



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on SB 781/AB 884

February 14, 2018

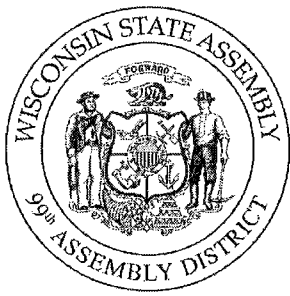
Good morning Chairman Nass and members of the Senate Committee on Labor and regulatory Reform. Thank you for holding a public hearing on SB 781 in the closing days of the session. SB 781 is a bill to address an unexpected change in worker's compensation law brought about by a recent court case called Rivera v. West Bend Mutual.

For a bit of background, the worker's compensation system was created at the beginning of the 20th century as a compromise to ensure relatively quick and low hassle medical care for workers injured on the jobsite. In exchange, employees accepted that workers compensation was the sole and exclusive remedy for any harm they may have incurred.

The Rivera case held that a temporary worker, because of ambiguity in the statutes, was not compelled to be part of the worker's compensation system and could elect either that remedy or to sue. In short, there is a temporary worker exception to the exclusive remedy otherwise outlined in law. This causes significant uncertainty for everyone in the worker's compensation system, including companies like West Bend Mutual, which is the largest employer in my district.

Beyond uncertainty, it is good policy for this bill to pass to make sure the "exclusive remedy" doctrine is preserved. This principle of "exclusive remedy" is essential to efficient workings of the workers compensation system because employers have the incentive to quickly provide medical care and rehabilitation to return an injured worker to productive employment. Those incentives would get muddled if an employer had to worry that expeditious aid to an employee might be taken as an admission of wrongdoing in a lawsuit. Treating an injured employee, not preparing for potential litigation, should be the priority when an injury occurs.

SB 781 clarifies and preserves the doctrine of "exclusive remedy" and is supported by both management and labor. I respectfully request your support of SB 781. Thank you.



CINDI DUCHOW

STATE REPRESENTATIVE • 99th ASSEMBLY DISTRICT

(608) 266-3007
Toll-Free (888) 534-0099

Rep.Duchow@legis.wi.gov
P.O. Box 8952
Madison, WI 53708-8952

Senate Committee on Labor and Regulatory Reform
Public Hearing, SB 781
February 14, 2018

Thank you Chairman and members of the Committee for this opportunity to testify on SB 781, relating to actions against third parties by injured employees under the worker's compensation law.

Over 100 years ago, the "grand bargain" for workers compensation was established between employers and labor. Workers who were injured on the job gave up their right to sue employers in civil court for workplace injuries and instead would go through the workers compensation procedures. In return, injured workers received statutory benefits in a no-fault system, simply meaning that if you were injured on the job, you would be covered under workers compensation. In Wisconsin, this deal was signed into law on May 3, 1911.

This law has worked well for over a hundred years now, until recently when District III of the Wisconsin Court of Appeals held that temporary workers who are injured while working for their host employers have the right to elect either to claim workers' compensation benefits or to sue their host employers in court. After a careful look at state statute, it appears that a fix is needed to make clear that temporary workers are held to the same standards as permanent workers. SB 781 does exactly that.

The court's decision has granted a greater right for temporary employees in the event that they are injured at work. This is not only unfair, but it will actually hurt our temporary workforce. You will hear from some attorneys today who are actually cautioning employers about hiring temporary workers because of the recent court ruling. We have over 60,000 temporary workers in this state. If employers are being cautious about hiring these workers, you can see how this could be a problem.

It is my hope that the Committee will support SB 781 in order to quickly remedy this situation.

Thank you again for the opportunity to testify.

Representative Cindi Duchow

WMC

WISCONSIN MANUFACTURERS & COMMERCE

TO: Members, Senate Committee on Labor and Regulatory Reform

FROM: Chris Reader, WMC Director of Health & Human Resources Policy

DATE: February 14, 2018

RE: Support for Senate Bill 781

Chairman Nass and members of the Senate Labor and Regulatory Reform Committee, thank you for holding a hearing on this important legislation in such a timely manner, and for providing an opportunity to convey our support for Senate Bill 781. Wisconsin Manufacturers & Commerce (WMC) also extends our sincere thanks to Senators Stroebel and Cowles and Representative Duchow for authoring this bill to fix an urgent problem in our worker's compensation system.

WMC is Wisconsin's largest general business association, with roughly 3,800 members from all sectors of our economy. Our membership consists of small, medium and large employers from all corners of our state. Since we were founded in 1911, WMC's mission has focused on making Wisconsin the most competitive state in the nation to do business. Having fair, consistent and predictable worker's compensation laws is an important factor in the competitiveness of Wisconsin businesses.

For nearly 107 years, Wisconsin has had a worker's compensation system that achieves two very important policy goals. The first goal ensures workers will receive medical treatment and compensation for workplace injuries, regardless of fault, by requiring employers to provide insurance coverage for their employees. The second goal provides employers with immunity from tort lawsuits, regardless of fault, for work-related injuries. Both of these concepts provide the foundation for the "grand bargain" that has worked to the mutual benefit of employers and employees for more than a century.

Unfortunately, a recent decision by the Wisconsin Court of Appeals disrupts this longstanding balance by allowing certain employees to sue businesses for work related injuries. The case in question is Rivera v. West Bend Mutual, and allows an injured temporary employee to make a choice between filing a worker's compensation claim, or suing the temporary employer for damages in a tort lawsuit.

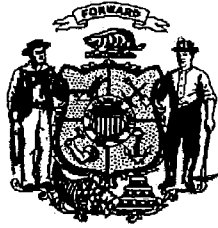
That was never the intent of Wisconsin's worker's compensation law. In exchange for providing medical treatment and compensation for workplace injuries, regardless of fault, employers were guaranteed that worker's compensation claims would be the "exclusive remedy" for injured workers to seek compensation. The appellate court decision makes clear that Wis. Stat. §102.29(6) must be clarified to maintain the Legislature's original intent to limit worker's compensation claims as the exclusive remedy for work-related injuries.

Senate Bill 781 makes simply clarifications to the statutes that will recapture the Legislature's original intent, and restore the elements of the "grand bargain" that has served our state so well for so many years.

I also serve as a member of the Worker's Compensation Advisory Council. The Council has reviewed the Assembly companion bill, AB 884, and has voted unanimously in support of the bill.

We thank you for your thoughtful consideration of this important legislation, and respectfully ask that you support its passage.

Wisconsin Worker's Compensation Advisory Council
P.O. Box 7901
Madison, WI 53707-7901
Telephone: (608) 266-1340
Fax: (608) 267-0394



Scott Walker, Governor
Raymond Allen, Secretary

February 8, 2018

The Honorable Stephen L. Nass
Wisconsin Senate
Chair, Senate Committee on Labor and Regulatory Reform
Room 10 South
State Capitol
PO Box 7882
Madison, WI 53707-7882

(SB 781)

Dear Senator Nass:

On February 5, 2018, the WCAC convened a meeting to discuss AB-884 relating to actions against certain third parties by injured employees under the worker's compensation law. After careful review and consideration, the WCAC unanimously passed a motion to support AB-884 to clarify the legislative intent to extend exclusive remedy protection to worksite employers.

As you know, the Wisconsin Worker's Compensation Advisory Council (WCAC) was created by the Legislature to advise both the Legislature and the Department of Workforce Development on policy matters concerning worker's compensation. Through this process the state has been able to maintain stability for all parties involved while also remaining nimble to the changing dynamics of the workforce since its inception in 1911.

After the WCAC completed deliberations on its agreed bill for this biennium the Wisconsin Court of Appeals issued a decision in Estate of Rivera v. West Bend Mutual Ins. Co., that resulted in an outcome never intended by the Legislature. The decision in this case permits an employee of a temporary help employer to choose to either claim worker's compensation benefits from the temporary help employer or sue the worksite employer in court.

The Legislature addressed the situation created by the Court of Appeals decision with the introduction of Assembly Bill 884. This bill prohibits an injured employee from bringing an action in tort against specified third parties that are worksite employers regardless if the employee makes a claim for worker's compensation benefits. AB-884 reinforces the exclusive remedy doctrine by providing temporary help employees, loaned and leased employees the right to recover worker's compensation benefits from their employer for work-related injuries.

The WCAC fully supports the passage and enactment into law of AB-884.

Sincerely,

Frank Lasee, Chair, Worker's Compensation Advisory Council
Administrator, Wisconsin Worker's Compensation Division