount by which payments from the uninsured employers fund on the claim are
11 in excess of \$1,000,000.

12 2. Each calendar year the department shall file with the secretary of
13 administration a certificate setting forth the number of claims in excess of
14 \$1,000,000 in the preceding year paid from the uninsured employers fund, the
15 payments made from the uninsured employers fund on each such claim in the
16 preceding year, and the total payments made from the uninsured employers fund on
17 all such claims and, based on that information, the secretary of administration shall
18 determine the amount to be transferred under subd. 1. in that calendar year.

19 3. The maximum amount that the secretary of administration may transfer
20 under subd. 1. in a calendar year is \$500,000. If the amount determined under subd.
21 2. is \$500,000 or less, the secretary of administration shall transfer the amount
22 determined under subd. 2. If the amount determined under subd. 2. exceeds
23 \$500,000, the secretary of administration shall transfer \$500,000 in the calendar
24 year in which the determination is made and, subject to the maximum transfer

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

3 **SECTION 78.** 108.10 (4) of the statutes is amended to read:

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

13 **SECTION 79.** 165.60 of the statutes is amended to read:

14 **165.60 Law enforcement.** The department of justice is authorized to enforce
15 ss. 101.123 (2), (2m), and (8), 175.60 (17) (e), 944.30, 944.31, 944.33, 944.34, 945.02
16 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and, with respect to a false statement
17 submitted or made under s. 175.60 (7) (b) or (15) (b) 2. or as described under s. 175.60
18 (17) (c), to enforce s. 946.32, is authorized to assist the department of workforce
19 development in the investigation and prosecution of suspected fraudulent activity
20 related to worker's compensation as provided in s. 102.125, and is invested with the
21 powers conferred by law upon sheriffs and municipal police officers in the
22 performance of those duties. This section does not deprive or relieve sheriffs,
23 constables, and other local police officers of the power and duty to enforce those
24 sections, and those officers shall likewise enforce those sections.

25 **SECTION 80. Nonstatutory provisions.**

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1 (1) FRAUD INVESTIGATION AND PROSECUTION; DEPARTMENT OF JUSTICE POSITION
2 AUTHORIZATION. The authorized FTE positions for the department of justice are
3 increased by 1.0 PR-S position, to be funded from the appropriation under section
4 20.455 (2) (k) of the statutes, for the purpose of investigating and prosecuting
5 fraudulent activity related to worker's compensation.

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

11 (3) STUDY OF TREATMENT OUTCOMES. The secretary of workforce development
12 shall create a committee under section 15.04 (1) (c) of the statutes to review and
13 evaluate the outcomes of treatment provided to injured employees by health care
14 providers under the worker's compensation program. The committee shall include
15 representatives of employers, employees, health care providers, worker's
16 compensation insurers authorized to do business in this state, and the department
17 of workforce development. Upon completion of the study, the committee shall report
18 its findings, conclusions, and recommendations to the department of workforce
19 development and the council on worker's compensation, after which the committee
20 shall terminate its activities and cease to exist.

SECTION 81. Fiscal changes.

21 (1) TRANSFER TO UNINSURED EMPLOYERS FUND. In the schedule under section
22 20.005 (3) of the statutes for the appropriation to the department of workforce
23 development under section 20.445 (1) (ra) of the statutes, as affected by the acts of
24 2013, the dollar amount is increased by \$500,000 for the first fiscal year of the fiscal
25

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1 biennium in which this subsection takes effect to provide funding for transfer to the
2 uninsured employers fund in reimbursement of claims paid from that fund in excess
3 of \$1,000,000 in 2013. In the schedule under section 20.005 (3) of the statutes for the
4 appropriation to the department of workforce development under section 20.445 (1)
5 (ra) of the statutes, as affected by the acts of 2013, the dollar amount is increased by
6 \$500,000 for the second fiscal year of the fiscal biennium in which this subsection
7 takes effect to provide funding for transfer to the uninsured employers fund in
8 reimbursement of claims paid from that fund in excess of \$1,000,000 in 2014.

9 (2) INDEXING OF PERMANENT PARTIAL DISABILITY PAYMENTS; INFORMATION
10 TECHNOLOGY. In the schedule under section 20.005 (3) of the statutes for the
11 appropriation to the department of workforce development under section 20.445 (1)
12 (ra) of the statutes, as affected by the acts of 2013, the dollar amount is increased by
13 \$160,000 for the second fiscal year of the fiscal biennium in which this subsection
14 takes effect for the purpose of updating the department's information technology
15 system to enable that system to monitor the payment of permanent partial disability
16 benefits under section 102.44 (4m) of the statutes, as created by this act.

SECTION 82. Initial applicability.

17
18 (1) TRANSFER TO UNINSURED EMPLOYERS FUND. The treatment of sections 20.445
19 (1) (ra) (with respect to the transfer of moneys to the uninsured employers fund) and
20 102.81 (1) (c) of the statutes first applies to claims paid from the uninsured employers
21 fund in 2013.

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

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1 (3) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS PAID. The renumbering and
2 amendment of section 102.44 (1) (c) of the statutes and the creation of section 102.44
3 (1) (c) 2. and 3. of the statutes first apply to supplemental benefits paid under section
4 102.44 (1) (ag) of the statutes on the effective date of this subsection.

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

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

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

16 **SECTION 83. Effective dates.** This act takes effect on the day after publication,
17 except as follows:

18 (1) JUDICIAL REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of
19 sections 102.23 (1) (a), (c), and (cm) and 108.10 (4) of the statutes and SECTION 82 (5)
20 of this act take effect on July 1, 2014.

21 (2) ADMINISTRATIVE REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment
22 of section 102.18 (3) and (4) (b) of the statutes and SECTION 82 (6) of this act take effect
23 on January 1, 2015.

24 (3) CONTINUATION OF HEALTH CARE COVERAGE. The treatment of section 102.445
25 of the statutes and SECTION 82 (4) take effect on July 1, 2015.

Malaise, Gordon

From: O'Malley, Jim T - DWD <Jim.OMalley@dwd.wisconsin.gov>
Sent: Friday, January 24, 2014 3:56 PM
To: Malaise, Gordon
Subject: MODIFICATIONS TO WCAC "AGREED UPON BILL"



13-4097_1.pdf

We just discovered a need to change the language in the draft bill in the sections related to indexing permanent partial disability (PPD). The language in the draft provides for indexing PPD more than 200 weeks after the first payment of PPD. The current language may result in payment of PPD at an indexed rate more than 200 weeks after the first PPD payment, even if 200 weeks of PPD has not yet been paid. This proposal is to provide for indexing PPD after an employee has more than 200 weeks of PPD, not just PPD that is payable more than 200 weeks after the injury date. With the current language if an employee was paid 50 weeks of PPD for a 2010 injury date and five (5) years later had another 50 weeks of PPD, this would be indexed.

The event that triggers the indexing for PPD is payment of PPD for 200 weeks and not PPD that is paid more than 200 weeks after the first week of PPD.

The language in these sections needs to cover situations where employees have more than 200 weeks of PPD assessed at one time as well as situations where they have more than 200 weeks of PPD resulting from several assessments, such as several surgical procedures over a number of years.

On page 43, Section 66, s. 102.44 (4) (b), lines 14-16, I suggest the following change:

" 102.44 (4) (b) The weekly indemnity for periods of permanent partial disability ~~occurring of~~ more than 200 weeks after the first week of permanent partial disability shall be as provided in sub. (4m)"

On page 43, Section 67, s. 102.44 (4m), lines 21-22, I suggest the following change:

"compensation under this chapter for periods of permanent partial disability ~~occurring of~~ more than 200 weeks after the first week of permanent disability shall be made as follows:

On page 43, Section 67, s. 102.44 (4m) (a), lines 24-25, I suggest the following:

"effect at the time of injury, payment of the weekly benefit for a week of permanent partial disability ~~occurring of~~ more than 200 weeks after the first week of permanent partial disability"

On page 44, Section 67, s. 102.44 (4m) (b), lines 4-6, I suggest the following:

"permanent partial disability ~~occurring of~~ more than 200 weeks after the first week of permanent partial disability shall be in in an amount that bears the same proportion to the maximum rate"

Let me know if you have any questions.

Thank you for your assistance.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-4097/A
GMM:kjf:jf

IN 1125
Mon 1127

Z
RMR

2013 BILL

(pp 4, 35, 43-44)

Resen

1 **AN ACT** *to renumber and amend* 102.07 (12m), 102.125, 102.18 (1) (b), 102.23
2 (1) (a), 102.28 (2) (c), 102.28 (7) (b), 102.44 (1) (c) and 102.44 (4); *to amend*
3 20.445 (1) (ra), 101.654 (2) (b), 102.01 (2) (d), 102.03 (4), 102.04 (1) (a), 102.04
4 (2m), 102.07 (1) (a), 102.07 (1) (b), 102.07 (3), 102.07 (7) (a), 102.07 (10), 102.077
5 (1), 102.077 (2), 102.11 (1) (intro.), 102.125 (title), 102.13 (2) (b), 102.13 (2) (c),
6 102.16 (1m) (a), 102.16 (2) (d), 102.17 (1) (a) 3., 102.17 (4), 102.18 (1) (bg) 1.,
7 102.18 (3), 102.18 (4) (b), 102.21, 102.23 (1) (c), 102.23 (1) (cm), 102.28 (2) (a),
8 102.28 (2) (b) (title), 102.28 (2) (c) (title), 102.28 (2) (d), 102.28 (7) (a), 102.29 (1)
9 (b) 2., 102.29 (8), 102.31 (2) (b) 2., 102.315 (2), 102.425 (3) (b), 102.425 (4) (a),
10 102.425 (4) (b), 102.425 (4m) (b), 102.43 (5) (c), 102.44 (1) (ag), 102.44 (1) (ag),
11 102.44 (1) (am), 102.44 (1) (b), 102.44 (3), 102.65 (4) (intro.), 102.75 (1), 102.75
12 (1m), 102.75 (2), 102.75 (4), 102.81 (1) (a), 108.10 (4) and 165.60; and *to create*
13 102.07 (12m) (a), 102.125 (2), 102.16 (2) (i), 102.28 (2) (bm), 102.28 (2) (c) 2.,
14 102.28 (7) (bm), 102.423, 102.425 (3) (am), 102.44 (1) (c) 2., 102.44 (1) (c) 3.,

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1 102.44 (1m), 102.44 (4) (b), 102.44 (4m), 102.445, 102.75 (1g), 102.80 (1) (f) and
2 102.81 (1) (c) of the statutes; **relating to:** various changes to the worker's
3 compensation law, granting rule-making authority, and making an
4 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 controlled by an Indian tribe that has elected to become subject to the worker's

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compensation law, 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 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 or insurers beginning on the effective date of the bill. For supplemental benefits paid by an insurer for an injury that occurs before 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

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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 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 an application for worker's compensation for a traumatic injury that is not filed within *nine* years from the date of injury or 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. The bill also provides that for traumatic injuries for which there is no statute of limitations 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 first week of permanent partial disability~~ 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 first week of permanent partial disability~~.

Vocational rehabilitation

Under current law, an injured employee is entitled to receive compensation for temporary disability while the employee is receiving vocational rehabilitation

Permanent partial

beginning with the 2015

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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 at the level and under the conditions that the employer would have provided coverage if the injured employee had continued in employment continuously during that period of temporary disability, 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. 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. 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

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may 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 may order the employer to pay the injured employee the contributions for group health care coverage that the employer failed to pay.

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

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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.

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.

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.

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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.

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 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, 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 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, any fee agreed to by the contract between the employer or insurer and health care provider for the health service as of that date, or the health care provider's actual fee for the health service as of that date, whichever is less.

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, and the average copayment, coinsurance, and deductible payment made by persons covered under those 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 the sum of that average payment and that average copayment, coinsurance, and deductible payment.

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The bill also requires DWD to adjust those maximum fees annually by the change in the consumer price index for medical care services 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.

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 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

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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 to self-insure without further order of DWD.

This bill codifies those DWD rules into the statutes. Specifically, the bill permits the state or a local governmental unit that has independent taxing authority (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 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

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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:

1 **SECTION 1.** 20.445 (1) (ra) of the statutes, as affected by 2013 Wisconsin Act 20,
2 is amended to read:

3 20.445 (1) (ra) *Worker's compensation operations fund; administration.* From
4 the worker's compensation operations fund, the amounts in the schedule for the
5 administration of the worker's compensation program by the department, for
6 assistance to the department of justice in investigating and prosecuting fraudulent
7 activity related to worker's compensation, for transfer to the uninsured employers
8 fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par.
9 (rp) and sub. (2) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75 shall

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1 be credited to this appropriation account. From this appropriation, an amount not
2 to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel
3 and research by the council on worker's compensation, an amount not to exceed
4 \$500,000 may be transferred in each fiscal year to the uninsured employers fund
5 under s. 102.81 (1) (c), the amount in the schedule under par. (rp) shall be transferred
6 to the appropriation account under par. (rp), and the amount in the schedule under
7 sub. (2) (ra) shall be transferred to the appropriation account under sub. (2) (ra).

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

9 101.654 (2) (b) If the applicant is required under s. 102.28 (2) (a) to have in force
10 a policy of worker's compensation insurance or if the applicant is self-insured in
11 accordance with s. 102.28 (2) (b) or (bm), that the applicant has in force a policy of
12 worker's compensation insurance issued by an insurer authorized to do business in
13 this state or is self-insured in accordance with s. 102.28 (2) (b) or (bm).

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

15 102.01 (2) (d) ~~"Municipality" includes a county, city, town, village, school~~
16 ~~district, sewer district, drainage district and long-term care district and~~ "Local
17 governmental unit" means a political subdivision of this state; a special purpose
18 district or taxing jurisdiction, as defined in s. 70.114 (1) (f), in this state; an
19 instrumentality, corporation, combination, or subunit of any of the foregoing; or any
20 other public or quasi-public corporations corporation.

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

22 102.03 (4) The right to compensation and the amount of the compensation shall
23 in all cases be determined in accordance with the provisions of law in effect as of the
24 date of the injury except as to employees whose rate of compensation is changed as
25 provided in ss. 102.43 (7) or 102.44 (1), (1m), (4m), or (5) or, before May 1, ~~2014~~ 2016,

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1 as provided in s. 102.43 (5) (c) and employees who are eligible to receive private
2 rehabilitative counseling and rehabilitative training under s. 102.61 (1m) and except
3 as provided in s. 102.555 (12) (b).

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

5 102.04 (1) (a) The state, and each county, city, town, village, school district,
6 sewer district, drainage district, long-term care district and other public or
7 quasi-public corporations therein local governmental unit in this state.

8 **SECTION 6.** 102.04 (2m) of the statutes is amended to read:

9 102.04 (2m) A temporary help agency is the employer of an employee whom
10 the temporary help agency has placed with or leased to another employer that
11 compensates the temporary help agency for the employee's services. A temporary
12 help agency is liable under s. 102.03 for all compensation and other payments
13 payable under this chapter to or with respect to that employee, including any
14 payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3),
15 102.57, or 102.60. Except as permitted under s. 102.29, a temporary help agency may
16 not seek or receive reimbursement from another employer for any payments made
17 as a result of that liability.

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

19 102.07 (1) (a) Every person, including all officials, in the service of the state,
20 or of any ~~municipality therein~~ local governmental unit in this state, whether elected
21 or under any appointment, or contract of hire, express or implied, and whether a
22 resident of the state or employed or injured within or without the state. The state
23 and or any municipality local governmental unit may require a bond from a
24 contractor to protect the state or ~~municipality~~ local governmental unit against
25 compensation to employees of ~~such~~ the contractor or to employees of a subcontractor

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1 under the contractor. This paragraph does not apply beginning on the first day of the
2 first July beginning after the day that the secretary files the certificate under s.
3 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag)
4 this paragraph does apply to claims for compensation filed on or after the date
5 specified in that certificate.

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

7 102.07 (1) (b) Every person, including all officials, in the service of the state,
8 or of any ~~municipality therein~~ local governmental unit in this state, whether elected
9 or under any appointment, or contract of hire, express or implied, and whether a
10 resident of the state or employed or injured within or without the state. This
11 paragraph first applies on the first day of the first July beginning after the day that
12 the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary
13 files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for
14 compensation filed on or after the date specified in that certificate.

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

16 102.07 (3) Nothing ~~herein contained shall prevent municipalities in this~~
17 chapter prevents a local governmental unit from paying teachers, police officers, fire
18 fighters and other employees a teacher, police officer, fire fighter, or any other
19 employee his or her full salaries salary during a period of disability, nor interfere
20 interferes with any pension funds fund, nor prevent prevents payment to teachers,
21 police officers or fire fighters therefrom a teacher, police officer, fire fighter, or any
22 other employee from a pension fund.

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

24 102.07 (7) (a) Every member of a volunteer fire company or fire department
25 organized under ch. 213, a legally organized rescue squad, or a legally organized

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1 diving team is considered to be an employee of that company, department, squad, or
2 team. Every member of a company, department, squad, or team described in this
3 paragraph, while serving as an auxiliary police officer at an emergency, is also
4 considered to be an employee of that company, department, squad, or team. If a
5 company, department, squad, or team described in this paragraph has not insured
6 its liability for compensation to its employees, the ~~municipality or county~~ political
7 subdivision within which that company, department, squad, or team was organized
8 shall be liable for that compensation.

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

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

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

23 102.07 (12m) (b) A student of a public school, ~~as described in s. 115.01 (1), or~~
24 ~~a private school, as defined in s. 115.001 (3r), or an institution of higher education,~~
25 while he or she is engaged in performing services as part of a school work training,

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1 work experience, or work study program, and who is not on the payroll of an employer
2 that is providing the work training or work experience or who is not otherwise
3 receiving compensation on which a worker's compensation carrier could assess
4 premiums on that employer, is an employee of a school district ~~or~~, private school, or
5 institution of higher education that elects under s. 102.077 to name the student as
6 its employee.

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

8 102.07 (12m) (a) In this subsection:

9 1. "Institution of higher education" means an institution within the University
10 of Wisconsin System, a technical college, a tribally controlled college controlled by
11 an Indian tribe that has elected under s. 102.05 (2) to become subject to this chapter,
12 a school approved under s. 38.50, or a private, nonprofit institution of higher
13 education located in this state.

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

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

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

17 102.077 (1) A school district ~~or a~~, private school, ~~as defined in s. 115.001 (3r),~~
18 or institution of higher education may elect to name as its employee for purposes of
19 this chapter a student described in s. 102.07 (12m) (b) by an endorsement on its policy
20 of worker's compensation insurance or, if the school district ~~or~~, private school, or
21 institution of higher education is exempt from the duty to insure under s. 102.28 (2)
22 (a), by filing a declaration with the department in the manner provided in s. 102.31
23 (2) (a) naming the student as an employee of the school district ~~or~~, private school, or
24 institution of higher education for purposes of this chapter. A declaration under this
25 subsection shall list the name of the student to be covered under this chapter, the

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1 name and address of the employer that is providing the work training or work
2 experience for that student, and the title, if any, of the work training, work
3 experience, or work study program in which the student is participating.

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

5 102.077 (2) A school district ~~or~~, private school, or institution of higher
6 education may revoke a declaration under sub. (1) by providing written notice to the
7 department in the manner provided in s. 102.31 (2) (a), the student, and the employer
8 who is providing the work training or work experience for that student. A revocation
9 under this subsection is effective 30 days after the department receives notice of that
10 revocation.

11 **SECTION 16.** 102.11 (1) (intro.) of the statutes is amended to read:

12 102.11 (1) (intro.) The average weekly earnings for temporary disability,
13 permanent total disability, or death benefits for injury in each calendar year on or
14 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that
15 results in a maximum compensation rate of 110 percent of the state's average weekly
16 earnings as determined under s. 108.05 as of June 30 of the previous year. The
17 average weekly earnings for permanent partial disability shall be not less than \$30
18 and, for permanent partial disability for injuries occurring on or after April 17, 2012,
19 ~~and before January 1, 2013, not more than \$468, resulting in a maximum~~
20 ~~compensation rate of \$312, and, for permanent partial disability for injuries~~
21 ~~occurring on or after January 1, 2013, not more than \$483, resulting in a maximum~~
22 ~~compensation rate of \$322, except as provided in 2011 Wisconsin Act 183, section 30~~
23 ~~(2)(a) 1 the effective date of this subsection [LRB inserts date], and before January~~
24 1, 2015, not more than \$506, resulting in a maximum compensation rate of \$337, and,
25 for permanent partial disability for injuries occurring on or after January 1, 2015,

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1 not more than \$528, resulting in a maximum compensation rate of \$352. Between
2 such limits the average weekly earnings shall be determined as follows:

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

4 **102.125 (title) ~~Fraudulent claims~~ Fraud reporting and, investigation,**
5 **and prosecution.**

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

8 **102.125 (1) FRAUDULENT CLAIMS REPORTING AND INVESTIGATION.** If an insurer or
9 self-insured employer has evidence that a claim is false or fraudulent in violation of
10 s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the
11 claim to the department will not impede its ability to defend the claim, the insurer
12 or self-insured employer shall report the claim to the department. The department
13 may require an insurer or self-insured employer to investigate an allegedly false or
14 fraudulent claim and may provide the insurer or self-insured employer with any
15 records of the department relating to that claim. An insurer or self-insured
16 employer that investigates a claim under this ~~section~~ subsection shall report on the
17 results of that investigation to the department.

18 **(3) PROSECUTION.** If based on the an investigation under sub. (1) or (2) the
19 department has a reasonable basis to believe that a violation of s. 943.20, 943.38,
20 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the
21 department shall refer the results of the investigation to the department of justice
22 or to the district attorney of the county in which the alleged violation occurred for
23 prosecution.

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

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1 102.125 (2) ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce
2 development may request the department of justice to assist the department of
3 workforce development in an investigation under sub. (1) or in the investigation of
4 any other suspected fraudulent activity on the part of an employer, employee,
5 insurer, health care provider, or other person related to worker's compensation.

6 **SECTION 20.** 102.13 (2) (b) of the statutes is amended to read:

7 102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist,
8 physician assistant, advanced practice nurse prescriber, hospital, or health service
9 provider shall furnish a legible, certified duplicate of the written material requested
10 under par. (a) in paper format upon payment of the actual costs of preparing the
11 certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request,
12 plus the actual costs of postage, or shall furnish a legible, certified duplicate of that
13 material in electronic format upon payment of \$26 per request. Any person who
14 refuses to provide certified duplicates of written material in the person's custody that
15 is requested under par. (a) shall be liable for reasonable and necessary costs and,
16 notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the
17 requester's right to the duplicates under par. (a).

18 **SECTION 21.** 102.13 (2) (c) of the statutes is amended to read:

19 102.13 (2) (c) Except as provided in this paragraph, if an injured employee has
20 a period of temporary disability that exceeds 3 weeks or a permanent disability, if the
21 injured employee has undergone surgery to treat his or her injury, other than surgery
22 to correct a hernia, or if the injured employee sustained an eye injury requiring
23 medical treatment on 3 or more occasions off the employer's premises, the
24 department may by rule require the insurer or self-insured employer to submit to
25 the department a final report of the employee's treating practitioner. The

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1 department may not require an insurer or self-insured employer to submit to the
2 department a final report of an employee's treating practitioner when the insurer or
3 self-insured employer denies the employee's claim for compensation in its entirety
4 and the employee does not contest that denial. A treating practitioner may charge
5 a reasonable fee for the completion of the final report, but may not require
6 prepayment of that fee. ~~An~~ Subject to s. 102.16 (2) (i), an insurer or self-insured
7 employer that disputes the reasonableness of a fee charged for the completion of a
8 treatment practitioner's final report may submit that dispute to the department for
9 resolution under s. 102.16 (2).

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

11 102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise
12 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured
13 employer is liable under this chapter for any health services provided to an injured
14 employee by a health service provider, but disputes the reasonableness of the fee
15 charged by the health service provider, the department may include in its order
16 confirming the compromise or stipulation a determination as to the reasonableness
17 of the fee or the department may notify, or direct the insurer or self-insured employer
18 to notify, the health service provider under sub. (2) (b) that the reasonableness of the
19 fee is in dispute. The department shall deny payment of a health service fee that the
20 department determines under this paragraph to be unreasonable. A health service
21 provider and an insurer or self-insured employer that are parties to a fee dispute
22 under this paragraph are bound by the department's determination under this
23 paragraph on the reasonableness of the disputed fee, unless that determination is
24 set aside, reversed, or modified by the department under sub. (2) (f) or is set aside
25 on judicial review as provided in sub. (2) (f). This paragraph does not apply to a

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1 health service provided to an injured employee beginning on the date on which the
2 notice under s. 102.423 (1) (a) is published in the Wisconsin Administrative Register.

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

4 102.16 (2) (d) The department shall analyze the information provided to the
5 department under par. (c) according to the criteria provided in this paragraph to
6 determine the reasonableness of the disputed fee. ~~Except as provided in 2011~~
7 ~~Wisconsin Act 183, section 30 (2) (b), the~~ The department shall determine that a
8 disputed fee is reasonable and order that the disputed fee be paid if that fee is at or
9 below the mean fee for the health service procedure for which the disputed fee was
10 charged, plus ~~1.2~~ 0.7 standard deviations from that mean, as shown by data from a
11 database that is certified by the department under par. (h). ~~Except as provided in~~
12 ~~2011 Wisconsin Act 183, section 30 (2) (b), the~~ The department shall determine that
13 a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed
14 fee is above the mean fee for the health service procedure for which the disputed fee
15 was charged, plus ~~1.2~~ 0.7 standard deviations from that mean, as shown by data from
16 a database that is certified by the department under par. (h), unless the health
17 service provider proves to the satisfaction of the department that a higher fee is
18 justified because the service provided in the disputed case was more difficult or more
19 complicated to provide than in the usual case.

20 **SECTION 24.** 102.16 (2) (i) of the statutes is created to read:

21 102.16 (2) (i) This subsection does not apply to a health service provided to an
22 injured employee beginning on the date on which the notice under s. 102.423 (1) (a)
23 is published in the Wisconsin Administrative Register.

24 **SECTION 25.** 102.17 (1) (a) 3. of the statutes is amended to read:

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

6 **SECTION 26.** 102.17 (4) of the statutes is amended to read:

7 102.17 (4) Except as provided in this subsection and s. 102.555 (12) (b), in the
8 case of occupational disease, the right of an employee, the employee's legal
9 representative, or a dependent to proceed under this section shall not extend beyond
10 12 years after the date of the injury or death or after the date that compensation,
11 other than for treatment or burial expenses, was last paid, or would have been last
12 payable if no advancement were made, whichever date is latest, and in the case of
13 traumatic injury, that right shall not extend beyond 9 years after that date. In the
14 case of occupational disease; a traumatic injury resulting in the loss or total
15 impairment of a hand or any part of the rest of the arm proximal to the hand or of
16 a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any
17 permanent brain injury; or a traumatic injury causing the need for an artificial
18 spinal disc or a total or partial knee or hip replacement, there shall be no statute of
19 limitations, except that benefits or treatment expense for an occupational disease
20 becoming due 12 years after the date of injury or death or last payment of
21 compensation, other than for treatment or burial expenses, shall be paid from the
22 work injury supplemental benefit fund under s. 102.65 and in the manner provided
23 in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming
24 due ~~12~~ 9 years after that date shall be paid from that fund and in that manner if the
25 date of injury or death or last payment of compensation, other than for treatment or

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1 burial expenses, is before April 1, 2006. Payment of wages by the employer during
2 disability or absence from work to obtain treatment shall be considered payment of
3 compensation for the purpose of this section if the employer knew of the employee's
4 condition and its alleged relation to the employment.

5 **SECTION 27.** 102.18 (1) (b) of the statutes is renumbered 102.18 (1) (b) 1. and
6 amended to read:

7 102.18 (1) (b) 1. Within 90 days after the final hearing and close of the record,
8 the department shall make and file its findings upon the ultimate facts involved in
9 the controversy, and its order, which shall state its determination as to the rights of
10 the parties. Pending the final determination of any controversy before it, the
11 department may in its discretion after any hearing make interlocutory findings,
12 orders, and awards, which may be enforced in the same manner as final awards.

13 2. The department may include in any interlocutory or final award or order an
14 order directing the employer or insurer to pay for any future treatment that may be
15 necessary to cure and relieve the employee from the effects of the injury or to pay for
16 a future course of instruction or other rehabilitation training services provided
17 under a rehabilitation training program developed under s. 102.61 (1) or (1m).

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

23 4. When there is a finding that the employee is in fact suffering from an
24 occupational disease caused by the employment of the employer against whom the
25 application is filed, a final award dismissing the application upon the ground that

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1 the applicant has suffered no disability from the disease shall not bar any claim the
2 employee may thereafter have after the date of the award for disability sustained
3 after the that date of the award.

4 **SECTION 28.** 102.18 (1) (bg) 1. of the statutes is amended to read:

5 102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer or
6 self-insured employer is liable under this chapter for any health services provided
7 to an injured employee by a health service provider, but that the reasonableness of
8 the fee charged by the health service provider is in dispute, the department may
9 include in its order under par. (b) a determination as to the reasonableness of the fee
10 or the department may notify, or direct the insurer or self-insured employer to notify,
11 the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee
12 is in dispute. The department shall deny payment of a health service fee that the
13 department determines under this subdivision to be unreasonable. An insurer or
14 self-insured employer and a health service provider that are parties to a fee dispute
15 under this subdivision are bound by the department's determination under this
16 subdivision on the reasonableness of the disputed fee, unless that determination is
17 set aside, reversed, or modified by the department under sub. (3) or by the
18 commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23.
19 This subdivision does not apply to a health service provided to an injured employee
20 beginning on the date on which the notice under s. 102.423 (1) (a) is published in the
21 Wisconsin Administrative Register.

22 **SECTION 29.** 102.18 (3) of the statutes is amended to read:

23 102.18 (3) A party in interest may petition the commission for review of an
24 examiner's decision awarding or denying compensation if the ~~department or~~
25 commission receives the petition within 21 days after the department mailed a copy

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1 of the examiner's findings and order to the party's last-known address. The
2 commission shall dismiss a petition ~~which~~ that is not timely filed within those 21
3 days unless the petitioner shows ~~probable good cause~~ that the petition was filed late
4 for a reason for failure to timely file ~~that~~ was beyond the petitioner's control. If no
5 petition is filed within those 21 days from the date that a copy of the findings or order
6 ~~of the examiner is mailed to the last-known address of the parties in interest~~, the
7 findings or order shall be considered final unless set aside, reversed, or modified by
8 the examiner within that time. If the findings or order are set aside by the examiner,
9 the status shall be the same as prior to the setting aside of the findings or order set
10 aside. If the findings or order are reversed or modified by the examiner, the time for
11 filing a petition commences ~~with~~ on the date that notice of the reversal or
12 modification is mailed to the last-known address of the parties in interest. The
13 commission shall either affirm, reverse, set aside, or modify the findings or order in
14 whole or in part, or direct the taking of additional evidence. ~~This~~ The commission's
15 action shall be based on a review of the evidence submitted.

16 **SECTION 30.** 102.18 (4) (b) of the statutes is amended to read:

17 102.18 (4) (b) Within 28 days after the date of a decision of the commission is
18 ~~mailed to the last-known address of each party in interest~~, the commission may, on
19 its own motion, set aside the decision for further consideration.

20 **SECTION 31.** 102.21 of the statutes is amended to read:

21 **102.21 Payment of awards by municipalities.** ~~Whenever~~ When an award
22 is made by the department under this chapter or s. 66.191, 1981 stats., against any
23 municipality local governmental unit, the person in whose favor it the award is made
24 shall file a certified copy ~~thereof of the award~~ with the municipal clerk of the local
25 governmental unit. Within 20 days ~~thereafter, unless an appeal is taken, such~~ after

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1 the filing of the award, the clerk shall draw an order on the municipal treasurer of
2 the local governmental unit for the payment of the award, unless an appeal is taken.

3 If upon appeal such the award is affirmed in whole or in part, the order for payment
4 shall be drawn within 10 days after a certified copy of such the judgment on appeal
5 is filed with the proper clerk. If more than one payment is provided for in the award
6 or judgment, orders shall be drawn as the payments become due. No statute relating
7 to the filing of claims against, and or the auditing, allowing and, or payment of claims
8 by municipalities, local governmental units shall apply to the payment of an award
9 or judgment under this section.

10 **SECTION 32.** 102.23 (1) (a) of the statutes is renumbered 102.23 (1) (a) 1. and
11 amended to read:

12 102.23 (1) (a) 1. The findings of fact made by the commission acting within its
13 powers shall, in the absence of fraud, be conclusive. The order or award granting or
14 denying compensation, either interlocutory or final, whether judgment has been
15 rendered on it or not, is subject to review only as provided in this section and not
16 under ch. 227 or s. 801.02. The commission shall identify in the order or award the
17 persons that must be made parties to an action for the review of the order or award.

18 2. Within 30 days after the date of an order or award made by the commission
19 ~~either originally or after the filing of a petition for review with the department under~~
20 ~~s. 102.18,~~ any party aggrieved thereby by the order or award may commence an
21 action in circuit court for the review of the order or award by serving a complaint as
22 provided in par. (b) and filing the summons and complaint with the clerk of the circuit
23 court ~~commence, in circuit court, an action against the commission for the review of~~
24 ~~the order or award, in which action the adverse party shall also be made a defendant.~~
25 The summons and complaint shall name the party commencing the action as the

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1 plaintiff and shall name as defendants the commission and all persons identified by
2 the commission under subd. 1. If the circuit court determines that any other person
3 is necessary for the proper resolution of the action, the circuit court may join that
4 person as a party to the action, unless joinder of the person would unduly delay the
5 resolution of the action. If the circuit court is satisfied that a party in interest has
6 been prejudiced because of an exceptional delay in the receipt of a copy of any finding
7 or order, ~~it~~ the circuit court may extend the time ~~in~~ within which an action may be
8 commenced by an additional 30 days.

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

13 **SECTION 33.** 102.23 (1) (c) of the statutes is amended to read:

14 102.23 (1) (c) ~~Except as provided in par. (em), the~~ The commission shall serve
15 its answer within 20 days after the service of the complaint, ~~and, within the like time,~~
16 ~~the adverse party.~~ Except as provided in par. (cm), any other defendant may serve
17 an answer to the complaint within 20 days after the service of the complaint, which
18 answer may, by way of counterclaim or cross complaint, ask for the review of the
19 order or award referred to in the complaint, with the same effect as if the party
20 defendant had commenced a separate action for the review thereof of the order or
21 award.

22 **SECTION 34.** 102.23 (1) (cm) of the statutes is amended to read:

23 102.23 (1) (cm) ~~If an adverse party to the proceeding~~ a defendant in an action
24 brought under par. (a) is an insurance company, the insurance company may serve
25 an answer to the complaint within 45 days after the service of the complaint.

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1 **SECTION 35.** 102.28 (2) (a) of the statutes is amended to read:

2 102.28 (2) (a) *Duty to insure payment for compensation.* Unless exempted by
3 the department under par. (b) or (bm) or sub. (3), every employer, as described in s.
4 102.04 (1), shall insure payment for ~~that~~ compensation under this chapter in an
5 insurer authorized to do business in this state. A joint venture may elect to be an
6 employer under this chapter and obtain insurance for payment of compensation. If
7 a joint venture that is subject to this chapter only because the joint venture elected
8 to be an employer under this chapter is dissolved and cancels or terminates its
9 contract for the insurance of compensation under this chapter, that joint venture is
10 deemed to have effected withdrawal, which shall be effective on the day after the
11 contract is canceled or terminated.

12 **SECTION 36.** 102.28 (2) (b) (title) of the statutes is amended to read:

13 102.28 (2) (b) (title) *Exemption from duty to insure; employers generally.*

14 **SECTION 37.** 102.28 (2) (bm) of the statutes is created to read:

15 102.28 (2) (bm) *Exemption from duty to insure; governmental employers.* 1.
16 Subject to subds. 2. to 4., if the state or a local governmental unit that has
17 independent taxing authority is not partially insured or fully insured for its liability
18 for the payment of compensation under this chapter, or to the extent that the state
19 or a local governmental unit that has independent taxing authority is not partially
20 insured for that liability under one or more contracts issued with the consent of the
21 department under s. 102.31 (1) (b), and if the state or local governmental unit agrees
22 to report faithfully all compensable injuries and to comply with this chapter and all
23 rules of the department, the state or local governmental unit may elect to self-insure
24 that liability without further order of the department.

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

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

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

22 4. An election to self-insure under subd. 1. is subject to revocation under par.
23 (c) 2. Once such an election is revoked, the employer whose election is revoked may
24 not elect to self-insure its liability for the payment of compensation under this
25 chapter unless at least 3 calendar years have elapsed since the revocation and the

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1 department finds that the employer's financial condition is adequate to pay its
2 employees' claims for compensation, that the employer has not received an excessive
3 number of claims for compensation, and that the employer has faithfully discharged
4 its obligations under this chapter and the rules of the department.

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

6 102.28 (2) (c) (title) *Revocation or election.*

7 **SECTION 39.** 102.28 (2) (c) of the statutes is renumbered 102.28 (2) (c) 1. and
8 amended to read:

9 102.28 (2) (c) 1. The department, after seeking the advice of the self-insurers
10 council, may revoke an exemption granted to an employer under par. (b), upon giving
11 the employer 10 days' written notice, if the department finds that the employer's
12 financial condition is inadequate to pay its employees' claims for compensation, that
13 the employer has received an excessive number of claims for compensation, or that
14 the employer has failed to discharge faithfully its obligations according to the
15 agreement contained in the application for exemption. ~~The employer may, within~~

16 3. Within 10 days after receipt of the a notice of revocation, under subd. 1. or
17 2., the employer may request in writing a review of the revocation by the secretary
18 or the secretary's designee and the secretary or the secretary's designee shall review
19 the revocation within 30 days after receipt of the request for review. If the employer
20 is aggrieved by the determination of the secretary or the secretary's designee, the
21 employer may, within 10 days after receipt of notice of that determination, request
22 a hearing under s. 102.17. If the secretary or the secretary's designee determines
23 that the employer's exemption or election should be revoked, the employer shall
24 obtain insurance coverage as required under par. (a) immediately upon receipt of
25 notice of that determination and, notwithstanding the pendency of proceedings

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1 under ss. 102.17 to 102.25, shall keep that coverage in force until another exemption
2 under par. (b) is granted or another election under par. (bm) is made.

3 **SECTION 40.** 102.28 (2) (c) 2. of the statutes is created to read:

4 102.28 (2) (c) 2. The department may revoke an election made by an employer
5 under par. (bm), upon giving the employer 10 days' written notice, if the department
6 finds that the employer's financial condition is inadequate to pay its employees'
7 claims for compensation, that the employer has received an excessive number of
8 claims for compensation, or that the employer has failed to discharge faithfully its
9 obligations under this chapter and the rules of the department.

10 **SECTION 41.** 102.28 (2) (d) of the statutes is amended to read:

11 102.28 (2) (d) *Effect of insuring with unauthorized insurer.* ~~An employer who~~
12 ~~procures an exemption under par. (b) and thereafter~~ If an employer that is exempted
13 under par. (b) or (bm) from the duty to insure under par. (a) enters into any agreement
14 for excess insurance coverage with an insurer not authorized to do business in this
15 state, the employer shall report that agreement to the department immediately. The
16 placing of such coverage shall not by itself be grounds for revocation of the exemption.

17 **SECTION 42.** 102.28 (7) (a) of the statutes is amended to read:

18 102.28 (7) (a) If an employer who is currently or was formerly exempted by
19 written order of the department under sub. (2) (b) is unable to pay an award,
20 judgment is rendered in accordance with s. 102.20 against that employer, and
21 execution is levied and returned unsatisfied in whole or in part, payments for the
22 employer's liability shall be made from the fund established under sub. (8). If a
23 currently or formerly exempted employer files for bankruptcy and not less than 60
24 days after that filing the department has reason to believe that compensation
25 payments due are not being paid, the department in its discretion may make

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1 payment for the employer's liability from the fund established under sub. (8). The
2 secretary of administration shall proceed to recover ~~such~~ those payments from the
3 employer or the employer's receiver or trustee in bankruptcy, and may commence an
4 action or proceeding or file a claim ~~therefor~~ for those payments. The attorney general
5 shall appear on behalf of the secretary of administration in any such action or
6 proceeding. All moneys recovered in any such action or proceeding shall be paid into
7 the fund established under sub. (8).

8 **SECTION 43.** 102.28 (7) (b) of the statutes is renumbered 102.28 (7) (b) 1. and
9 amended to read:

10 102.28 (7) (b) 1. Each employer exempted by written order of the department
11 under sub. (2) (b) shall pay into the fund established by sub. (8) ~~a sum equal to that~~
12 ~~assessed against each of the other such exempt employers upon the issuance of an~~
13 ~~initial order. The order~~ an initial assessment based on orders of the department as
14 provided in subd. 2. An order of the department requiring exempt employers to pay
15 into that fund shall provide for ~~a sum~~ an amount that is sufficient to secure
16 estimated payments of the an insolvent exempt employer due for the period up to the
17 date of the order and for one year following the date of the order and to pay the
18 estimated cost of insurance carrier or insurance service organization services under
19 par. (c). Payments ordered to be made to the fund shall be paid to the department
20 within 30 days after the date of the order. If additional moneys are required, further
21 assessments shall be made based on orders of the department ~~with~~ as provided under
22 subd. 2.

23 2. An initial or further assessment under subd. 1. shall be prorated on the basis
24 of the gross payroll for this state of the exempt employer, as reported to the
25 department for the previous calendar year for unemployment insurance purposes

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1 under ch. 108. ~~If the~~ or, if an exempt employer is not covered under ch. 108, ~~then the~~
2 ~~department shall determine~~ on the basis of the comparable gross payroll for the
3 exempt employer as determined by the department. If payment of any assessment
4 made under ~~this subsection~~ subd. 1. is not made within 30 days of after the date of
5 the order of the department, the attorney general may appear on behalf of the state
6 to collect the assessment.

7 **SECTION 44.** 102.28 (7) (bm) of the statutes is created to read:

8 102.28 (7) (bm) The department may not do any of the following:

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

12 2. Make any payments from the fund established under sub. (8) for the liability
13 under this chapter of an employer that elects under sub. (2) (bm) to self-insure its
14 liability for the payment of compensation under this chapter, whether currently or
15 formerly exempt from the duty to insure under sub. (2) (a).

16 **SECTION 45.** 102.29 (1) (b) 2. of the statutes is amended to read:

17 102.29 (1) (b) 2. Out of the balance remaining after the deduction and payment
18 specified in subd. 1., the employer, the insurance carrier, or, if applicable, the
19 uninsured employers fund or the work injury supplemental benefit fund shall be
20 reimbursed for all payments made by the employer, insurance carrier, or
21 department, or which the employer, insurance carrier, or department may be
22 obligated to make in the future, under this chapter, except that the employer,
23 insurance carrier, or department shall not be reimbursed for any payments made or
24 to be made under s. 102.18 (1) (b) 3. or (bp), 102.22, 102.35 (3), 102.57, or 102.60.

25 **SECTION 46.** 102.29 (8) of the statutes is amended to read:

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

8 **SECTION 47.** 102.31 (2) (b) 2. of the statutes is amended to read:

9 102.31 (2) (b) 2. Regardless of whether the notices required under par. (a) have
10 been given, a cancellation or termination is effective upon the effective date of
11 replacement insurance coverage obtained by the employer ~~or,~~ of an order under s.
12 102.28 (2) (b) exempting the employer from carrying the duty to carry insurance
13 under s. 102.28 (2) (a), or of an election by an employer under s. 102.28 (2) (bm) to
14 self-insure its liability for the payment of compensation under this chapter.

15 **SECTION 48.** 102.315 (2) of the statutes is amended to read:

16 102.315 (2) **EMPLOYEE LEASING COMPANY LIABLE.** An employee leasing company
17 is liable under s. 102.03 for all compensation payable under this chapter to a leased
18 employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or
19 (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29,
20 an employee leasing company may not seek or receive reimbursement from another
21 employer for any payments made as a result of that liability. An employee leasing
22 company is not liable under s. 102.03 for any compensation payable under this
23 chapter to an employee of a client who is not a leased employee.

24 **SECTION 49.** 102.423 of the statutes is created to read: