



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1323/P2  
MED:cdc

DOA:.....Bork, BB0196 - Transfer of Worker's Compensation Functions from  
DHA to DWD

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

**1. Worker's compensation; authority to conduct hearings**

Under current law, DWD performs various administrative and adjudicatory functions relating to worker's compensation, except that the adjudicatory functions of DWD relating to disputed worker's compensation claims are performed the Division of Hearings and Appeals in DOA (DHA). This bill transfers the adjudicatory functions of DHA relating to disputed worker's compensation claims to DWD.

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

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

**SECTION 1.** 40.65 (2) (a) of the statutes is amended to read:

40.65 (2) (a) This paragraph applies to participants who first apply for benefits before May 3, 1988. Any person desiring a benefit under this section must apply to

the department of workforce development, which department shall determine whether the applicant is eligible to receive the benefit and the participant's monthly salary. Appeals from the eligibility decision shall follow the procedures under ss. 102.16 to 102.26. If it is determined that an applicant is eligible, the department of workforce development shall notify the department of employee trust funds and shall certify the applicant's monthly salary. If at the time of application for benefits an applicant is still employed in any capacity by the employer in whose employ the disabling injury occurred or disease was contracted, that continued employment shall not affect that applicant's right to have his or her eligibility to receive those benefits determined in proceedings before the ~~division of hearings and appeals in the department of administration~~ department of workforce development or the labor and industry review commission or in proceedings in the courts. The department of workforce development may promulgate rules needed to administer this paragraph.

**SECTION 2.** 40.65 (2) (b) 3. of the statutes is amended to read:

40.65 **(2)** (b) 3. The department shall determine whether or not the applicant is eligible for benefits under this section on the basis of the evidence in subd. 2. An applicant may appeal a determination under this subdivision to the ~~division of hearings and appeals in the department of administration~~ department of workforce development.

**SECTION 3.** 40.65 (2) (b) 4. of the statutes is amended to read:

40.65 **(2)** (b) 4. In hearing an appeal under subd. 3., the ~~division of hearings and appeals in the department of administration~~ department of workforce development shall follow the procedures under ss. 102.16 to 102.26.

**SECTION 4.** 102.01 (2) (ad) of the statutes is repealed.

**SECTION 5.** 102.01 (2) (ar) of the statutes is repealed.

**SECTION 6.** 102.01 (2) (dm) of the statutes is amended to read:

102.01 (2) (dm) “Order” means any decision, rule, regulation, direction, requirement, or standard of the department ~~or the division~~, or any other determination arrived at or decision made by the department ~~or the division~~.

**SECTION 7.** 102.04 (2r) (b) of the statutes is amended to read:

102.04 (2r) (b) The franchisor has been found by the department ~~or the division~~ to have exercised a type or degree of control over the franchisee or the franchisee’s employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor’s trademarks and brand.

**SECTION 8.** 102.07 (8) (c) of the statutes is amended to read:

102.07 (8) (c) The ~~division~~ department may not admit in evidence any state or federal law, regulation, or document granting operating authority, or a license when determining whether an independent contractor meets the conditions specified in par. (b) 1. or 3.

**SECTION 9.** 102.11 (1) (am) 1. of the statutes is amended to read:

102.11 (1) (am) 1. The employee is a member of a class of employees that does the same type of work at the same location and, in the case of an employee in the service of the state, is employed in the same office, department, independent agency, authority, institution, association, society, or other body in state government or, if the department ~~or the division~~ determines appropriate, in the same subunit of an office, department, independent agency, authority, institution, association, society, or other body in state government.

**SECTION 10.** 102.12 of the statutes is amended to read:

**102.12 Notice of injury, exception, laches.** No claim for compensation may be maintained unless, within 30 days after the occurrence of the injury or within 30

days after the employee knew or ought to have known the nature of his or her disability and its relation to the employment, actual notice was received by the employer or by an officer, manager or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places where notices to employees are customarily posted, then notice received by any superior is sufficient. Absence of notice does not bar recovery if it is found that the employer was not misled by that absence. Regardless of whether notice was received, if no payment of compensation, other than medical treatment or burial expense, is made, and if no application is filed with the department within 2 years after the date of the injury or death or the date the employee or his or her dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation for the injury or death is barred, except that the right to compensation is not barred if the employer knew or should have known, within the 2-year period, that the employee had sustained the injury on which the claim is based. Issuance of notice of a hearing on the motion of the department or the division has the same effect for the purposes of this section as the filing of an application. This section does not affect any claim barred under s. 102.17 (4).

**SECTION 11.** 102.13 (1) (c) of the statutes is amended to read:

102.13 (1) (c) So long as the employee, after a written request of the employer or insurer that complies with par. (b), refuses to submit to or in any way obstructs the examination, the employee's right to begin or maintain any proceeding for the collection of compensation is suspended, except as provided in sub. (4). If the employee refuses to submit to the examination after direction by the department, the division, or an examiner, or in any way obstructs the examination, the employee's

right to the weekly indemnity that accrues and becomes payable during the period of that refusal or obstruction, is barred, except as provided in sub. (4).

**SECTION 12.** 102.13 (1) (d) 2. of the statutes is amended to read:

102.13 (1) (d) 2. Any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist who attended a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the ~~division~~ department when the ~~division~~ department so directs.

**SECTION 13.** 102.13 (1) (d) 3. of the statutes is amended to read:

102.13 (1) (d) 3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, employer, worker's compensation insurer, or department, ~~or division~~ information and reports relative to a compensation claim.

**SECTION 14.** 102.13 (1) (f) of the statutes is amended to read:

102.13 (1) (f) If an employee claims compensation under s. 102.81 (1), the department ~~or the division~~ may require the employee to submit to physical or vocational examinations under this subsection.

**SECTION 15.** 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.

**SECTION 16.** 102.13 (3) of the statutes is amended to read:

102.13 (3) If 2 or more physicians, chiropractors, psychologists, dentists, or podiatrists disagree as to the extent of an injured employee's temporary disability, the end of an employee's healing period, an employee's ability to return to work at suitable available employment or the necessity for further treatment or for a particular type of treatment, the department ~~or the division~~ may appoint another physician, chiropractor, psychologist, dentist, or podiatrist to examine the employee and render an opinion as soon as possible. The department ~~or the division~~ shall promptly notify the parties of this appointment. If the employee has not returned to work, payment for temporary disability shall continue until the department ~~or the division~~ receives the opinion. The employer or its insurance carrier, or both, shall pay for the examination and opinion. The employer or insurance carrier, or both, shall receive appropriate credit for any overpayment to the employee determined by the department ~~or the division~~ after receipt of the opinion.

**SECTION 17.** 102.13 (4) of the statutes is amended to read:

102.13 (4) The right of an employee to begin or maintain proceedings for the collection of compensation and to receive weekly indemnities that accrue and become payable shall not be suspended or barred under sub. (1) when an employee refuses

to submit to a physical examination, upon the request of the employer or worker's compensation insurer or at the direction of the department, ~~the division~~, or an examiner, that would require the employee to travel a distance of 100 miles or more from his or her place of residence, unless the employee has claimed compensation for treatment from a practitioner whose office is located 100 miles or more from the employee's place of residence or the department, ~~division~~, or examiner determines that any other circumstances warrant the examination. If the employee has claimed compensation for treatment from a practitioner whose office is located 100 miles or more from the employee's place of residence, the employer or insurer may request, or the department, ~~the division~~, or an examiner may direct, the employee to submit to a physical examination in the area where the employee's treatment practitioner is located.

**SECTION 18.** 102.13 (5) of the statutes is amended to read:

102.13 (5) The department ~~or the division~~ may refuse to receive testimony as to conditions determined from an autopsy if it appears that the party offering the testimony had procured the autopsy and had failed to make reasonable effort to notify at least one party in adverse interest or the department ~~or the division~~ at least 12 hours before the autopsy of the time and place at which the autopsy would be performed, or that the autopsy was performed by or at the direction of the coroner or medical examiner or at the direction of the district attorney for purposes not authorized under ch. 979. The department ~~or the division~~ may withhold findings until an autopsy is held in accordance with its directions.

**SECTION 19.** 102.14 (title) of the statutes is amended to read:

**102.14 (title) Jurisdiction of department and ~~division~~; advisory committee council.**

**SECTION 20.** 102.14 (1) of the statutes is amended to read:

102.14 (1) Except as otherwise provided, this chapter shall be administered by the department ~~and the division~~.

**SECTION 21.** 102.14 (2) of the statutes is amended to read:

102.14 (2) The council on worker's compensation shall advise the department ~~and the division~~ in carrying out the purposes of this chapter, shall submit its recommendations with respect to amendments to this chapter to each regular session of the legislature, and shall report its views upon any pending bill relating to this chapter to the proper legislative committee. At the request of the chairpersons of the senate and assembly committees on labor, the department shall schedule a meeting of the council with the members of the senate and assembly committees on labor to review and discuss matters of legislative concern arising under this chapter.

**SECTION 22.** 102.15 (1) of the statutes is amended to read:

102.15 (1) Subject to this chapter, the ~~division~~ department may ~~adopt its own promulgate~~ rules of procedure ~~and may change the same from time to time~~.

**SECTION 23.** 102.15 (2) of the statutes is amended to read:

102.15 (2) The ~~division~~ department may provide by rule the conditions under which transcripts of testimony and proceedings shall be furnished.

**SECTION 24.** 102.16 (1) of the statutes is repealed and recreated to read:

102.16 (1) Any controversy concerning compensation or a violation of sub. (3), including a controversy in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified, or confirmed by the department within one year after the date on which the compromise is filed with the department, the date on which an award has been



entered based on the compromise, or the date on which an application for the department to take any of those actions is filed with the department. Unless the word “compromise” appears in a stipulation of settlement, the settlement shall not be considered a compromise, and further claim is not barred except as provided in s. 102.17 (4) regardless of whether an award is made. The employer, insurer or dependent under s. 102.51 (5) shall have equal rights with the employee to have a compromise or any other stipulation of settlement reviewed under this subsection. Upon petition filed with the department under this subsection, the department may set aside the award or otherwise determine the rights of the parties.

**SECTION 25.** 102.16 (1m) (a) of the statutes is amended to read:

102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but disputes the reasonableness of the fee charged by the health service provider, the department ~~or the division~~ may include in its order confirming the compromise or stipulation a determination made by the department under sub. (2) as to the reasonableness of the fee or, if such a determination has not yet been made, the department ~~or the division~~ may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2) (b) that the reasonableness of the fee is in dispute. The department ~~or the division~~ shall deny payment of a health service fee that the department determines under sub. (2) to be unreasonable. A health service provider and an insurer or self-insured employer that are parties to a fee dispute under this paragraph are bound by the department’s determination under sub. (2) on the reasonableness of the disputed fee, unless that determination is set aside, reversed,

or modified by the department under sub. (2) (f) or is set aside on judicial review as provided in sub. (2) (f).

**SECTION 26.** 102.16 (1m) (b) of the statutes is amended to read:

102.16 **(1m)** (b) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for any treatment provided to an injured employee by a health service provider, but disputes the necessity of the treatment, the department ~~or the division~~ may include in its order confirming the compromise or stipulation a determination made by the department under sub. (2m) as to the necessity of the treatment or, if such a determination has not yet been made, the department ~~or the division~~ may notify, or direct the insurer or self-insured employer to notify, the health service provider under sub. (2m) (b) that the necessity of the treatment is in dispute. Before determining under sub. (2m) the necessity of treatment provided to an injured employee, the department may, but is not required to, obtain the opinion of an expert selected by the department who is qualified as provided in sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be applied by an expert and by the department in rendering an opinion as to, and in determining, necessity of treatment under this paragraph. In cases in which no standards promulgated under sub. (2m) (g) apply, the department shall find the facts regarding necessity of treatment. The department ~~or the division~~ shall deny payment for any treatment that the department determines under sub. (2m) to be unnecessary. A health service provider and an insurer or self-insured employer that are parties to a dispute under this paragraph over the necessity of treatment are bound by the department's determination under sub. (2m) on the necessity of the disputed treatment, unless that determination is set aside, reversed, or modified by

the department under sub. (2m) (e) or is set aside on judicial review as provided in sub. (2m) (e).

**SECTION 27.** 102.16 (1m) (c) of the statutes is amended to read:

102.16 (1m) (c) If an insurer or self-insured employer concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but disputes the reasonableness of the amount charged for the prescription drug, the department ~~or the division~~ may include in its order confirming the compromise or stipulation a determination made by the department under s. 102.425 (4m) as to the reasonableness of the prescription drug charge or, if such a determination has not yet been made, the department ~~or the division~~ may notify, or direct the insurer or self-insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute. The department ~~or the division~~ shall deny payment of a prescription drug charge that the department determines under s. 102.425 (4m) to be unreasonable. A pharmacist or practitioner and an insurer or self-insured employer that are parties to a dispute under this paragraph over the reasonableness of a prescription drug charge are bound by the department's determination under s. 102.425 (4m) on the reasonableness of the disputed prescription drug charge, unless that determination is set aside, reversed, or modified by the department under s. 102.425 (4m) (e) or is set aside on judicial review as provided in s. 102.425 (4m) (e).

**SECTION 28.** 102.16 (2) (a) of the statutes is amended to read:

102.16 (2) (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, ~~the department and the division have jurisdiction under sub. (1m) (a), and the division has jurisdiction under s. 102.17~~ to resolve a dispute between a health service provider and an insurer or self-insured employer over the reasonableness of a fee charged by the health service provider for health services provided to an injured employee who claims benefits under this chapter. A health service provider may not submit a fee dispute to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than \$25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any fee dispute to the department, regardless of the amount in controversy. The department shall deny payment of a health service fee that the department determines under this subsection to be unreasonable.

**SECTION 29.** 102.16 (2) (b) of the statutes is amended to read:

102.16 (2) (b) An insurer or self-insured employer that disputes the reasonableness of a fee charged by a health service provider or the department ~~or the division~~ under sub. (1m) (a) or s. 102.18 (1) (bg) 1. shall provide reasonable written notice to the health service provider that the fee is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (a) or s. 102.18 (1) (bg) 1. that a health service fee is being disputed, a health service provider may not collect the disputed fee from, or bring an action for collection of the disputed fee against, the employee who received the services for which the fee was charged.

**SECTION 30.** 102.16 (2m) (a) of the statutes is amended to read:

102.16 (2m) (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, ~~the department and the division have jurisdiction under sub. (1m) (b), and the division has jurisdiction under s. 102.17~~ to resolve a dispute between a health service provider and an insurer or self-insured employer over the necessity of treatment provided for an injured employee who claims benefits under this chapter. A health service provider may not submit a dispute over necessity of treatment to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than \$25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any dispute over necessity of treatment to the department, regardless of the amount in controversy. The department shall deny payment for any treatment that the department determines under this subsection to be unnecessary.

**SECTION 31.** 102.16 (2m) (b) of the statutes is amended to read:

102.16 (2m) (b) An insurer or self-insured employer that disputes the necessity of treatment provided by a health service provider or the department ~~or the division~~ under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable written notice to the health service provider that the necessity of that treatment is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (b) or s. 102.18 (1) (bg) 2. that the necessity of treatment is being disputed, a health service provider may not collect a fee for that disputed treatment from, or bring an action for collection of the fee for that disputed treatment against, the employee who received the treatment.

**SECTION 32.** 102.16 (4) of the statutes is amended to read:

102.16 (4) The department ~~and the division have~~ has jurisdiction to pass on any question arising out of sub. (3) and to order the employer to reimburse an employee or other person for any sum deducted from wages or paid by him or her in violation of that subsection. In addition to the penalty provided in s. 102.85 (1), any employer violating sub. (3) shall be liable to an injured employee for the reasonable value of the necessary services rendered to that employee under any arrangement made in violation of sub. (3) without regard to that employee's actual disbursements for those services.

**SECTION 33.** 102.17 (1) (a) 1. of the statutes is amended to read:

102.17 (1) (a) 1. Upon the filing with the department by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the department shall mail a copy of the application to all other parties in interest, and the insurance carrier shall be considered a party in interest. The department ~~or the division~~ may bring in additional parties by service of a copy of the application.

**SECTION 34.** 102.17 (1) (a) 2. of the statutes is amended to read:

102.17 (1) (a) 2. Subject to subd. 3., the ~~division~~ department shall cause notice of hearing on the application to be given to each interested party by service of that notice on the interested party personally or by mailing a copy of that notice to the interested party's last-known address at least 10 days before the hearing. If a party in interest is located without this state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed with the department of financial institutions and shall also be sent by registered or certified mail to the last-known post-office address of the party. Such filing and mailing shall

constitute sufficient service, with the same effect as if served upon a party located within this state.

**SECTION 35.** 102.17 (1) (a) 3. of the statutes is amended to read:

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

**SECTION 36.** 102.17 (1) (a) 4. of the statutes is amended to read:

102.17 (1) (a) 4. The hearing may be adjourned in the discretion of the ~~division~~ department, and hearings may be held at such places as the ~~division~~ department designates, within or without the state. The ~~division~~ department may also arrange to have hearings held by the commission, officer, or tribunal having authority to hear cases arising under the worker's compensation law of any other state, of the District of Columbia, or of any territory of the United States, with the testimony and proceedings at any such hearing to be reported to the ~~division~~ department and to be made part of the record in the case. Any evidence so taken shall be subject to rebuttal upon final hearing before the ~~division~~ department.

**SECTION 37.** 102.17 (1) (b) of the statutes is amended to read:

102.17 (1) (b) In any dispute or controversy pending before the ~~division~~ department, the ~~division~~ department may direct the parties to appear before an examiner for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports, and bills that may avoid unnecessary proof, and such other matters as may aid in disposition of the

dispute or controversy. After that conference the ~~division~~ department may issue an order requiring disclosure or exchange of any information or written material that the ~~division~~ department considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange that information within the time stated in the order, the ~~division~~ department may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The ~~division~~ department shall provide each party with a copy of any order issued under this paragraph.

**SECTION 38.** 102.17 (1) (c) 1. of the statutes is amended to read:

102.17 (1) (c) 1. Any party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as may be pertinent to the controversy before the ~~division~~ department. No person, firm, or corporation, other than an attorney at law who is licensed to practice law in the state, may appear on behalf of any party in interest before the ~~division~~ department or any member or employee of the ~~division~~ department assigned to conduct any hearing, investigation, or inquiry relative to a claim for compensation or benefits under this chapter, unless the person is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified, and has obtained from the department a license with authorization to appear in matters or proceedings before the ~~division~~ department. Except as provided under pars. (cm), (cr), and (ct), the license shall be issued by the department under rules promulgated by the department. The department shall maintain in its office a current list of persons to whom licenses have been issued.

**SECTION 39.** 102.17 (1) (d) 1. of the statutes is amended to read:



102.17 (1) (d) 1. The contents of certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice nurse prescribers, and chiropractors licensed in and practicing in this state, and of certified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation constitute prima facie evidence as to the matter contained in those reports, subject to any rules and limitations the ~~division~~ department prescribes. Certified reports of physicians, podiatrists, surgeons, dentists, psychologists, physician assistants, advanced practice nurse prescribers, and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to being subjected to cross-examination, also constitute prima facie evidence as to the matter contained in those reports. Certified reports of physicians, podiatrists, surgeons, psychologists, and chiropractors are admissible as evidence of the diagnosis, necessity of the treatment, and cause and extent of the disability. Certified reports by doctors of dentistry, physician assistants, and advanced practice nurse prescribers are admissible as evidence of the diagnosis and necessity of treatment but not of the cause and extent of disability. Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor, physician assistant, advanced practice nurse prescriber, or expert who knowingly makes a false statement of fact or opinion in a certified report may be fined or imprisoned, or both, under s. 943.395.

**SECTION 40.** 102.17 (1) (d) 2. of the statutes is amended to read:

102.17 (1) (d) 2. The record of a hospital or sanatorium in this state that is satisfactory to the ~~division~~ department, established by certificate, affidavit, or testimony of the supervising officer of the hospital or sanatorium, any other person having charge of the record, or a physician, podiatrist, surgeon, dentist, psychologist,

physician assistant, advanced practice nurse prescriber, or chiropractor to be the record of the patient in question, and made in the regular course of examination or treatment of the patient, constitutes prima facie evidence as to the matter contained in the record, to the extent that the record is otherwise competent and relevant.

**SECTION 41.** 102.17 (1) (d) 3. of the statutes is amended to read:

102.17 (1) (d) 3. The ~~division~~ department may, by rule, establish the qualifications of and the form used for certified reports submitted by experts who provide information concerning loss of earning capacity under s. 102.44 (2) and (3). The ~~division~~ department may not admit into evidence a certified report of a practitioner or other expert or a record of a hospital or sanatorium that was not filed with the ~~division~~ department and all parties in interest at least 15 days before the date of the hearing, unless the ~~division~~ department is satisfied that there is good cause for the failure to file the report.

**SECTION 42.** 102.17 (1) (d) 4. of the statutes is amended to read:

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

**SECTION 43.** 102.17 (1) (e) of the statutes is amended to read:

102.17 (1) (e) The ~~division~~ department may, with or without notice to any party, cause testimony to be taken, an inspection of the premises where the injury occurred to be made, or the time books and payrolls of the employer to be examined by any examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist, dentist, or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the ~~division~~ department for its consideration upon final hearing. All ex parte testimony

taken by the ~~division~~ department shall be reduced to writing, and any party shall have opportunity to rebut that testimony on final hearing.

**SECTION 44.** 102.17 (1) (f) 1. of the statutes is amended to read:

102.17 (1) (f) 1. Beyond reach of the subpoena of the ~~division~~ department.

**SECTION 45.** 102.17 (1) (g) of the statutes is amended to read:

102.17 (1) (g) Whenever the testimony presented at any hearing indicates a dispute or creates a doubt as to the extent or cause of disability or death, the ~~division~~ department may direct that the injured employee be examined, that an autopsy be performed, or that an opinion be obtained without examination or autopsy, by or from an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist designated by the ~~division~~ department who is not under contract with or regularly employed by a compensation insurance carrier or self-insured employer. The expense of the examination, autopsy, or opinion shall be paid by the employer or, if the employee claims compensation under s. 102.81, from the uninsured employers fund. The report of the examination, autopsy, or opinion shall be transmitted in writing to the ~~division~~ department and a copy of the report shall be furnished by the ~~division~~ department to each party, who shall have an opportunity to rebut the report on further hearing.

**SECTION 46.** 102.17 (1) (h) of the statutes is amended to read:

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

constitutes substantial evidence under s. 102.23 (6) as to the matter contained in the report.

**SECTION 47.** 102.17 (2) of the statutes is amended to read:

102.17 (2) If the ~~division~~ department has reason to believe that the payment of compensation has not been made, the ~~division~~ department may on its own motion give notice to the parties, in the manner provided for the service of an application, of a time and place when a hearing will be held for the purpose of determining the facts. The notice shall contain a statement of the matter to be considered. All provisions of this chapter governing proceedings on an application shall apply, insofar as applicable, to a proceeding under this subsection. When the ~~division~~ department schedules a hearing on its own motion, the ~~division~~ department does not become a party in interest and is not required to appear at the hearing.

**SECTION 48.** 102.17 (2m) of the statutes is amended to read:

102.17 (2m) ~~The division or any~~ Any party, including the department, may require any person to produce books, papers, and records at the hearing by personal service of a subpoena upon the person along with a tender of witness fees as provided in ss. 814.67 and 885.06. Except as provided in sub. (2s), the subpoena shall be on a form provided by the ~~division~~ department and shall give the name and address of the party requesting the subpoena.

**SECTION 49.** 102.17 (2s) of the statutes is amended to read:

102.17 (2s) A party's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07 (4) and must be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of

issuance, send a copy of the subpoena to the hearing examiner or other representative of the ~~division~~ department responsible for conducting the proceeding.

**SECTION 50.** 102.17 (7) (b) of the statutes is amended to read:

102.17 (7) (b) Except as provided in par. (c), the ~~division~~ department shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by the party that raises the issue of loss of earning capacity if that party failed to notify the ~~division~~ department and the other parties of interest, at least 60 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved. Except as provided in par. (c), the ~~division~~ department shall exclude from evidence testimony or certified reports from expert witnesses under par. (a) offered by a party of interest in response to the party that raises the issue of loss of earning capacity if the responding party failed to notify the ~~division~~ department and the other parties of interest, at least 45 days before the date of the hearing, of the party's intent to provide the testimony or reports and of the names of the expert witnesses involved.

**SECTION 51.** 102.17 (7) (c) of the statutes is amended to read:

102.17 (7) (c) Notwithstanding the notice deadlines provided in par. (b), the ~~division~~ department may receive in evidence testimony or certified reports from expert witnesses under par. (a) when the applicable notice deadline under par. (b) is not met if good cause is shown for the delay in providing the notice required under par. (b) and if no party is prejudiced by the delay.

**SECTION 52.** 102.17 (8) of the statutes is amended to read:

102.17 (8) Unless otherwise agreed to by all parties, an injured employee shall file with the ~~division~~ department and serve on all parties at least 15 days before the date of the hearing an itemized statement of all medical expenses and incidental

compensation under s. 102.42 claimed by the injured employee. The itemized statement shall include, if applicable, information relating to any travel expenses incurred by the injured employee in obtaining treatment including the injured employee's destination, number of trips, round trip mileage, and meal and lodging expenses. The ~~division~~ department may not admit into evidence any information relating to medical expenses and incidental compensation under s. 102.42 claimed by an injured employee if the injured employee failed to file with the ~~division~~ department and serve on all parties at least 15 days before the date of the hearing an itemized statement of the medical expenses and incidental compensation under s. 102.42 claimed by the injured employee, unless the ~~division~~ department is satisfied that there is good cause for the failure to file and serve the itemized statement.

**SECTION 53.** 102.175 (2) of the statutes is amended to read:

102.175 (2) If after a hearing or a prehearing conference the ~~division~~ department determines that an injured employee is entitled to compensation but that there remains in dispute only the issue of which of 2 or more parties is liable for that compensation, the ~~division~~ department may order one or more parties to pay compensation in an amount, time, and manner as determined by the ~~division~~ department. If the ~~division~~ department later determines that another party is liable for compensation, the ~~division~~ department shall order that other party to reimburse any party that was ordered to pay compensation under this subsection.

**SECTION 54.** 102.175 (3) (c) of the statutes is amended to read:

102.175 (3) (c) Upon request of the department, ~~the division~~, the employer, or the employer's worker's compensation insurer, an injured employee who claims compensation for an injury causing permanent disability shall disclose all previous

findings of permanent disability or other impairments that are relevant to that injury.

**SECTION 55.** 102.18 (1) (b) 1. of the statutes is amended to read:

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

**SECTION 56.** 102.18 (1) (b) 2. of the statutes is amended to read:

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

**SECTION 57.** 102.18 (1) (b) 3. of the statutes is amended to read:

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

**SECTION 58.** 102.18 (1) (bg) 1. of the statutes is amended to read:

102.18 (1) (bg) 1. If the ~~division~~ department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for any health services provided to an injured employee by a health service provider, but that the reasonableness of the fee charged by the health service provider is in dispute, the ~~division~~ department may include in its order under par. (b) a determination made by the department under s. 102.16 (2) as to the reasonableness of the fee or, if such a determination has not yet been made, the ~~division~~ department may notify, or direct the insurer or self-insured employer to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute.

**SECTION 59.** 102.18 (1) (bg) 2. of the statutes is amended to read:

102.18 (1) (bg) 2. If the ~~division~~ department finds under par. (b) that an employer or insurance carrier is liable under this chapter for any treatment provided to an injured employee by a health service provider, but that the necessity of the treatment is in dispute, the ~~division~~ department may include in its order under par. (b) a determination made by the department under s. 102.16 (2m) as to the necessity of the treatment or, if such a determination has not yet been made, the ~~division~~ department may notify, or direct the employer or insurance carrier to notify, the health service provider under s. 102.16 (2m) (b) that the necessity of the treatment is in dispute.

**SECTION 60.** 102.18 (1) (bg) 3. of the statutes is amended to read:

102.18 (1) (bg) 3. If the ~~division~~ department finds under par. (b) that an insurer or self-insured employer is liable under this chapter for the cost of a prescription drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but that the reasonableness of the amount charged for that prescription drug is in dispute, the ~~division~~ department may include in its order under par. (b) a



determination made by the department under s. 102.425 (4m) as to the reasonableness of the prescription drug charge or, if such a determination has not yet been made, the ~~division~~ department may notify, or direct the insurer or self-insured employer to notify, the pharmacist or practitioner dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness of the prescription drug charge is in dispute.

**SECTION 61.** 102.18 (1) (bp) of the statutes is amended to read:

102.18 (1) (bp) If the ~~division~~ department determines that the employer or insurance carrier suspended, terminated, or failed to make payments or failed to report an injury as a result of malice or bad faith, the ~~division~~ department may include a penalty in an award to an employee for each event or occurrence of malice or bad faith. That penalty is the exclusive remedy against an employer or insurance carrier for malice or bad faith. If the penalty is imposed for an event or occurrence of malice or bad faith that causes a payment that is due an injured employee to be delayed in violation of s. 102.22 (1) or overdue in violation of s. 628.46 (1), the ~~division~~ department may not also order an increased payment under s. 102.22 (1) or the payment of interest under s. 628.46 (1). The ~~division~~ department may award an amount that the ~~division~~ department considers just, not to exceed the lesser of 200 percent of total compensation due or \$30,000 for each event or occurrence of malice or bad faith. The ~~division~~ department may assess the penalty against the employer, the insurance carrier, or both. Neither the employer nor the insurance carrier is liable to reimburse the other for the penalty amount. The ~~division~~ department may, by rule, define actions that demonstrate malice or bad faith.

**SECTION 62.** 102.18 (1) (bw) of the statutes is amended to read:

102.18 (1) (bw) If an insurer, a self-insured employer, or, if applicable, the uninsured employers fund pays compensation to an employee in excess of its liability and another insurer or self-insured employer is liable for all or part of the excess payment, the department ~~or the division~~ may order the insurer or self-insured employer that is liable for that excess payment to reimburse the insurer or self-insured employer that made the excess payment or, if applicable, the uninsured employers fund.

**SECTION 63.** 102.18 (1) (c) of the statutes is amended to read:

102.18 (1) (c) If 2 or more examiners have conducted a formal hearing on a claim and are unable to agree on the order or award to be issued, the decision shall be the decision of the majority. If the examiners are equally divided on the decision, the ~~division~~ department may appoint an additional examiner who shall review the record and consult with the other examiners concerning their impressions of the credibility of the evidence. Findings of fact and an order or award may then be issued by a majority of the examiners.

**SECTION 64.** 102.18 (1) (e) of the statutes is amended to read:

102.18 (1) (e) Except as provided in s. 102.21, if the department ~~or the division~~ orders a party to pay an award of compensation, the party shall pay the award no later than 21 days after the date on which the order is mailed to the last-known address of the party, unless the party files a petition for review under sub. (3). This paragraph applies to all awards of compensation ordered by the department ~~or the division~~, whether the award results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department ~~or the division~~.

**SECTION 65.** 102.18 (2) of the statutes is repealed and recreated to read:

102.18 (2) The department shall have and maintain on its staff such examiners as are necessary to hear and decide claims and to assist in the effective administration of this chapter. Those examiners shall be attorneys and may be designated as administrative law judges. Those examiners may make findings and orders and may approve, review, set aside, modify, or confirm stipulations of settlement or compromises of claims for compensation.

**SECTION 66.** 102.18 (3) of the statutes is amended to read:

102.18 (3) A party in interest may petition the commission for review of an examiner's decision awarding or denying compensation if the department, ~~the division,~~ or the commission receives the petition within 21 days after the department ~~or the division~~ mailed a copy of the examiner's findings and order to the last-known addresses of the parties in interest. The commission shall dismiss a petition 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. If no petition is filed within those 21 days, the findings or order shall be considered final unless set aside, reversed, or modified by the examiner within that time. If the findings or order are set aside by the examiner, the status shall be the same as prior to ~~the setting aside~~ of the findings or order that were set aside. If the findings or order are reversed or modified by the examiner, the time for filing a petition commences on the date on which notice of the reversal or modification is mailed to the last-known addresses of the parties in interest. The commission shall either affirm, reverse, set aside, or modify the findings or order, in whole or in part, or direct the taking of additional evidence. The commission's action shall be based on a review of the evidence submitted.

**SECTION 67.** 102.18 (4) (c) 3. of the statutes is amended to read:

102.18 (4) (c) 3. Remand the case to the department ~~or the division~~ for further proceedings.

**SECTION 68.** 102.18 (4) (d) of the statutes is amended to read:

102.18 (4) (d) While a petition for review by the commission is pending or after entry of an order or award by the commission but before commencement of an action for judicial review or expiration of the period in which to commence an action for judicial review, the commission shall remand any compromise presented to it to the department ~~or the division~~ for consideration and approval or rejection under s. 102.16 (1). Presentation of a compromise does not affect the period in which to commence an action for judicial review.

**SECTION 69.** 102.18 (5) of the statutes is amended to read:

102.18 (5) If it appears to the ~~division~~ department that a mistake may have been made as to cause of injury in the findings, order, or award upon an alleged injury based on accident, when in fact the employee was suffering from an occupational disease, within 3 years after the date of the findings, order, or award the ~~division~~ department may, upon its own motion, with or without hearing, set aside the findings, order or award, or the ~~division~~ department may take that action upon application made within those 3 years. After an opportunity for hearing, the ~~division~~ department may, if in fact the employee is suffering from disease arising out of the employment, make new findings, and a new order or award, or the ~~division~~ department may reinstate the previous findings, order, or award.

**SECTION 70.** 102.18 (6) of the statutes is amended to read:

102.18 (6) In case of disease arising out of employment, the ~~division~~ department may from time to time review its findings, order, or award, and make new findings, or a new order or award, based on the facts regarding disability or

otherwise as those facts may appear at the time of the review. This subsection shall not affect the application of the limitation in s. 102.17 (4).

**SECTION 71.** 102.195 of the statutes is amended to read:

**102.195 Employees confined in institutions; payment of benefits.** In case an employee is adjudged mentally ill or incompetent or convicted of a felony, and is confined in a public institution and has wholly dependent upon the employee for support a person whose dependency is determined as if the employee were deceased, compensation payable during the period of the employee's confinement may be paid to the employee and the employee's dependents in such manner, for such time, and in such amount as the department ~~or division~~ by order provides.

**SECTION 72.** 102.22 (1) of the statutes is amended to read:

102.22 (1) If the employer or his or her insurer inexcusably delays in making the first payment that is due an injured employee for more than 30 days after the date on which the employee leaves work as a result of an injury and if the amount due is \$500 or more, the payments as to which the delay is found shall be increased by 10 percent. If the employer or his or her insurer inexcusably delays in making the first payment that is due an injured employee for more than 14 days after the date on which the employee leaves work as a result of an injury, the payments as to which the delay is found may be increased by 10 percent. If the employer or his or her insurer inexcusably delays for any length of time in making any other payment that is due an injured employee, the payments as to which the delay is found may be increased by 10 percent. If the delay is chargeable to the employer and not to the insurer, s. 102.62 applies and the relative liability of the parties shall be fixed and discharged as provided in that section. The department ~~or the division~~ may also order the employer or insurance carrier to reimburse the employee for any finance

charges, collection charges, or interest that the employee paid as a result of the inexcusable delay by the employer or insurance carrier.

**SECTION 73.** 102.22 (2) of the statutes is amended to read:

102.22 (2) If any sum that the department ~~or the division~~ orders to be paid is not paid when due, that sum shall bear interest at the rate of 10 percent per year. The state is liable for interest on awards issued against it under this chapter. The department ~~or the division~~ has jurisdiction to issue an award for payment of interest under this subsection at any time within one year after the date of its order or, if the order is appealed, within one year after final court determination. Interest awarded under this subsection becomes due from the date the examiner's order becomes final or from the date of a decision by the commission, whichever is later.

**SECTION 74.** 102.23 (2) of the statutes is amended to read:

102.23 (2) Upon the trial of an action for review of an order or award, the court shall disregard any irregularity or error of the commission, or the department, ~~or the division~~ unless it is made to affirmatively appear that the plaintiff was damaged by that irregularity or error.

**SECTION 75.** 102.23 (3) of the statutes is amended to read:

102.23 (3) The record in any case shall be transmitted to the department ~~or the division~~ within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from that order or judgment.

**SECTION 76.** 102.23 (5) of the statutes is amended to read:

102.23 (5) When an action for review involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies, a party that has been ordered by the department, ~~the division,~~

the commission, or a court to pay compensation is not relieved from paying compensation as ordered.

**SECTION 77.** 102.24 (2) of the statutes is amended to read:

102.24 (2) After the commencement of an action to review any order or award of the commission, the parties may have the record remanded by the court for such time and under such condition as the parties may provide, for the purpose of having the department ~~or the division~~ act upon the question of approving or disapproving any settlement or compromise that the parties may desire to have so approved. If approved, the action shall be at an end and judgment may be entered upon the approval as upon an award. If not approved, the department ~~or the division~~ shall immediately return the record to the circuit court and the action shall proceed as if no remand had been made.

**SECTION 78.** 102.25 (1) of the statutes is amended to read:

102.25 (1) Any party aggrieved by a judgment entered upon the review of any order or award may appeal the judgment within the period specified in s. 808.04 (1). A trial court may not require the commission or any party to the action to execute, serve, or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the tape of the recording machine. The state is a party aggrieved under this subsection if a judgment is entered upon the review confirming any order or award against the state. At any time before the case is set down for hearing in the court of appeals or the supreme court, the parties may have the record remanded by the court to the department ~~or the division~~ in the same manner and for the same purposes as provided for remanding from the circuit court to the department ~~or the division~~ under s. 102.24 (2).

**SECTION 79.** 102.26 (2) of the statutes is amended to read:

102.26 (2) Unless previously authorized by the department ~~or the division~~, no fee may be charged or received for the enforcement or collection of any claim for compensation nor may any contract for that enforcement or collection be enforceable when that fee, inclusive of all taxable attorney fees paid or agreed to be paid for that enforcement or collection, exceeds 20 percent of the amount at which the claim is compromised or of the amount awarded, adjudged, or collected, except that in cases of admitted liability in which there is no dispute as to the amount of compensation due and in which no hearing or appeal is necessary, the fee charged may not exceed 10 percent, but not to exceed \$250, of the amount at which the claim is compromised or of the amount awarded, adjudged, or collected. The limitation as to fees shall apply to the combined charges of attorneys, solicitors, representatives, and adjusters who knowingly combine their efforts toward the enforcement or collection of any compensation claim.

**SECTION 80.** 102.26 (3) (b) 1. of the statutes is amended to read:

102.26 (3) (b) 1. Subject to sub. (2), upon application of any interested party, the department ~~or the division~~ may fix the fee of the claimant's attorney or representative and provide in the award for that fee to be paid directly to the attorney or representative.

**SECTION 81.** 102.26 (3) (b) 3. of the statutes is amended to read:

102.26 (3) (b) 3. The claimant may request the insurer or self-insured employer to pay any compensation that is due the claimant by depositing the payment directly into an account maintained by the claimant at a financial institution. If the insurer or self-insured employer agrees to the request, the insurer or self-insured employer may deposit the payment by direct deposit, electronic funds transfer, or any other



money transfer technique approved by the department ~~or the division~~. The claimant may revoke a request under this subdivision at any time by providing appropriate written notice to the insurer or self-insured employer.

**SECTION 82.** 102.26 (4) of the statutes is amended to read:

102.26 (4) Any attorney or other person who charges or receives any fee in violation of this section may be required to forfeit double the amount retained by the attorney or other person, which forfeiture shall be collected by the state in an action in debt upon complaint of the department ~~or the division~~. Out of the sum recovered the court shall direct payment to the injured party of the amount of the overcharge.

**SECTION 83.** 102.27 (2) (b) of the statutes is amended to read:

102.27 (2) (b) If a governmental unit provides public assistance under ch. 49 to pay medical costs or living expenses related to a claim under this chapter and if the governmental unit has given the parties to the claim written notice stating that the governmental unit provided the assistance and the cost of that assistance, the department ~~or the division~~ shall order the employer or insurance carrier owing compensation to reimburse that governmental unit for the amount of assistance the governmental unit provided or two-thirds of the amount of the award or payment remaining after deduction of attorney fees and any other fees or costs chargeable under ch. 102, whichever is less. The department shall comply with this paragraph when making payments under s. 102.81.

**SECTION 84.** 102.28 (3) (c) of the statutes is amended to read:

102.28 (3) (c) An employee who has signed a waiver under par. (a) 1. and an affidavit under par. (a) 2., who sustains an injury that, but for that waiver, the employer would be liable for under s. 102.03, who at the time of the injury was a member of a religious sect whose authorized representative has filed an affidavit

under par. (a) 3. and an agreement under par. (a) 4., and who as a result of the injury becomes dependent on the religious sect for financial and medical assistance, or the employee's dependent, may request a hearing under s. 102.17 (1) to determine if the religious sect has provided the employee and his or her dependents with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect. If, after hearing, the ~~division~~ department determines that the religious sect has not provided that standard of living or medical treatment, or both, the ~~division~~ department may order the religious sect to provide alternative benefits to that employee or his or her dependent, or both, in an amount that is reasonable under the circumstances, but not in excess of the benefits that the employee or dependent could have received under this chapter but for the waiver under par. (a) 1.

**SECTION 85.** 102.28 (4) (c) of the statutes is amended to read:

102.28 (4) (c) After a hearing under par. (b), or without a hearing if one is not requested, the ~~division~~ department may issue an order to an employer to cease operations on a finding that the employer is an uninsured employer. ~~If no hearing is requested, the department may issue such an order.~~

**SECTION 86.** 102.29 (1) (b) (intro.) of the statutes is amended to read:

102.29 (1) (b) (intro.) If a party entitled to notice cannot be found, the department shall become the agent of that party for the giving of a notice as required in par. (a) and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate that party. Each party shall have an equal voice in the prosecution of the claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department ~~or the division~~. If notice is

given as provided in par. (a), the liability of the tort-feasor shall be determined as to all parties having a right to make claim and, irrespective of whether or not all parties join in prosecuting the claim, the proceeds of the claim shall be divided as follows:

**SECTION 87.** 102.29 (1) (c) of the statutes is amended to read:

102.29 (1) (c) If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of said claim and are represented by counsel, the attorney fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between the attorneys for those parties as directed by the court or by the department ~~or the division~~.

**SECTION 88.** 102.29 (1) (d) of the statutes is amended to read:

102.29 (1) (d) A settlement of a 3rd-party claim shall be void unless the settlement and the distribution of the proceeds of the settlement are approved by the court before whom the action is pending or, if no action is pending, then by a court of record or by the department ~~or the division~~.

**SECTION 89.** 102.30 (7) (a) of the statutes is amended to read:

102.30 (7) (a) The department ~~or the division~~ may order direct reimbursement out of the proceeds payable under this chapter for payments made under a nonindustrial insurance policy covering the same disability and expenses compensable under s. 102.42 when the claimant consents or when it is established that the payments under the nonindustrial insurance policy were improper. No attorney fee is due with respect to that reimbursement.

**SECTION 90.** 102.32 (1m) (intro.) of the statutes is amended to read:

102.32 (1m) (intro.) In any case in which compensation payments for an injury have extended or will extend over 6 months or more after the date of the injury or in any case in which death benefits are payable, any party in interest may, in the discretion of the department ~~or the division~~, be discharged from, or compelled to guarantee, future compensation payments by doing any of the following:

**SECTION 91.** 102.32 (1m) (a) of the statutes is amended to read:

102.32 (1m) (a) Depositing the present value of the total unpaid compensation upon a 5 percent interest discount basis with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department ~~or the division~~.

**SECTION 92.** 102.32 (1m) (c) of the statutes is amended to read:

102.32 (1m) (c) Making payment in gross upon a 5 percent interest discount basis to be approved by the department ~~or the division~~.

**SECTION 93.** 102.32 (1m) (d) of the statutes is amended to read:

102.32 (1m) (d) In cases in which the time for making payments or the amounts of payments cannot be definitely determined, furnishing a bond, or other security, satisfactory to the department ~~or the division~~ for the payment of compensation as may be due or become due. The acceptance of the bond, or other security, and the form and sufficiency of the bond or other security, shall be subject to the approval of the department ~~or the division~~. If the employer or insurer is unable or fails to immediately procure the bond, the employer or insurer, in lieu of procuring the bond, shall deposit with a credit union, savings bank, savings and loan association, bank, or trust company designated by the department ~~or the division~~ the maximum amount that may reasonably become payable in those cases, to be determined by the department ~~or the division~~ at amounts consistent with the extent of the injuries and

the law. The bonds and deposits may be reduced only to satisfy claims and may be withdrawn only after the claims which they are to guarantee are fully satisfied or liquidated under par. (a), (b), or (c).

**SECTION 94.** 102.32 (5) of the statutes is amended to read:

102.32 (5) Any insured employer may, in the discretion of the department ~~or the division~~, compel the insurer to discharge, or to guarantee payment of, the employer's liabilities in any case described in sub. (1m) and by that discharge or guarantee release the employer from liability for compensation in that case, except that if for any reason a bond furnished or deposit made under sub. (1m) (d) does not fully protect the beneficiary of the bond or deposit, the compensation insurer or insured employer, as the case may be, shall still be liable to that beneficiary.

**SECTION 95.** 102.32 (6m) of the statutes is amended to read:

102.32 (6m) The department ~~or the division~~ may direct an advance on a payment of unaccrued compensation for permanent disability or death benefits if the department ~~or the division~~ determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, the department ~~or the division~~ shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at 5 percent. An injured employee or dependent may receive no more than 3 advance payments per calendar year.

**SECTION 96.** 102.32 (7) of the statutes is amended to read:

102.32 (7) No lump sum settlement shall be allowed in any case of permanent total disability upon an estimated life expectancy, except upon consent of all parties, after hearing and finding by the ~~division~~ department that the interests of the injured employee will be conserved by the lump sum settlement.

**SECTION 97.** 102.33 (1) of the statutes is amended to read:

102.33 (1) The department ~~and the division~~ shall print and furnish free to any employer or employee any blank forms that are necessary to facilitate efficient administration of this chapter. The department ~~and the division~~ shall keep any record books or records that are necessary for the proper and efficient administration of this chapter.

**SECTION 98.** 102.33 (2) (a) of the statutes is amended to read:

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

**SECTION 99.** 102.33 (2) (b) (intro.) of the statutes is amended to read:

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

**SECTION 100.** 102.33 (2) (b) 1. of the statutes is amended to read:

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

**SECTION 101.** 102.33 (2) (b) 2. of the statutes is amended to read:

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

**SECTION 102.** 102.33 (2) (b) 4. of the statutes is amended to read:

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

**SECTION 103.** 102.33 (2) (c) of the statutes is amended to read:

102.33 (2) (c) A record maintained by the department, ~~the division,~~ or the commission that contains employer or insurer information obtained from the Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is

confidential and not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin compensation rating bureau authorizes public inspection or copying of that information.

**SECTION 104.** 102.33 (2) (d) 2. of the statutes is amended to read:

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

**SECTION 105.** 102.35 (3) of the statutes is amended to read:

102.35 (3) Any employer who without reasonable cause refuses to rehire an employee who is injured in the course of employment, when suitable employment is available within the employee's physical and mental limitations, upon order of the department ~~or the division,~~ has exclusive liability to pay to the employee, in addition



to other benefits, the wages lost during the period of such refusal, not exceeding one year's wages. In determining the availability of suitable employment the continuance in business of the employer shall be considered and any written rules promulgated by the employer with respect to seniority or the provisions of any collective bargaining agreement with respect to seniority shall govern.

**SECTION 106.** 102.42 (1m) of the statutes is amended to read:

102.42 **(1m)** LIABILITY FOR UNNECESSARY TREATMENT. If an employee who has sustained a compensable injury undertakes in good faith invasive treatment that is generally medically acceptable, but that is unnecessary, the employer shall pay disability indemnity for all disability incurred as a result of that treatment. An employer is not liable for disability indemnity for any disability incurred as a result of any unnecessary treatment undertaken in good faith that is noninvasive or not medically acceptable. This subsection applies to all findings that an employee has sustained a compensable injury, whether the finding results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department ~~or the division~~.

**SECTION 107.** 102.42 (6) of the statutes is amended to read:

102.42 **(6)** TREATMENT REJECTED BY EMPLOYEE. Unless the employee has elected Christian Science treatment in lieu of medical, surgical, dental, or hospital treatment, no compensation shall be payable for the death or disability of an employee, if the death is caused, or insofar as the disability may be aggravated, caused, or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical, surgical, or dental treatment or, in the case of tuberculosis, by refusal or neglect to submit to or follow hospital or medical treatment when found by the department ~~or the division~~ to be necessary. The right

to compensation accruing during a period of refusal or neglect to submit to or follow hospital or medical treatment when found by the department ~~or the division~~ to be necessary in the case of tuberculosis shall be barred, irrespective of whether disability was aggravated, caused, or continued by that refusal or neglect.

**SECTION 108.** 102.42 (8) of the statutes is amended to read:

102.42 (8) AWARD TO STATE EMPLOYEE. Whenever the department ~~or the division~~ makes an award on behalf of a state employee, the department ~~or the division~~ shall file duplicate copies of the award with the subunit of the department of administration responsible for risk management. Upon receipt of the copies of the award, the department of administration shall promptly issue a voucher in payment of the award from the proper appropriation under s. 20.865 (1) (fm), (kr) or (ur), and shall transmit one copy of the voucher and the award to the officer, department, or agency by whom the affected employee is employed.

**SECTION 109.** 102.425 (4m) (a) of the statutes is amended to read:

102.425 (4m) (a) The department has jurisdiction under this subsection, ~~the department and the division have jurisdiction under s. and ss. 102.16 (1m) (c), and the division has jurisdiction under s. 102.17~~ to resolve a dispute between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee who claims benefits under this chapter.

**SECTION 110.** 102.425 (4m) (b) of the statutes is amended to read:

102.425 (4m) (b) An employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee or the department ~~or division~~ under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a

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

**SECTION 111.** 102.43 (5) (b) of the statutes is amended to read:

102.43 (5) (b) Except as provided in s. 102.61 (1g), temporary disability shall also include such period as the employee may be receiving instruction under s. 102.61 (1) or (1m). Temporary disability on account of receiving instruction under s. 102.61 (1) or (1m), and not otherwise resulting from the injury, shall not be in excess of 80 weeks. That 80-week limitation does not apply to temporary disability benefits under this section, the cost of tuition, fees, books, travel, or maintenance under s. 102.61 (1), or the cost of private rehabilitation counseling or rehabilitative training under s. 102.61 (1m) if the department ~~or the division~~ determines that additional training is warranted. The necessity for additional training as authorized by the department ~~or the division~~ for any employee shall be subject to periodic review and reevaluation.

**SECTION 112.** 102.44 (2) of the statutes is amended to read:

102.44 (2) In case of permanent total disability, aggregate indemnity shall be weekly indemnity for the period that the employee may live. Total impairment for industrial use of both eyes, the loss of both arms at or near the shoulder, the loss of both legs at or near the hip, or the loss of one arm at the shoulder and one leg at the hip constitutes permanent total disability. This enumeration is not exclusive, but in other cases the ~~division~~ department shall find the facts.

**SECTION 113.** 102.44 (6) (b) of the statutes is amended to read:

102.44 (6) (b) If during the period set forth in s. 102.17 (4) the employment relationship is terminated by the employer at the time of the injury or by the employee because his or her physical or mental limitations prevent his or her continuing in such employment, or if during that period a wage loss of 15 percent or more occurs, the ~~division~~ department may reopen any award and make a redetermination taking into account loss of earning capacity.

**SECTION 114.** 102.475 (6) of the statutes is amended to read:

102.475 (6) PROOF. In administering this section the department ~~or the division~~ may require reasonable proof of birth, marriage, domestic partnership under ch. 770, relationship, or dependency.

**SECTION 115.** 102.48 (1) of the statutes is amended to read:

102.48 (1) An unestranged surviving parent or parents to whose support the deceased has contributed less than \$500 in the 52 weeks next preceding the injury causing death shall receive a death benefit of \$6,500. If the parents are not living together, the department ~~or the division~~ shall divide this sum in such proportion as the department ~~or division~~ considers to be just, considering their ages and other facts bearing on dependency.

**SECTION 116.** 102.48 (2) of the statutes is amended to read:

102.48 (2) In all other cases the death benefit shall be such sum as the department ~~or the division~~ determines to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employee made any contribution to support. The aggregate benefits in that case shall not exceed twice the average annual

earnings of the deceased or 4 times the contributions of the deceased to the support of his or her dependents during the year immediately preceding the deceased employee's death, whichever amount is the greater. In no event shall the aggregate benefits in that case exceed the amount that would accrue to a person who is solely and wholly dependent. When there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents for their necessary comfort.

**SECTION 117.** 102.48 (3) of the statutes is amended to read:

102.48 (3) Except as otherwise provided, a death benefit, other than burial expenses, shall be paid in weekly installments corresponding in amount to two-thirds of the weekly earnings of the employee, until otherwise ordered by the department ~~or the division~~.

**SECTION 118.** 102.49 (3) of the statutes is amended to read:

102.49 (3) If the employee leaves a spouse or domestic partner under ch. 770 wholly dependent and also a child by a former marriage, domestic partnership under ch. 770, or adoption, likewise wholly dependent, aggregate benefits shall be the same in amount as if the child were the child of the surviving spouse or partner, and the entire benefit shall be apportioned to the dependents in the amounts that the department ~~or the division~~ determines to be just, considering the ages of the dependents and other factors bearing on dependency. The benefit awarded to the surviving spouse or partner shall not exceed 4 times the average annual earnings of the deceased employee.

**SECTION 119.** 102.49 (6) of the statutes is amended to read:

102.49 (6) The department ~~or the division~~ may award the additional benefits payable under this section to the surviving parent of the child, to the child's guardian, or to such other person, bank, or trust company for the child's use as may be found best calculated to conserve the interests of the child. If the child dies while benefits are still payable, there shall be paid the reasonable expense for burial, not exceeding \$1,500.

**SECTION 120.** 102.51 (3) of the statutes is amended to read:

102.51 (3) DIVISION AMONG DEPENDENTS. If there is more than one person wholly or partially dependent on a deceased employee, the death benefit shall be divided between those dependents in such proportion as the department ~~or the division~~ determines to be just, considering their ages and other facts bearing on their dependency.

**SECTION 121.** 102.51 (4) of the statutes is amended to read:

102.51 (4) DEPENDENCY AS OF THE DATE OF DEATH. Questions as to who is a dependent and the extent of his or her dependency shall be determined as of the date of the death of the employee, and the dependent's right to any death benefit becomes fixed at that time, regardless of any subsequent change in conditions. The death benefit shall be directly recoverable by and payable to the dependents entitled to the death benefit or their legal guardians or trustees. In case of the death of a dependent whose right to a death benefit has become fixed, so much of the benefit as is unpaid is payable to the dependent's personal representatives in gross, unless the department ~~or the division~~ determines that the unpaid benefit shall be reassigned under sub. (6) and paid to any other dependent who is physically or mentally incapacitated or a minor. For purposes of this subsection, a child of the employee who

is born after the death of the employee is considered to be a dependent as of the date of death.

**SECTION 122.** 102.51 (6) of the statutes is amended to read:

102.51 (6) DIVISION AMONG DEPENDENTS. Benefits accruing to a minor dependent child may be awarded to either parent in the discretion of the department ~~or the division~~. Notwithstanding sub. (1), the department ~~or the division~~ may reassign the death benefit as between a surviving spouse or a domestic partner under ch. 770 and any children specified in sub. (1) and s. 102.49 in accordance with their respective needs for the death benefit.

**SECTION 123.** 102.55 (3) of the statutes is amended to read:

102.55 (3) For all other injuries to the members of the body or its faculties that are specified in the schedule under s. 102.52 resulting in permanent disability, though the member is not actually severed or the faculty is not totally lost, compensation shall bear such relation to the compensation named in the schedule as the disability bears to the disability named in the schedule. Indemnity in those cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting after the healing period as found by the department ~~or the division~~.

**SECTION 124.** 102.555 (12) (a) of the statutes is amended to read:

102.555 (12) (a) An employer, or the department, ~~or the division~~ is not liable for the expense of any examination or test for hearing loss, any evaluation of such an exam or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effect of hearing loss unless it is determined that compensation for occupational deafness is payable under sub. (3), (4), or (11).

**SECTION 125.** 102.56 (1) of the statutes is amended to read:

102.56 (1) Subject to sub. (2), if an employee is so permanently disfigured as to occasion potential wage loss due to the disfigurement, the department ~~or the division~~ may allow such sum as the department ~~or the division~~ considers just as compensation for the disfigurement, not exceeding the employee's average annual earnings. In determining the potential for wage loss due to the disfigurement and the sum awarded, the department ~~or the division~~ shall take into account the age, education, training, and previous experience and earnings of the employee, the employee's present occupation and earnings, and likelihood of future suitable occupational change. Consideration for disfigurement allowance is confined to those areas of the body that are exposed in the normal course of employment. The department ~~or the division~~ shall also take into account the appearance of the disfigurement, its location, and the likelihood of its exposure in occupations for which the employee is suited.

**SECTION 126.** 102.56 (2) of the statutes is amended to read:

102.56 (2) If an employee who claims compensation under sub. (1) returns to work for the employer who employed the employee at the time of the injury, or is offered employment with that employer, at the same or a higher wage, the department ~~or the division~~ may not allow that compensation unless the employee suffers an actual wage loss due to the disfigurement.

**SECTION 127.** 102.565 (1) of the statutes is amended to read:

102.565 (1) When, as a result of exposure in the course of employment over a period of time to toxic or hazardous substances or conditions, an employee performing work that is subject to this chapter develops any clinically observable abnormality or condition that, on competent medical opinion, predisposes or renders the employee in any manner differentially susceptible to disability to such an extent



that it is inadvisable for the employee to continue employment involving that exposure, is discharged from or ceases to continue the employment, and suffers wage loss by reason of that discharge from, or cessation of, employment, the department ~~or the division~~ may allow such sum as the department ~~or the division~~ considers just as compensation for that wage loss, not exceeding \$13,000. If a nondisabling condition may also be caused by toxic or hazardous exposure not related to employment and if the employee has a history of that exposure, compensation as provided under this section or any other remedy for loss of earning capacity shall not be allowed. If the employee is discharged from employment prior to a finding by the department ~~or the division~~ that it is inadvisable for the employee to continue in that employment and if it is reasonably probable that continued exposure would result in disability, the liability of the employer who discharges the employee is primary, and the liability of the employer's insurer is secondary, under the same procedure and to the same effect as provided by s. 102.62.

**SECTION 128.** 102.565 (2) of the statutes is amended to read:

102.565 (2) Upon application of any employer or employee, the department ~~or the division~~ may direct any employee of the employer or an employee who, in the course of his or her employment, has been exposed to toxic or hazardous substances or conditions to submit to examination by one or more physicians appointed by the department ~~or the division~~ to determine whether the employee has developed any abnormality or condition under sub. (1), and the degree of that abnormality or condition. The cost of the medical examination shall be borne by the person making application. The physician conducting the examination shall submit the results of the examination to the department ~~or the division~~, which shall submit copies of the reports to the employer and employee, who shall have an opportunity to rebut the

reports if a request to submit a rebuttal is made to the department ~~or the division~~ within 10 days after the department ~~or the division~~ mails the report to the parties. The department ~~or the division~~ shall make its findings as to whether it is inadvisable for the employee to continue in his or her employment.

**SECTION 129.** 102.565 (3) of the statutes is amended to read:

102.565 (3) If, after direction by the commission, ~~or~~ any member of the commission, the department, ~~the division~~, or an examiner, an employee refuses to submit to an examination or in any way obstructs the examination, the employee's right to compensation under this section shall be barred.

**SECTION 130.** 102.61 (1g) (c) of the statutes is amended to read:

102.61 (1g) (c) On receiving notice that he or she is eligible to receive vocational rehabilitation services under [29 USC 701](#) to [797a](#), an employee shall provide the employer with a written report from a physician, chiropractor, psychologist, or podiatrist stating the employee's permanent work restrictions. Within 60 days after receiving that report, the employer shall provide to the employee in writing an offer of suitable employment, a statement that the employer has no suitable employment for the employee, or a report from a physician, chiropractor, psychologist, or podiatrist showing that the permanent work restrictions provided by the employee's practitioner are in dispute and documentation showing that the difference in work restrictions would materially affect either the employer's ability to provide suitable employment or a vocational rehabilitation counselor's ability to recommend a rehabilitative training program. If the employer and employee cannot resolve the dispute within 30 days after the employee receives the employer's report and documentation, the employer or employee may request a hearing before the ~~division~~ department to determine the employee's work restrictions. Within 30 days after the

~~division~~ department determines the employee's work restrictions, the employer shall provide to the employee in writing an offer of suitable employment or a statement that the employer has no suitable employment for the employee.

**SECTION 131.** 102.61 (1m) (c) of the statutes is amended to read:

102.61 **(1m)** (c) The employer or insurance carrier shall pay the reasonable cost of any services provided for an employee by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including the cost of tuition, fees, books, maintenance, and travel at the same rate as is provided for state officers and employees under s. 20.916 (8). Notwithstanding that the department ~~or the division~~ may authorize under s. 102.43 (5) (b) a rehabilitative training program that lasts longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to be reasonable.

**SECTION 132.** 102.61 (2) of the statutes is amended to read:

102.61 **(2)** The ~~division~~ department, the commission, and the courts shall determine the rights and liabilities of the parties under this section in like manner and with like effect as the ~~division~~ department, the commission, and the courts determine other issues under this chapter. A determination under this subsection may include a determination based on the evidence regarding the cost or scope of the services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

**SECTION 133.** 102.62 of the statutes is amended to read:

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

**SECTION 134.** 102.64 (1) of the statutes is amended to read:

102.64 (1) Upon request of the department of administration, a representative of the department of justice shall represent the state in cases involving payment into or out of the state treasury under s. 20.865 (1) (fm), (kr), or (ur) or 102.29. The department of justice, after giving notice to the department of administration, may compromise the amount of those payments but such compromises shall be subject to review by the department ~~or the division~~. If the spouse or domestic partner under ch. 770 of the deceased employee compromises his or her claim for a primary death benefit, the claim of the children of the employee under s. 102.49 shall be

compromised on the same proportional basis, subject to approval by the department ~~or the division~~. If the persons entitled to compensation on the basis of total dependency under s. 102.51 (1) compromise their claim, payments under s. 102.49 (5) (a) shall be compromised on the same proportional basis.

**SECTION 135.** 102.64 (2) of the statutes is amended to read:

102.64 (2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. Except as provided in s. 102.65 (3), the department of justice shall represent the interests of the state in proceedings under s. 102.44 (1), 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise claims in those proceedings, but the compromises are subject to review by the department ~~or the division~~. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

**SECTION 136.** 102.65 (3) of the statutes is amended to read:

102.65 (3) The department of workforce development may retain the department of administration to process, investigate, and pay claims under ss. 102.44 (1), 102.49, 102.59, and 102.66. If retained by the department of workforce development, the department of administration may compromise a claim processed by that department, but a compromise made by that department is subject to review by the department of workforce development ~~or the division~~. The department of workforce development shall pay for the services retained under this subsection from the appropriation account under s. 20.445 (1) (t).

**SECTION 137.** 102.66 (1) of the statutes is amended to read:

102.66 (1) Subject to any certificate filed under s. 102.65 (4), if there is an otherwise meritorious claim for occupational disease, or for a traumatic injury described in s. 102.17 (4) in which the date of injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006, and if the claim is barred solely by the statute of limitations under s. 102.17 (4), the department ~~or the division~~ may, in lieu of worker's compensation benefits, direct payment from the work injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

**SECTION 138.** 102.75 (1) of the statutes is amended to read:

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

calendar year, other than for increased, double, or treble compensation, bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers and exempt employers, other than for increased, double, or treble compensation. The council on worker's compensation, ~~the division,~~ and the commission shall annually certify any costs and expenses for worker's compensation activities to the department at such time as the secretary requires.

**SECTION 139.** 227.43 (1) (bm) of the statutes is repealed.

**SECTION 140.** 227.43 (2) (am) of the statutes is repealed.

**SECTION 141.** 227.43 (3) (bm) of the statutes is repealed.

**SECTION 142.** 227.43 (4) (bm) of the statutes is repealed.

**SECTION 9150. Nonstatutory provisions; Workforce Development.**

(1) TRANSFER OF WORKER'S COMPENSATION ADJUDICATORY FUNCTIONS.

(a) *Assets and liabilities.* On the effective date of this paragraph, the assets and liabilities of the division of hearings and appeals in the department of administration that are primarily related to worker's compensation matters, as determined by the secretary of administration, shall become the assets and liabilities of the department of workforce development.

(b) *Positions and employees.* On the effective date of this paragraph, all positions and all incumbent employees holding those positions in the division of hearings and appeals in the department of administration performing duties that are primarily related to worker's compensation matters, as determined by the secretary of administration, are transferred to the department of workforce development.

(c) *Employee status.* Employees transferred under par. (b) have all the rights and the same status under ch. 230 in the department of workforce development that

they enjoyed in the division of hearings and appeals in the department of administration immediately before the transfer. Notwithstanding s. 230.28 (4), no employee so transferred who has attained permanent status in class is required to serve a probationary period.

(d) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the the division of hearings and appeals in the department of administration that is primarily related to worker's compensation matters, as determined by the secretary of administration, is transferred to the department of workforce development.

(e) *Pending matters.* Any worker's compensation matter pending with the division of hearings and appeals in the department of administration on the effective date of this paragraph, as determined by the secretary of administration, is transferred to the department of workforce development. All materials submitted to or actions taken by the division of hearings and appeals in the department of administration with respect to the pending matter are considered as having been submitted to or taken by the department of workforce development.

(f) *Contracts.* All contracts entered into by the division of hearings and appeals in the department of administration in effect on the effective date of this paragraph that are primarily related to worker's compensation matters, as determined by the secretary of administration, remain in effect and are transferred to the department of workforce development. The department of workforce development shall carry out any obligations under those contracts unless modified or rescinded by the department of workforce development to the extent allowed under the contract.

(g) *Rules and orders.* All rules promulgated by the division of hearings and appeals in the department of administration in effect on the effective date of this



paragraph that are primarily related to worker's compensation matters, as determined by the secretary of administration, remain in effect until their specified expiration dates or until amended or repealed by the department of workforce development. All orders issued by the division of hearings and appeals in the department of administration in effect on the effective date of this paragraph that are primarily related to worker's compensation matters, as determined by the secretary of administration, remain in effect until their specified expiration dates or until modified or rescinded by the department of workforce development.

**SECTION 9450. Effective dates; Workforce Development.**

(1) TRANSFER OF WORKER'S COMPENSATION FUNCTIONS. The treatment of ss. 40.65 (2) (a) and (b) 3. and 4., 102.01 (2) (ad), (ar), and (dm), 102.04 (2r) (b), 102.07 (8) (c), 102.11 (1) (am) 1., 102.12, 102.13 (1) (c), (d) 2., and 3., and (f), (2) (a), (3), (4), and (5), 102.14 (title), (1), and (2), 102.15 (1) and (2), 102.16 (1), (1m) (a), (b), and (c), (2) (a) and (b), (2m) (a) and (b), and (4), 102.17 (1) (a) 1., 2., 3., and 4., (b), (c) 1., (d) 1., 2., 3., and 4., (e), (f) 1., (g), and (h), (2), (2m), (2s), (7) (b) and (c), and (8), 102.175 (2) and (3) (c), 102.18 (1) (b) 1., 2., and 3., (bg) 1., 2., and 3., (bp), (bw), (c), and (e), (2), (3), (4) (c) 3. and (d), (5), and (6), 102.195, 102.22 (1) and (2), 102.23 (2), (3), and (5), 102.24 (2), 102.25 (1), 102.26 (2), (3) (b) 1. and 3., and (4), 102.27 (2) (b), 102.28 (3) (c) and (4) (c), 102.29 (1) (b) (intro.), (c), and (d), 102.30 (7) (a), 102.32 (1m) (intro.), (a), and (c), and (d), (5), (6m), and (7), 102.33 (1) and (2) (a), (b) (intro.), 1., 2., and 4., (c), and (d) 2., 102.35 (3), 102.42 (1m), (6), and (8), 102.425 (4m) (a) and (b), 102.43 (5) (b), 102.44 (2) and (6) (b), 102.475 (6), 102.48 (1), (2), and (3), 102.49 (3) and (6), 102.51 (3), (4), and (6), 102.55 (3), 102.555 (12) (a), 102.56 (1) and (2), 102.565 (1), (2), and (3), 102.61 (1g) (c), (1m) (c), and (2), 102.62, 102.64 (1) and (2), 102.65 (3), 102.66 (1),

102.75 (1), and 227.43 (1) (bm), (2) (am), (3) (bm), and (4) (bm) and SECTION 9150 (1) of this act take effect on January 1, 2020.

**(END)**