ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO SENATE BILL 511

February 18, 2020 – Offered by Representative HORLACHER.

AN ACT to renumber and amend 102.17 (4) and 102.58; to amend 102.04 (2m), 102.13 (2) (a), 102.29 (6m) (a) 3., 102.315 (1) (c), 102.315 (2), 102.42 (1), 102.49 (5) (b), 102.49 (5) (c) and 102.49 (5) (e); and to create 102.04 (2g), 102.17 (9), 102.29 (6m) (a) 1m., 102.315 (2e), 102.315 (2m), 102.315 (2s), 102.42 (1p), 102.44 (7) and 102.49 (5) (cm) of the statutes; relating to: various changes to the worker’s compensation law.

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 and the Division of Hearings and Appeals in the Department of Administration (DHA).

PAYMENT OF BENEFITS; OTHER PAYMENTS

Liability for public safety officers

This bill makes changes to the conditions of liability for worker’s compensation benefits for a law enforcement officer or a fire fighter (public safety officer) who is diagnosed with post-traumatic stress disorder (PTSD).

The bill provides that if a public safety officer is diagnosed with PTSD by a licensed psychiatrist or psychologist and the mental injury that resulted in that
diagnosis is not accompanied by a physical injury, that public safety officer can bring a claim for worker’s compensation benefits if the conditions of liability are proven by a preponderance of the evidence and the mental injury is not the result of a good-faith employment action by the person’s employer. Under the bill, such an injured public safety employee is not required to demonstrate a diagnosis based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by all employees as required under School District No. 1 v. DILHR, 62 Wis. 2d 370, 215 N.W.2d 373 (1974).

The bill also limits liability for treatment for a mental injury that is compensable under the bill’s provisions to no more than 32 weeks after the injury is first reported. Under the bill, a public safety officer is restricted to compensation for a mental injury that is not accompanied by a physical injury and that results in a diagnosis of PTSD three times in his or her lifetime irrespective of a change of employer or employment.

Payments in cases of injuries resulting in death

Current law provides that, in each case of an injury resulting in death leaving no person dependent for support or leaving one or more persons partially dependent for support, the employer or insurer must pay into the work injury supplemental benefit fund (WISBF) the amount of the death benefit otherwise payable. This bill does the following:

1. Allows such amounts due to be paid in advance of when they would otherwise be due, including as a single, lump-sum payment. If an employer or insurer makes an advance or lump-sum payment, the bill requires DWD to give the employer or the insurer an interest credit, computed as otherwise provided under current law. Current law requires, in the case of a death leaving no dependents, that the payments be made in five equal annual installments.

2. Provides that, in the case of a violation of an employer policy against drug or alcohol use that is causal to an employee’s injury resulting in death who leaves no person dependent for support or leaving one or more persons partially dependent for support, no payment is required to be made to WISBF. Current law provides that, in the case of such a violation, then neither the employee nor the employee’s dependents may receive any compensation under the worker’s compensation law for that injury, other than costs for treating the injury, but does not exempt the employer or insurer from the payment to WISBF.

Furnishing of billing statements

This bill requires a health care provider to furnish to the representative or agent of a worker’s compensation insurer a complete billing statement for treatment of an injury for which an employee claims compensation upon request. The bill removes DHA as an entity that may request to receive information from a health care provider regarding a worker’s compensation claim.

Coverage; liability

Leased employees

Under current law, employee leasing companies are generally liable for injuries to their leased employees under the worker’s compensation law. This bill provides
that a client of an employee leasing company may instead assume the liability for leased employees under an employee leasing agreement. The bill also provides that if a client terminates or otherwise does not provide worker’s compensation insurance coverage for the leased employees, the employee leasing company is liable for injuries to those leased employees under the worker’s compensation law.

**Statute of limitations**

This bill clarifies that for worker’s compensation claims the statute of limitations applies to an individual’s employer, the employer’s insurance company, and any other named party.

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

**SECTION 1.** 102.04 (2g) of the statutes is created to read:

102.04 (2g) Liability under s. 102.03 with respect to a leased employee, as defined in s. 102.315 (1) (g), shall be determined as provided in s. 102.315 (2) or (2m) (c), whichever is applicable.

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

102.04 (2m) A Except as otherwise provided in an employee leasing agreement that meets the requirements of s. 102.315 (2m), a temporary help agency is the employer of an employee whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employee’s services. A Except as provided in s. 102.315 (2m) (c), a temporary help agency is liable under s. 102.03 for all compensation and other payments payable under this chapter to or with respect to that employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, a temporary help agency may not seek or receive reimbursement from another employer for any payments made as a result of that liability.

**SECTION 3.** 102.13 (2) (a) of the statutes is amended to read:
102.13 (2) (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, worker’s compensation insurer, or department, or division, or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation. If the request is by a representative of a worker’s compensation insurer for a billing statement, the physician, chiropractor, psychologist, dentist, podiatrist, physician assistant, advanced practice nurse prescriber, hospital, or health care provider shall, within 30 days after receiving the request, provide that person with a complete copy of an itemized billing statement or a billing statement in a standard billing format recognized by the federal government.

**SECTION 4.** 102.17 (4) of the statutes is renumbered 102.17 (4) (a) and amended to read:

102.17 (4) (a) Except as provided in this subsection and s. 102.555 (12) (b), in the case of occupational disease, the right of an employee, the employee’s legal representative, or a dependent, the employee’s employer or the employer’s insurance company, or other named party to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last
payable if no advancement were made, whichever date is latest, and in the case of
traumatic injury, that right shall not extend beyond 6 years after that date.

(b) In the case of occupational disease; a traumatic injury resulting in the loss
or total impairment of a hand or any part of the rest of the arm proximal to the hand
or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision,
or any permanent brain injury; or a traumatic injury causing the need for an
artificial spinal disc or a total or partial knee or hip replacement, there shall be no
statute of limitations, except that benefits or treatment expense for an occupational
disease becoming due 12 years after the date of injury or death or last payment of
compensation, other than for treatment or burial expenses, shall be paid from the
work injury supplemental benefit fund under s. 102.65 and in the manner provided
in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming
due 6 years after that date shall be paid from that fund and in that manner if the date
of injury or death or last payment of compensation, other than for treatment or burial
expenses, is before April 1, 2006.

(c) Payment of wages by the employer during disability or absence from work
to obtain treatment shall be considered payment of compensation for the purpose of
this section if the employer knew of the employee's condition and its alleged relation
to the employment.

SECTION 5. 102.17 (9) of the statutes is created to read:

102.17 (9) (a) In this subsection:

1. “Fire fighter” means any person employed on a full-time basis by the state
or any political subdivision as a member or officer of a fire department, including the
first class cities and state fire marshal and deputies.
2. “Post-traumatic stress disorder” means that condition, as described in the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

(b) Subject to par. (c), in the case of a mental injury that is not accompanied by a physical injury and that results in a diagnosis of post-traumatic stress disorder in a law enforcement officer, as defined in s. 23.33 (1) (ig), or a fire fighter, the claim for compensation for the mental injury, in order to be compensable under this chapter, is subject to all of the following:

1. The mental injury must satisfy all of the following conditions:
   a. The diagnosis of post-traumatic stress disorder is made by a licensed psychiatrist or psychologist.
   b. The conditions of liability under s. 102.03 (1) are proven by the preponderance of the evidence.

2. The mental injury may not be a result of any of the following actions taken in good faith by the employer:
   a. A disciplinary action.
   b. A work evaluation.
   c. A job transfer.
   d. A layoff.
   e. A demotion.
   f. A termination.

3. The diagnosis does not need to be based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by similarly situated employees.
(c) No individual may receive compensation for a claim of mental injury under this subsection more than 3 times in his or her lifetime. The limitation under this paragraph applies irrespective of whether the individual becomes employed by a different employer or in a different position with the same employer.

**Section 6.** 102.29 (6m) (a) 1m. of the statutes is created to read:

102.29 (6m) (a) 1m. The employee leasing company that employs the leased employee.

**Section 7.** 102.29 (6m) (a) 3. of the statutes is amended to read:

102.29 (6m) (a) 3. Any employee of the client, the employee leasing company that employs the leased employee, or of that other employee leasing company described in subd. 2., unless the leased employee who has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the client, the employee leasing company that employs the leased employee, or the leased employee of the other employee leasing company described in subd. 2., if the employees and leased employees were coemployees.

**Section 8.** 102.315 (1) (c) of the statutes is amended to read:

102.315 (1) (c) “Divided workforce” means a workforce in which some of the employees of a client are leased employees and some of the employees of the client are not leased employees, but does not include a workforce with respect to a client that has elected to provide insurance coverage for leased employees under sub. (2m).

**Section 9.** 102.315 (2) of the statutes is amended to read:

102.315 (2) Employee leasing company liable. An employee leasing company is liable under s. 102.03 for all compensation payable under this chapter to a leased employee, including any payments required
under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60.

If a client that makes an election under sub. (2m) (a) terminates the election, fails to provide the required coverage, or allows coverage to lapse, the employee leasing company is liable under s. 102.03 as set forth in this subsection. Except as permitted under s. 102.29, an employee leasing company may not seek or receive reimbursement from another employer for any payments made as a result of that liability. An employee leasing company is not liable under s. 102.03 for any compensation payable under this chapter to an employee of a client who is not a leased employee.

**SECTION 10.** 102.315 (2e) of the statutes is created to read:

102.315 (2e) **Termination of Employee Leasing Agreement.** If an employee leasing company terminates an employee leasing agreement with a client that has made an election under sub. (2m) (a), the company shall provide notice of the termination of an employee leasing agreement to the department and the client, on a form prescribed by the department, at least 30 days before the termination of the employee leasing agreement. The notice provided under this subsection must contain all of the following information:

(a) The name, mailing address, and federal employer identification number of the employee leasing company.

(b) The name, mailing address, and federal employer identification number of the client.

(c) The effective date of the termination of the employee leasing agreement.

(d) The signatures of the authorized representatives of the client and the employee leasing company.

**SECTION 11.** 102.315 (2m) of the statutes is created to read:
102.315 (2m) Client election to provide insurance coverage. (a) A client may elect to provide insurance coverage under this chapter for leased employees. Such an election must be provided in an employee leasing agreement, and the leased employees must be insured in the voluntary market and not under a mandatory risk-sharing plan under s. 619.01.

(b) The client shall provide notice of an election or termination of an election under par. (a) to the department and the employee leasing company on a form prescribed by the department at least 30 days before the effective date of the election or termination of the election. The notice provided under this subsection must contain all of the following information:

1. The name, mailing address, and federal employer identification number of the client.

2. The name, mailing address, and federal employer identification number of the employee leasing company.

3. The effective date of the employee leasing agreement.

4. The signatures of the authorized representatives of the client and the employee leasing company.

(c) A client that elects to provide insurance coverage under par. (a) is liable under s. 102.03 for all compensation payable to a leased employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60.

(d) If a client makes an election under par. (a), the employee leasing company shall include the client’s federal employer identification number on any reports to the department for the purposes of administering the worker’s compensation program or the unemployment insurance program under ch. 108.
(e) The experience rating under the standards and criteria under ss. 626.11 and 626.12 remain with a client that makes an election under par. (a).

SECTION 12. 102.315 (2s) of the statutes is created to read:

102.315 (2s) CLAIM REPORTING. Any claim filed under this chapter for a leased employee shall include the client’s federal employer identification number.

SECTION 13. 102.42 (1) of the statutes is amended to read:

102.42 (1) TREATMENT OF EMPLOYEE. The Subject to the limitations under sub. (1p), the employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental, and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, Christian Science treatment in lieu of medical treatment, medicines, and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer’s neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such treatment, medicines, supplies, and training. When the employer has knowledge of the injury and the necessity for treatment, the employer’s failure to tender the necessary treatment, medicines, supplies, and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances
shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

**SECTION 14.** 102.42 (1p) of the statutes is created to read:

102.42 (1p) LIABILITY FOR TREATMENT OF CERTAIN MENTAL INJURIES. The employer of an employee whose injury is a mental injury that is compensable under s. 102.17 (9) is liable for the employee’s treatment of the mental injury for no more than 32 weeks after the injury is first reported.

**SECTION 15.** 102.44 (7) of the statutes is created to read:

102.44 (7) In the case of an employee whose injury is a mental injury that is compensable under s. 102.17 (9), the period of disability may not exceed 32 weeks after the injury is first reported.

**SECTION 16.** 102.49 (5) (b) of the statutes is amended to read:

102.49 (5) (b) In addition to the payment required under par. (a), in each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall, except as provided in s. 102.58 (2), pay into the state treasury the amount of the death benefit otherwise payable, minus any payment made under s. 102.48 (1),. The payment under this paragraph shall, except as provided in par. (cm), be made in 5 equal annual installments, with the first installment due as of the date of death.

**SECTION 17.** 102.49 (5) (c) of the statutes is amended to read:

102.49 (5) (c) In addition to the payment required under par. (a), in each case of injury resulting in death, leaving one or more persons partially dependent for support, the employer or insurer shall, except as provided in s. 102.58 (2), pay into the state treasury an amount which, when added to the sums paid or to be paid on
account of partial dependency and under s. 102.48 (1), shall equal the death benefit payable to a person wholly dependent.

**SECTION 18.** 102.49 (5) (cm) of the statutes is created to read:

102.49 (5) (cm) The employer or insurer may make advance payments of amounts owed under par. (b) or (c), up to and including a lump sum payment of the entire amount owed. If an employer or insurer makes an advance payment, the department shall give the employer or the insurer an interest credit against its liability for payments made in excess of that required under par. (b) or (c). The credit shall be computed at 5 percent.

**SECTION 19.** 102.49 (5) (e) of the statutes is amended to read:

102.49 (5) (e) The adjustments in liability provided in ss. 102.57, 102.58 (1), and 102.60 do not apply to payments made under this section.

**SECTION 20.** 102.58 of the statutes is renumbered 102.58 (1) and amended to read:

102.58 (1) If injury is caused by the failure of the employee to use safety devices that are provided in accordance with any statute, rule, or order of the department of safety and professional services and that are adequately maintained, and the use of which is reasonably enforced by the employer, or if injury results from the employee’s failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, the compensation and death benefit provided in this chapter shall be reduced by 15 percent, but the total reduction may not exceed $15,000.

(2) If an employee violates the employer’s policy concerning employee drug or alcohol use and is injured, and if that violation is causal to the employee’s injury, no compensation or death benefits shall be payable to the injured employee or a
dependent of the injured employee and no payment under s. 102.49 (5) (b) or (c) shall be payable. Nothing in this section subsection shall reduce or eliminate an employer’s liability for incidental compensation under s. 102.42 (1) to (8) or drug treatment under s. 102.425.

**SECTION 21. Nonstatutory provisions.**

(1) Worker’s compensation insurance; rate approval; notice. The commissioner of insurance shall submit to the legislative reference bureau for publication in the Wisconsin Administrative Register a notice of the effective date of new rates for worker’s compensation insurance first approved by the commissioner after the effective date of this subsection.

**SECTION 22. Initial applicability.**

(1) The treatment of ss. 102.17 (9), 102.42 (1) and (1p), and 102.44 (7) first applies to injuries reported on the effective date of rate changes for worker’s compensation insurance approved by the commissioner of insurance under s. 626.13 after the effective date of this subsection.

(END)