



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5800/1
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2021 SENATE BILL 898

February 1, 2022 - Introduced by COMMITTEE ON LABOR AND REGULATORY REFORM.
Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT to repeal** 102.11 (1) (am), 102.11 (1) (f) 1. and 102.39 (title); **to renumber**
2 102.05 (3), 102.15 (1) and 102.16 (1) (b); **to renumber and amend** 102.11 (1)
3 (f) 2. and 102.39; **to amend** 46.275 (4m), 46.277 (3r), 46.281 (1k), 46.2897 (3),
4 46.995 (3), 73.0301 (1) (d) 3m., 73.0301 (1) (e), 102.04 (1) (b) 1., 102.04 (1) (b) 2.,
5 102.05 (1), 102.05 (2), 102.11 (1) (intro.), 102.13 (1) (b) (intro.), 102.15 (title),
6 102.17 (1) (c), 102.17 (1) (cg), 102.17 (1) (cr), 102.18 (2) (a), 102.18 (3), 102.43 (6)
7 (b), 102.61 (1g) (a) 2., 102.80 (1) (d), 102.81 (4) (b) (intro.), 102.81 (4) (b) 2.,
8 102.81 (5), 102.82 (1), 108.227 (1) (f), 108.227 (1m) (intro.), 108.227 (3) (a) 3.,
9 108.227 (5) (a), 108.227 (5) (b) 1. and 108.227 (5) (b) 2.; **to repeal and recreate**
10 102.17 (1) (ct); and **to create** 73.0301 (1) (d) 15., 102.11 (1) (ap), 102.13 (1) (b)
11 6., 102.16 (1) (b) 2., 102.33 (2) (b) 7., 102.81 (4) (c) and 108.227 (1) (e) 16. of the

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1 statutes; **relating to:** various changes to the worker's compensation law and
2 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development and the Division of Hearings and Appeals in the Department of Administration (DHA).

CLAIMS AND PAYMENTS***Maximum weekly compensation for permanent partial disability***

The bill increases the maximum weekly compensation rate for permanent partial disability from \$362 to \$415 for injuries occurring before January 1, 2023, and to \$430 for injuries occurring on or after that date.

Part-time employment and wage expansion

Generally, under current law, when calculating average weekly earnings for purposes of worker's compensation benefit amounts, the the normal full-time workweek is used, and it is generally presumed that the normal full-time workweek is not less than 40 hours per week. Current law provides, however, that if an employee is a member of a regularly-scheduled class of part-time employees, average weekly earnings are determined using the hours and days established by the employer for that class, but not less than 24 hours. Current law also provides that the weekly temporary disability benefits for a part-time employee who restricts his or her availability in the labor market to part-time work and is not employed elsewhere may not exceed the average weekly wages of the part-time employment.

The bill replaces the provision in current law regarding employees who are members of a regularly-scheduled class of part-time employees with a provision that applies to employees who work less than full time. Under this provision, an injured employee's average weekly wage is calculated as the greater of 1) the hourly rate at the time of injury multiplied by the average number of hours worked per week for the 52 calendar weeks before his or her injury or 2) the actual average weekly earnings of the employee for the 52 calendar weeks before his or her injury. Weeks not worked are not counted under either calculation.

Under the bill, however, earnings are expanded to be based on full-time work if the employee shows that he or she is employed by another employer, by providing evidence of taxable earnings or evidence that the employee worked less than full time for a period of less than 12 months. An employer may rebut the employee's evidence of eligibility for temporary disability benefits based on full-time work by providing evidence that the employee chose to work less than full time.

Observers in examinations

The bill allows an employee to have an observer, chosen and provided by the employee, present during a medical examination that is requested by an employer or insurer following a claim for worker's compensation.

SENATE BILL 898***Payment of proceeds of claims against third parties***

Current law provides that when an employee sustains a work injury or dies as a result of a work injury and the employee, the employee's personal representative, or another person entitled to bring action maintains an action in tort against a third party for the injury or death, the proceeds of the claim are to be divided pursuant to a formula detailed under current law. Under that formula, after deducting the reasonable cost of collection, one-third of the remainder is in all cases to be paid to the injured employee, personal representative, or other person entitled. Current law also provides that if an injured employee or dependent receives compensation from the employee's employer or a third party in such an action and the employee received payments from DWD due to the employer being an uninsured employer, the employee or dependent must reimburse DWD for the full amount of the payments up to the amount recovered from the third party.

The bill modifies the latter provision such that if an injured employee or dependent receives compensation from the employee's employer or a third party in such an action and the employee received payments from DWD due to the employer being an uninsured employer, the employee or dependent must reimburse DWD in accordance with the formula described above.

COVERAGE; LIABILITY***Employers subject to worker's compensation law; withdrawal***

Current law generally provides that, with certain exceptions, every person who usually employs three or more employees for services performed in this state is subject to the worker's compensation law and provides that a covered employer who has not usually employed three employees in every calendar quarter in a calendar year may file a notice with DWD to withdraw from coverage under the law. The bill provides that any person who *at any time* employs three or more employees for services performed in this state is subject to the worker's compensation law and specifies that a person becomes subject to that law on the day on which the person employs three or more employees for services performed in this state. The bill provides that an employer who has not employed three employees in every calendar quarter in a calendar year may file a notice with DWD to withdraw from coverage under the law.

Current law also provides that an employer who has had no employee at any time within a continuous period of two years shall be deemed to have effected withdrawal, which shall be effective on the last day of such period. The bill clarifies that this provision applies to farm employers.

Long-term care providers; clarification

The bill makes clarifications regarding individuals who perform services for persons receiving long-term care benefits under certain long-term care programs and who do not otherwise have worker's compensation coverage for those services to confirm that they are considered to be employees, for worker's compensation purposes, of the entities providing financial management services for the persons receiving the benefits.

SENATE BILL 898**PROGRAM ADMINISTRATION*****Confidential records; disclosure to certain agencies***

Under current law, subject to a number of exceptions, certain records of DWD, DHA, or the Labor and Industry Review Commission that reveal information about injured employees are confidential and not subject to disclosure under the public records law or a subpoena. The bill creates another exception for records requested by the Department of Health Services, a county department of social services, or a county department of human services if the request is limited to the name and address of the employee who is the subject of the record, the name and address of the employee's employer, and any financial information about that employee contained in the record.

Other changes

The bill makes various other changes regarding the administration of the worker's compensation law, including:

1. Granting explicit rule-making authority to DWD to carry out the worker's compensation law.
2. Expressly providing that DWD may conduct alternative dispute resolution activities for certain cases.
3. Transferring from DWD to DHA the authority to grant licenses for non-attorneys to appear in worker's compensation cases.

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

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

1 **SECTION 1.** 46.275 (4m) of the statutes is amended to read:

2 46.275 (4m) WORKER'S COMPENSATION COVERAGE. An individual who is
3 performing services for a person receiving long-term care benefits under this section
4 on a self-directed basis and who does not otherwise have worker's compensation
5 coverage for those services is considered, for purposes of worker's compensation
6 coverage, to be an employee of the entity that is providing financial management
7 services for that person.

8 **SECTION 2.** 46.277 (3r) of the statutes is amended to read:

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1 46.277 **(3r)** WORKER'S COMPENSATION COVERAGE. An individual who is
2 performing services for a person receiving long-term care benefits under this section
3 on a self-directed basis and who does not otherwise have worker's compensation
4 coverage for those services is considered, for purposes of worker's compensation
5 coverage, to be an employee of the entity that is providing financial management
6 services for that person.

7 **SECTION 3.** 46.281 (1k) of the statutes is amended to read:

8 46.281 **(1k)** WORKER'S COMPENSATION COVERAGE. An individual who is
9 performing services for a person receiving the Family Care benefit, or benefits under
10 Family Care Partnership, on a self-directed basis and who does not otherwise have
11 worker's compensation coverage for those services is considered, for purposes of
12 worker's compensation coverage, to be an employee of the entity that is providing
13 financial management services for that person.

14 **SECTION 4.** 46.2897 (3) of the statutes is amended to read:

15 46.2897 **(3)** WORKER'S COMPENSATION COVERAGE. An individual who is
16 performing services for a person participating in the self-directed services option
17 and who does not otherwise have worker's compensation coverage for those services
18 is considered, for purposes of worker's compensation coverage, to be an employee of
19 the entity that is providing financial management services for that person.

20 **SECTION 5.** 46.995 (3) of the statutes is amended to read:

21 46.995 **(3)** An individual who is performing services for a person receiving
22 long-term care benefits under any children's long-term support waiver program on
23 a self-directed basis and who does not otherwise have worker's compensation
24 coverage for those services is considered, for purposes of worker's compensation

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1 coverage, to be an employee of the entity that is providing financial management
2 services for that person.

3 **SECTION 6.** 73.0301 (1) (d) 3m. of the statutes is amended to read:

4 73.0301 (1) (d) 3m. A license or certificate issued by the department of
5 workforce development under s. ~~102.17 (1) (e)~~, 103.275 (2) (b), 103.34 (3) (c), 103.91
6 (1), 103.92 (3), 104.07 (1) or (2), or 105.13 (1).

7 **SECTION 7.** 73.0301 (1) (d) 15. of the statutes is created to read:

8 73.0301 (1) (d) 15. A license issued by the division of hearings and appeals
9 under s. 102.17 (1) (c).

10 **SECTION 8.** 73.0301 (1) (e) of the statutes is amended to read:

11 73.0301 (1) (e) “Licensing department” means the department of
12 administration; the division of hearings and appeals; the department of agriculture,
13 trade and consumer protection; the board of commissioners of public lands; the
14 department of children and families; the ethics commission; the department of
15 financial institutions; the department of health services; the department of natural
16 resources; the department of public instruction; the department of safety and
17 professional services; the department of workforce development; the office of the
18 commissioner of insurance; or the department of transportation.

19 **SECTION 9.** 102.04 (1) (b) 1. of the statutes is amended to read:

20 102.04 (1) (b) 1. Every person who usually at any time employs 3 or more
21 employees for services performed in this state, whether in one or more trades,
22 businesses, professions, or occupations, and whether in one or more locations. A
23 person who employs 3 or more employees for services performed in this state becomes
24 subject to this chapter on the day on which the person employs 3 or more such
25 employees.

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1 **SECTION 10.** 102.04 (1) (b) 2. of the statutes is amended to read:

2 102.04 (1) (b) 2. Every person who usually employs less ~~fewer~~ than 3
3 employees, provided the person has paid wages of \$500 or more in any calendar
4 quarter for services performed in this state. Such ~~employer~~ a person shall become
5 subject to this chapter on the 10th day of the month next succeeding such quarter.

6 **SECTION 11.** 102.05 (1) of the statutes is amended to read:

7 102.05 (1) WITHDRAWAL. (a) An employer, including a person engaged in
8 farming who has become subject to this chapter, who has had no employee at any time
9 within a continuous period of 2 years shall be deemed to have effected withdrawal,
10 which shall be effective on the last day of ~~such~~ that 2-year period. An

11 (b) 1. If an employer who has not usually, in every calendar quarter in a
12 calendar year, employed 3 employees and who has not paid wages of at least \$500 for
13 employment in this state in every calendar quarter in a calendar year, the employer
14 may file a withdrawal notice with the department, which withdrawal shall take
15 effect 30 days after the date of such filing or at such later date as is specified in the
16 notice. Such employer may again become subject to this chapter as provided by s.
17 102.04 (1) (b) and (e). This subdivision shall not apply to farmers.

18 (c) If an employer who is subject to this chapter only because the employer
19 elected to become subject to this chapter under sub. (2) cancels or terminates his or
20 her contract for the insurance of compensation under this chapter, that employer is
21 deemed to have effected withdrawal, which shall be effective on the day after the
22 contract is canceled or terminated.

23 **SECTION 12.** 102.05 (2) of the statutes is amended to read:

24 102.05 (2) ELECTION. Any employer who ~~shall enter~~ enters into a contract for
25 the insurance of compensation, or against liability therefor, shall be deemed thereby

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1 to have elected to accept the provisions of this chapter, and such election shall include
2 farm laborers, domestic servants and employees not in the course of a trade,
3 business, profession or occupation of the employer if such intent is shown by the
4 terms of the policy. Such election shall remain in force until withdrawn in the
5 manner provided in sub. (1) (c).

6 **SECTION 13.** 102.05 (3) of the statutes is renumbered 102.05 (1) (b) 2.

7 **SECTION 14.** 102.11 (1) (intro.) of the statutes is amended to read:

8 102.11 (1) (intro.) The average weekly earnings for temporary disability,
9 permanent total disability, or death benefits for injury in each calendar year on or
10 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that
11 results in a maximum compensation rate of 110 percent of the state's average weekly
12 earnings as determined under s. 108.05 as of June 30 of the previous year. The
13 average weekly earnings for permanent partial disability shall be not less than \$30
14 and, for permanent partial disability for injuries occurring on or after ~~March 2, 2016,~~
15 ~~and before January 1, 2017, not more than \$513, resulting in a maximum~~
16 ~~compensation rate of \$342, and, for permanent partial disability for injuries~~
17 ~~occurring on or after January 1, 2017, and before the effective date of this subsection~~
18 ~~.... [LRB inserts date], not more than \$543, resulting in a maximum compensation~~
19 ~~rate of \$362; for permanent partial disability for injuries occurring on or after the~~
20 ~~effective date of this subsection [LRB inserts date], and before January 1, 2023,~~
21 ~~not more than \$622.50, resulting in a maximum compensation rate of \$415; and for~~
22 ~~permanent partial disability for injuries occurring on or after January 1, 2023, not~~
23 ~~more than \$645, resulting in a maximum compensation rate of \$430. Between such~~
24 limits the average weekly earnings shall be determined as follows:

25 **SECTION 15.** 102.11 (1) (am) of the statutes is repealed.

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1 **SECTION 16.** 102.11 (1) (ap) of the statutes is created to read:

2 102.11 (1) (ap) 1. Except as provided in subd. 2., in the case of an employee who
3 works less than full time, average weekly earnings shall be calculated by whichever
4 of the following is greater:

5 a. The actual average weekly earnings of the employee for the 52 calendar
6 weeks before his or her injury, except that calendar weeks within which no work was
7 performed shall not be considered.

8 b. The employee's hourly earnings on the date of injury multiplied by the
9 average number of hours worked in that employment for the 52 calendar weeks
10 before his or her injury, except that calendar weeks within which no work was
11 performed shall not be considered.

12 2. An employee may, subject to subd. 3., demonstrate that he or she is eligible
13 for temporary disability benefits based on full-time work rather than part-time
14 work as provided in subd. 1. a. by providing evidence of qualifying taxable earnings
15 with an employer other than the employer liable for the employee's injury or
16 demonstrating that the employee has worked less than full time for less than 12
17 months before the date of the employee's injury. If the employee so demonstrates,
18 the employee's average weekly wage shall be calculated using the normal full-time
19 workweek established by the employer under par. (a).

20 3. An employer may rebut the employee's evidence of eligibility for temporary
21 disability benefits based on full-time work under subd. 2. by providing evidence that
22 the employee chose to work less than full time. Such evidence of a choice to restrict
23 employment to less than full time may include a written statement signed by the
24 employee or an employment application that indicates an hour or shift preference.

25 **SECTION 17.** 102.11 (1) (f) 1. of the statutes is repealed.

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1 **SECTION 18.** 102.11 (1) (f) 2. of the statutes is renumbered 102.11 (1) (f) and
2 amended to read:

3 102.11 (1) (f) The weekly temporary disability benefits for a part-time
4 employee who restricts his or her availability in the labor market to part-time work
5 and is not employed elsewhere, or who has worked less than full time for 12 months
6 or longer before the employee's injury, may not exceed the average weekly wages of
7 the part-time employment.

8 **SECTION 19.** 102.13 (1) (b) (intro.) of the statutes is amended to read:

9 102.13 (1) (b) (intro.) An employer or insurer who requests that an employee
10 submit to reasonable examination under par. (a) or (am) shall tender to the employee,
11 before the examination, all necessary expenses including transportation expenses.
12 The employee is entitled to have a physician, chiropractor, psychologist, dentist,
13 physician assistant, advanced practice nurse prescriber, or podiatrist provided by
14 himself or herself present at the examination and to receive a copy of all reports of
15 the examination that are prepared by the examining physician, chiropractor,
16 psychologist, podiatrist, dentist, physician assistant, advanced practice nurse
17 prescriber, or vocational expert immediately upon receipt of those reports by the
18 employer or worker's compensation insurer. The employee is entitled to have one
19 observer provided by himself or herself present at the examination. The employee
20 is also entitled to have a translator provided by himself or herself present at the
21 examination if the employee has difficulty speaking or understanding the English
22 language. The employer's or insurer's written request for examination shall notify
23 the employee of all of the following:

24 **SECTION 20.** 102.13 (1) (b) 6. of the statutes is created to read:

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1 102.13 (1) (b) 6. The employee's right to have one observer provided by himself
2 or herself present at the examination.

3 **SECTION 21.** 102.15 (title) of the statutes is amended to read:

4 **102.15 (title) Rules of procedure; transcripts.**

5 **SECTION 22.** 102.15 (1) of the statutes is renumbered 102.15 (1) (b).

6 **SECTION 23.** 102.16 (1) (b) of the statutes is renumbered 102.16 (1) (b) 1.

7 **SECTION 24.** 102.16 (1) (b) 2. of the statutes is created to read:

8 102.16 (1) (b) 2. The department may conduct alternative dispute resolution
9 activities for a case involving an employee who is not represented by an attorney with
10 respect to which no application has been filed under s. 102.17 (1) (a) 1. or with respect
11 to which an application has been filed, regardless of whether the application is ready
12 to be scheduled for a hearing.

13 **SECTION 25.** 102.17 (1) (c) of the statutes is amended to read:

14 102.17 (1) (c) 1. Any party shall have the right to be present at any hearing,
15 in person or by attorney or any other agent, and to present such testimony as may
16 be pertinent to the controversy before the division. No person, firm, or corporation,
17 other than an attorney at law who is licensed to practice law in the state, may appear
18 on behalf of any party in interest before the division or any member or employee of
19 the division assigned to conduct any hearing, investigation, or inquiry relative to a
20 claim for compensation or benefits under this chapter, unless the person is 18 years
21 of age or older, does not have an arrest or conviction record, subject to ss. 111.321,
22 111.322 and 111.335, is otherwise qualified, and has obtained from the ~~department~~
23 division a license with authorization to appear in matters or proceedings before the
24 division. Except as provided under pars. (cm), (cr), and (ct), the license shall be
25 issued by the ~~department~~ division under rules promulgated by the ~~department~~

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1 division. The ~~department~~ division shall maintain in its office a current list of persons
2 to whom licenses have been issued.

3 2. Any license issued under subd. 1. may be suspended or revoked by the
4 ~~department~~ division for fraud or serious misconduct on the part of an agent, may be
5 denied, suspended, nonrenewed, or otherwise withheld by the ~~department~~ division
6 for failure to pay court-ordered payments as provided in par. (cm) on the part of an
7 agent, and may be denied or revoked if the department of revenue certifies under s.
8 73.0301 that the applicant or licensee is liable for delinquent taxes or if the
9 ~~department determines~~ of workforce development certifies under ~~par. (et)~~ s. 108.227
10 that the applicant or licensee is liable for delinquent unemployment insurance
11 contributions. Before suspending or revoking the license of the agent on the grounds
12 of fraud or misconduct, the ~~department~~ division shall give notice in writing to the
13 agent of the charges of fraud or misconduct and shall give the agent full opportunity
14 to be heard in relation to those charges. In denying, suspending, restricting, refusing
15 to renew, or otherwise withholding a license for failure to pay court-ordered
16 payments as provided in par. (cm), the ~~department~~ division shall follow the
17 procedure provided in a memorandum of understanding entered into under s.
18 49.857.

19 3. Unless otherwise suspended or revoked, a license issued under subd. 1. shall
20 be in force from the date of issuance until the June 30 following the date of issuance
21 and may be periodically renewed by the ~~department from time to time~~ division, but
22 each renewed license shall expire on the June 30 following the issuance of the
23 renewed license.

24 **SECTION 26.** 102.17 (1) (cg) of the statutes is amended to read:

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1 102.17 (1) (cg) 1. Except as provided in subd. 2m., the ~~department~~ division shall
2 require each applicant for a license under par. (c) who is an individual to provide the
3 ~~department~~ division with the applicant's social security number, and shall require
4 each applicant for a license under par. (c) who is not an individual to provide the
5 ~~department~~ division with the applicant's federal employer identification number,
6 when initially applying for or applying to renew the license.

7 2. If an applicant who is an individual fails to provide the applicant's social
8 security number to the ~~department~~ division or if an applicant who is not an
9 individual fails to provide the applicant's federal employer identification number to
10 the ~~department~~ division, the ~~department~~ division may not issue or renew a license
11 under par. (c) to or for the applicant unless the applicant is an individual who does
12 not have a social security number and the applicant submits a statement made or
13 subscribed under oath or affirmation as required under subd. 2m.

14 2m. If an applicant who is an individual does not have a social security number,
15 the applicant shall submit a statement made or subscribed under oath or affirmation
16 to the ~~department~~ division that the applicant does not have a social security number.
17 The form of the statement shall be prescribed by the ~~department~~ division. A license
18 issued in reliance upon a false statement submitted under this subdivision is invalid.

19 3. The ~~department of workforce development~~ division may not disclose any
20 information received under subd. 1. to any person except to the department of
21 revenue for the sole purpose of requesting certifications under s. 73.0301, the
22 department of workforce development for the sole purpose of requesting
23 certifications under s. 108.227, or the department of children and families for
24 purposes of administering s. 49.22.

25 **SECTION 27.** 102.17 (1) (cr) of the statutes is amended to read:

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1 102.17 (1) (cr) The ~~department~~ division shall deny an application for the
2 issuance or renewal of a license under par. (c), or revoke such a license already issued,
3 if the department of revenue certifies under s. 73.0301 that the applicant or licensee
4 is liable for delinquent taxes. Notwithstanding par. (c), an action taken under this
5 paragraph is subject to review only as provided under s. 73.0301 (5) and not as
6 provided in ch. 227.

7 **SECTION 28.** 102.17 (1) (ct) of the statutes is repealed and recreated to read:

8 102.17 (1) (ct) The division shall deny an application for the issuance or
9 renewal of a license under par. (c), or revoke such a license already issued, if the
10 department certifies under s. 108.227 that the applicant or licensee is liable for
11 delinquent contributions, as defined in s. 108.227 (1) (d). Notwithstanding par. (c),
12 an action taken under this paragraph is subject to review only as provided under s.
13 108.227 (5) and not as provided in ch. 227.

14 **SECTION 29.** 102.18 (2) (a) of the statutes is amended to read:

15 102.18 (2) (a) The department shall have and maintain on its staff such
16 examiners as are necessary to hear and decide claims for compensation described in
17 s. 102.16 (1) (b) 1, and to assist in the effective administration of this chapter.

18 **SECTION 30.** 102.18 (3) of the statutes is amended to read:

19 102.18 (3) A party in interest may petition the commission for review of an
20 examiner's decision awarding or denying compensation if the department, the
21 division, or the commission receives the petition within 21 days after the department
22 or the division mailed a copy of the examiner's findings and order to the last-known
23 addresses of the parties in interest. The commission shall dismiss a petition that is
24 not filed within those 21 days unless the petitioner shows that the petition was filed
25 late for a reason that was beyond the petitioner's control. If no petition is filed within

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1 those 21 days, the findings or order shall be considered final unless set aside,
2 reversed, or modified by the examiner within that time. If the findings or order are
3 set aside by the examiner, the status shall be the same as prior to ~~the setting aside~~
4 of the findings or order that were set aside. If the findings or order are reversed or
5 modified by the examiner, the time for filing a petition commences on the date on
6 which notice of the reversal or modification is mailed to the last-known addresses
7 of the parties in interest. The commission shall either affirm, reverse, set aside, or
8 modify the findings or order, in whole or in part, or direct the taking of additional
9 evidence. The commission's action shall be based on a review of the evidence
10 submitted.

11 **SECTION 31.** 102.33 (2) (b) 7. of the statutes is created to read:

12 102.33 (2) (b) 7. The requester is the department of health services, a county
13 department of social services under s. 46.215 or 46.22, or a county department of
14 human services under s. 46.23, and the request is limited to the name and address
15 of the employee who is the subject of the record, the name and address of the
16 employee's employer, and any financial information about that employee contained
17 in the record.

18 **SECTION 32.** 102.39 (title) of the statutes is repealed.

19 **SECTION 33.** 102.39 of the statutes is renumbered 102.15 (1) (a) and amended
20 to read:

21 102.15 (1) (a) The department may promulgate rules as necessary to carry out
22 its duties and functions under this chapter. The provisions of s. 103.005 relating to
23 the adoption, publication, modification, and court review of rules or general orders
24 of the department shall apply to all rules promulgated or general orders adopted
25 under this chapter.

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1 **SECTION 34.** 102.43 (6) (b) of the statutes is amended to read:

2 102.43 **(6)** (b) In the case of an employee whose average weekly earnings are
3 calculated under s. 102.11 (1) ~~(a)~~ (ap) 2., wages received from other employment held
4 by the employee when the injury occurred shall be considered in computing actual
5 wage loss from the employer in whose employ the employee sustained the injury as
6 provided in this paragraph. If an employee's average weekly earnings are calculated
7 under s. 102.11 (1) ~~(a)~~ (ap) 2., wages received from other employment held by the
8 employee when the injury occurred shall be offset against those average weekly
9 earnings and not against the employee's actual earnings in the employment in which
10 the employee was engaged at the time of the injury.

11 **SECTION 35.** 102.61 (1g) (a) 2. of the statutes is amended to read:

12 102.61 **(1g)** (a) 2. The employee was performing part-time employment at the
13 time of the injury, the employee's average weekly wage for compensation purposes
14 is calculated under s. 102.11 (1) ~~(f) 1. or 2.~~ (ap) 2., and that average weekly wage
15 exceeds the employee's gross average weekly wage for the part-time employment.

16 **SECTION 36.** 102.80 (1) (d) of the statutes is amended to read:

17 102.80 **(1)** (d) Amounts collected from employees or dependents of employees
18 under s. 102.81 (4) (b) and (c).

19 **SECTION 37.** 102.81 (4) (b) (intro.) of the statutes is amended to read:

20 102.81 **(4)** (b) (intro.) If the employee or dependent receives compensation from
21 the employee's employer ~~or a 3rd party liable under s. 102.29~~, pay to the department
22 the lesser of the following:

23 **SECTION 38.** 102.81 (4) (b) 2. of the statutes is amended to read:

24 102.81 **(4)** (b) 2. The amount after attorney fees and costs that the employee
25 or dependent received from the employer ~~or 3rd party~~.

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1 **SECTION 39.** 102.81 (4) (c) of the statutes is created to read:

2 102.81 (4) (c) If the employee or dependent receives compensation from a 3rd
3 party that is liable under s. 102.29, pay to the department the proceeds as specified
4 under s. 102.29 (1) (b).

5 **SECTION 40.** 102.81 (5) of the statutes is amended to read:

6 102.81 (5) The department of justice may bring an action to collect ~~the a~~
7 payment under sub. (4) (b) or (c).

8 **SECTION 41.** 102.82 (1) of the statutes is amended to read:

9 102.82 (1) Except as provided in sub. (2) (ar), an uninsured employer shall
10 reimburse the department for any payment made under s. 102.81 (1) to or on behalf
11 of an employee of the uninsured employer or to an employee's dependents and for any
12 expenses paid by the department in administering the claim of the employee or
13 dependents, less amounts repaid by the employee or dependents under s. 102.81 (4)
14 (b) or (c). The reimbursement owed under this subsection is due within 30 days after
15 the date on which the department notifies the uninsured employer that the
16 reimbursement is owed. Interest shall accrue on amounts not paid when due at the
17 rate of 1 percent per month.

18 **SECTION 42.** 108.227 (1) (e) 16. of the statutes is created to read:

19 108.227 (1) (e) 16. A license issued by the division of hearings and appeals
20 under s. 102.17 (1) (c).

21 **SECTION 43.** 108.227 (1) (f) of the statutes is amended to read:

22 108.227 (1) (f) "Licensing department" means the department of
23 administration; the division of hearings and appeals; the department of agriculture,
24 trade and consumer protection; the board of commissioners of public lands; the
25 department of children and families; the ethics commission; the department of

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1 financial institutions; the department of health services; the department of natural
2 resources; the department of public instruction; the department of revenue; the
3 department of safety and professional services; the office of the commissioner of
4 insurance; or the department of transportation.

5 **SECTION 44.** 108.227 (1m) (intro.) of the statutes is amended to read:

6 108.227 **(1m)** GENERAL PROVISIONS. (intro.) The department shall promulgate
7 rules specifying procedures to be used before taking action under sub. (3) (b) or s.
8 ~~102.17 (1) (et)~~, 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7),
9 or 105.13 (4) with respect to a person whose license or credential is to be denied, not
10 renewed, discontinued, suspended, or revoked, including rules with respect to all of
11 the following:

12 **SECTION 45.** 108.227 (3) (a) 3. of the statutes is amended to read:

13 108.227 **(3)** (a) 3. Upon the request of any person whose license or certificate
14 has been previously revoked or denied under s. ~~102.17 (1) (et)~~, 103.275 (2) (bt), 103.34
15 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), reinstate the license or
16 certificate if the applicant is not liable for delinquent contributions.

17 **SECTION 46.** 108.227 (5) (a) of the statutes is amended to read:

18 108.227 **(5)** (a) The department of workforce development shall conduct a
19 hearing requested by a license holder or applicant for a license or license renewal or
20 continuation under sub. (2) (b) 1. b., or as requested under s. ~~102.17 (1) (et)~~, 103.275
21 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), to review
22 a certification or determination of contribution delinquency that is the basis of a
23 denial, suspension, or revocation of a license or certificate in accordance with this
24 section or an action taken under s. ~~102.17 (1) (et)~~, 103.275 (2) (bt), 103.34 (10) (d),
25 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4). A hearing under this paragraph

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1 is limited to questions of mistaken identity of the license or certificate holder or
2 applicant and of prior payment of the contributions that the department of workforce
3 development certified or determined the license or certificate holder or applicant
4 owes the department. At a hearing under this paragraph, any statement filed by the
5 department of workforce development, the licensing department, or the supreme
6 court, if the supreme court agrees, may be admitted into evidence and is prima facie
7 evidence of the facts that it contains. Notwithstanding ch. 227, a person entitled to
8 a hearing under this paragraph is not entitled to any other notice, hearing, or review,
9 except as provided in sub. (6).

10 **SECTION 47.** 108.227 (5) (b) 1. of the statutes is amended to read:

11 108.227 (5) (b) 1. Issue a nondelinquency certificate to a license holder or an
12 applicant for a license or license renewal or continuation if the department
13 determines that the license holder or applicant is not liable for delinquent
14 contributions. For a hearing requested in response to an action taken under s. ~~102.17~~
15 ~~(1) (et)~~, 103.275 (2) (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13
16 (4), the department shall grant a license or certificate or reinstate a license or
17 certificate if the department determines that the applicant for or the holder of the
18 license or certificate is not liable for delinquent contributions, unless there are other
19 grounds for denying the application or revoking the license or certificate.

20 **SECTION 48.** 108.227 (5) (b) 2. of the statutes is amended to read:

21 108.227 (5) (b) 2. Provide notice that the department of workforce development
22 has affirmed its certification of contribution delinquency to a license holder; to an
23 applicant for a license, a license renewal, or a license continuation; and to the
24 licensing department or the supreme court, if the supreme court agrees. For a
25 hearing requested in response to an action taken under s. ~~102.17 (1) (et)~~, 103.275 (2)

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1 (bt), 103.34 (10) (d), 103.91 (4) (d), 103.92 (8), 104.07 (7), or 105.13 (4), the department
2 of workforce development shall provide notice to the license or certificate holder or
3 applicant that the department of workforce development has affirmed its
4 determination of contribution delinquency.

5 **SECTION 49. Nonstatutory provisions.**

6 (1) All rules promulgated by the department of workforce development in effect
7 on the effective date of this subsection that are primarily related to licenses issued
8 under s. 102.17 (1) (c), as determined by the secretary of administration, remain in
9 effect until their specified expiration dates or until amended or repealed by the
10 administrator of the division of hearings and appeals in the department of
11 administration.

12 (END)