State of Wisconsin
1995 - 1996 LEGISLATURE

LRB-4021/4
GMM:skg:ks

1995 ASSEMBLY BILL 607

October 10, 1995 - Introduced by Representatives VRAKAS and VANDER LOOP, cosponsored by Senators ZIEN and BRESKE. Referred to Committee on Labor and Employment.

AN ACT ***to repeal*** 102.65 (3) (a), 102.835 (1) (b), 102.835 (1) (c), 102.835 (16) and 102.835 (17); ***to renumber and amend*** 20.445 (1) (sp) and 102.65 (3) (b); ***to amend*** 20.445 (1) (ha), 20.445 (1) (sm), 102.06, 102.07 (1) (a), 102.07 (1) (b), 102.11 (1) (intro.), 102.16 (2) (d), 102.16 (5), 102.17 (1) (d), 102.17 (2), 102.17 (7) (a), 102.17 (7) (b), 102.17 (7) (c), 102.28 (2) (a), 102.28 (2) (b), 102.33 (2) (b) (intro.), 102.33 (2) (b) 2., 102.44 (1) (a), 102.44 (1) (b), 102.50, 102.75 (4), 102.80 (3) (a), 102.80 (3) (am), 102.80 (3) (b), 102.81 (1) (a), 102.81 (1) (b), 102.81 (2), 102.81 (7), 102.83 (1) (a) and 102.835 (12); ***to repeal and recreate*** 20.445 (1) (ha), 102.80 (3) (b) and 102.81 (2); and ***to create*** 102.01 (1) (em), 102.07 (4m), 102.07 (5) (d), 102.07 (11m), 102.07 (12m), 102.077, 102.28 (3), 102.29 (8), 102.29 (9), 102.33 (2) (b) 4., 102.80 (3) (ag), 102.80 (3) (c), 102.80 (4) and 626.125 of the statutes; **relating to:** various changes to the worker's compensation law, granting rule-making authority and making appropriations.

Analysis by the Legislative Reference Bureau

This bill makes various changes relating to worker's compensation, as administered by the department of industry, labor and human relations (DILHR) as follows:

General coverage

Under current law, subject to certain exceptions, every employer must pay worker's compensation to an employe who sustains an injury while performing

services growing out of and incidental to his or her employment. Currently, unless exempted by DILHR, an employer must insure payment of that compensation by purchasing insurance from an insurer authorized to do business in this state. Currently, if an employer satisfies certain conditions, DILHR may exempt the employer from the insurance requirement, thereby permitting the employer to self–insure. This bill permits DILHR to exempt an employer from the duty to pay worker's compensation to certain employes who belong to a religious sect whose tenets or teachings oppose accepting the benefits of any public or private insurance that pays benefits in the event of death, disability, old age or retirement or that makes payments towards the cost of medical care, for example, the Amish. Under the bill, an employer applying for this exemption must submit to DILHR all of the following:

1. A written waiver by the employe of all worker's compensation benefits other than the financial and medical assistance provided by his or her religious sect.

2. An affidavit by the employe stating that the employe is a member of a recognized religious sect and that, as a result of the established tenets or teachings of the religious sect, the employe is conscientiously opposed to accepting the benefits of insurance as described above.

3. An affidavit by an authorized representative of the religious sect that the religious sect has a long–standing history of providing its members who become dependent on the religious sect as a result of work–related injuries 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.

4. An agreement signed by an authorized representative of the religious sect to provide financial and medical assistance to the employe if the employe sustains an injury which, but for the employe's waiver, would be compensable under the worker's compensation law; and proof of the financial ability of the religious sect to provide that assistance, which the religious sect may establish by maintaining, in an amount determined by DILHR, a surety bond, an irrevocable letter of credit or some other financial commitment approved by DILHR.

If DILHR finds that those conditions are satisfied with respect to an employe, DILHR may exempt the employer from paying worker's compensation to that employe. If that employe sustains a work–related injury and his or her religious sect is not providing reasonable financial or medical assistance, the employe may request DILHR to hold a hearing and, if after the hearing DILHR determines that the religious sect is not providing reasonable financial and medical assistance, DILHR may order the religious sect to provide benefits that are reasonable under the circumstances, but not in excess of what the employe could have received under the worker's compensation law. If the religious sect does not provide benefits as ordered by DILHR, DILHR may use the surety bond, letter of credit or other financial commitment maintained by the religious sect to pay the benefits ordered, plus any penalties that may be appropriate.

Current law defines certain persons as "employes" for purposes of coverage under the worker's compensation law. Currently, DILHR may, by rule, prescribe classes of volunteer workers who may, at the election of the person for whom the

volunteer services are being performed, be considered to be employes for purposes of coverage under the worker's compensation law. This bill provides that a volunteer for a nonprofit organization that is exempt or eligible for exemption from federal income taxation under the federal internal revenue code who receives nominal payments of money or other things of value totaling not more than $10 per week is not considered to be an employe of the nonprofit organization for purposes of coverage under the worker's compensation law, unless the nonprofit organization elects to cover the volunteer under the worker's compensation law.

Currently, a student in a technical college district while, as part of a training program, he or she is engaged in performing services for which the technical college collects a fee or is engaged in producing a product that the technical college sells is an employe of the technical college for purposes of coverage under the worker's compensation law. This bill provides that a student of a public school or a private school while he or she is engaged in performing services as part of a school work training, work experience or work study program, and who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums, is an employe of a school district or private school that elects to name the student as an employe for purposes of worker's compensation coverage. The bill also provides that a student who is named as an employe of a school district or private school for purposes of worker's compensation coverage and who makes a claim for worker's compensation against his or her school district or private school may not also make a worker's compensation claim or maintain an action in tort against the employer who provided the work training or work experience from which the claim arose. This provision does not apply to injuries occurring after December 1, 1997.

Similarly, under the bill, a participant in a work experience component of a job opportunities and basic skills (JOBS) program under the aid to families with dependent children (AFDC) program who, under the JOBS program, is considered to be an employe of the agency administering the JOBS program or who, under the JOBS program, is provided worker's compensation coverage by the person administering the community work experience component, and who makes a claim for worker's compensation against that agency or person may not make a worker's compensation claim or maintain an action in tort against the employer who provided the work experience from which the claim arose. This provision does not apply to injuries occurring after December 1, 1997.

Program administration

Under current law, the records of DILHR relating to the administration of the worker's compensation laws are subject to inspection and copying under the open records law, except that records that reveal the identity of an employe who claims worker's compensation benefits, the nature of the employe's claimed injury, the employe's past or present medical condition, the extent of the employe's disability and the amount, type and duration of any benefits paid to the employe are confidential and may not be disclosed except to the employe who is the subject of the record or to the insurance carrier or employer who is a party to the employe's worker's

compensation claim. This bill requires DILHR to disclose confidential information to an insurance carrier or employer that is a party to *any* claim involving the same employe, except that DILHR is not required to do random searches and DILHR may require the requester to provide the approximate date of the injury and any other relevant information that would assist DILHR in finding the record requested. The bill also permits DILHR to refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding, other than a worker's compensation claim, to inspect and copy a confidential worker's compensation record, unless a court of competent jurisdiction in this state orders DILHR to release the record.

Under current law, every employer who is subject to the worker's compensation law must carry worker's compensation insurance or, if permitted by DILHR, self–insure to cover the employer's worker's compensation liability. Currently, DILHR may promulgate rules establishing amounts to be charged as initial and renewal application fees to employers applying for self–insurer status. Under current DILHR rules, the renewal fee for a self–insured employer is $100 per year. This bill eliminates the initial application fee and renewal fee for self–insured employers and provides instead that DILHR may charge an amount to an initial applicant for self–insured employer status and an annual amount to self–insured employers.

Hearings and procedures

Under current law, verified medical reports and the verified reports of experts concerning loss of earning capacity presented by a party for compensation constitute prima facie evidence as to the matters contained in them. Current law permits a medical practitioner or an expert to certify, rather than verify, a report and provides that certification is equivalent to verification. A verified document is a document whose authenticity has been sworn to under oath. A certified document is a document that contains a written and signed, but not necessarily sworn to, assurance of authenticity. This bill eliminates the requirement that medical reports and the reports of experts be verified and provides that certified reports constitute prima facie evidence as to the matters contained in them.

Under current law, if DILHR has reason to believe that payment of compensation has not been made, DILHR may on its own motion schedule a hearing to determine the facts. This bill provides that when DILHR schedules a hearing on its own motion, DILHR does not become a party to the proceeding and is not required to appear at the hearing.

Under current law, DILHR may determine the reasonableness of the fees charged for health services that are provided for an injured employe for whom compensation is paid. Currently, DILHR's authority to determine the reasonableness of a health service fee expires on July 1, 1996. This bill extends that expiration date to July 1, 1998.

Qualified loss management program

Under current law, the Wisconsin compensation rating bureau (bureau), an organization to which every insurer writing worker's compensation insurance in this state belongs, determines for approval by the commissioner of insurance the premium rates that insurers may charge employers in this state. Currently, the

bureau determines those rates based on past and prospective loss and expense experience, catastrophe hazards and contingencies, a reasonable margin for profits and dividends and other relevant factors. Currently, the bureau may classify risks according to variations in the hazards posed by those risks. This bill permits the bureau to file with the commissioner of insurance a qualified loss management program under which the bureau must grant prospective premium credits to employers that subscribe to a loss management action plan prepared by a loss management firm that has been approved by the bureau. Under the bill, the bureau must base the initial prospective premium credit granted to an employer on the qualifications of the loss management firm that prepared the employer's loss management action plan and on the anticipated improvement in loss experience as a result of the action plan, based on generally accepted actuarial principles. The bureau then bases subsequent premium credits on the aggregate loss experience of all employers served by a particular loss management firm. The bureau, however, must adjust the premium credit to reflect any credits granted under the ordinary rating process as a result of the same improved loss experience. The bureau may approve a loss management firm if the firm demonstrates an ability to reduce the loss experience of its clients and if the firm submits a loss management program that is approved by the bureau. This program expires on January 1, 1998.

Uninsured employers

Under current law, if an employer is not insured or self–insured as required by the worker's compensation law, the employer is liable to DILHR for certain payments which are deposited in an uninsured employers fund. DILHR uses the uninsured employers fund to administer the laws relating to uninsured employers and to pay worker's compensation benefits to the injured employes of uninsured employers. DILHR may pay those benefits, however, only if the cash balance in the fund equals or exceeds $4,000,000 before July 1, 1996, and, for the 6–month period immediately preceding the date on which the cash balance equals or exceeds $4,000,000 or for any 6–month period after that date, DILHR collected 55% or more of the payments assessed on uninsured employers during that 6–month period. This bill eliminates the July 1, 1996, deadline for reaching a cash balance of $4,000,000 and the 55% collection requirement and instead provides that DILHR may pay benefits from the uninsured employers fund beginning on the first day of the first July after the cash balance in the fund equals or exceeds $4,000,000. The bill also provides, however, that, if the secretary of industry, labor and human relations determines that expected losses on claims exceed 85% of the cash balance in the uninsured employers fund, the secretary of industry, labor and human relations must file a certificate with the secretary of administration attesting that the cash balance is likely to be inadequate to fund all claims against the fund and specifying a date after which no new claims will be paid. Further, the bill permits DILHR to obtain excess or stop–loss reinsurance in an amount that the secretary of industry, labor and human relations determines is necessary for the sound operation of the uninsured employer's fund and requires DILHR's reinsurer, if any, to pay benefits to the injured employes of uninsured employers according to the terms of the contract of

reinsurance if DILHR is unable to make those payments from the uninsured employers fund.

Current law provides 2 procedures by which DILHR may collect payments owed to DILHR by uninsured employers. Under the first procedure, if an uninsured employer fails to pay an amount owed to DILHR and no appeal or other proceeding for review is pending and the time for taking an appeal has expired, DILHR may issue a warrant to the clerk of circuit court of any county in the state and the clerk of circuit court dockets the warrant, which gives the warrant the effect of a final judgment. Under the 2nd procedure, if no appeal or other proceeding for review is pending, and the time for taking an appeal has expired, DILHR may levy on any personal property of the uninsured employer, after demanding payment and giving 10 days' notice of its intent to pursue legal action to collect the debt. This bill eliminates the requirement that no appeal be pending and that the time for taking an appeal must have expired before DILHR may collect payment from an uninsured employer by either the warrant or levy procedure. The bill, however, does not eliminate the requirement that no proceeding for review be pending before DILHR may issue a warrant or impose a levy.

Under the current levy procedure for collecting payment from an uninsured employer, an uninsured employer is entitled to an exemption from levy of the greater of 75% of the uninsured employer's disposable earnings or 30 times the federal minimum hourly wage. Current law also exempts from levy the first $1,000 of an uninsured employer's account in a depository institution. This bill eliminates those exemptions.

Finally, with respect to uninsured employers, the bill provides that if an uninsured employer who owes a payment to DILHR transfers his or her business assets or activities, DILHR may collect the amount owed from the transferee of the business assets or activities if DILHR determines that all of the following conditions are satisfied:

1. At the time of the business transfer, the uninsured employer and the transferee are owned or controlled, in whole or in substantial part, either directly or indirectly, by the same interest or interests.

2. The transferee has continued or resumed the business of the uninsured employer or has employed substantially the same employes as those the uninsured employer had employed in connection with the business transferred.

Employes of contractors

Under current law, an employe of a contractor may recover compensation from the contractor's employer if the contractor does not have worker's compensation insurance or is not self–insured. Currently, however, an employe of a contractor would not be able to recover from the principal employer for an injury suffered on or after the first day of the calendar quarter beginning after the date that recovery from the uninsured employers fund is available. This bill changes that day to the first day of the first July beginning after the date that recovery from the uninsured employers fund is available. The bill also provides that an employe may recover from the principal employer for a claim made on or after the day that the secretary of industry, labor and human relations specifies in his or her certificate to the secretary of

administration that the cash balance in the uninsured employers fund is likely to be inadequate to fund all claims against the fund.

Compensation amounts

The bill sets the average weekly earnings and maximum compensation rates for permanent partial disability for injuries occurring on or after January 1, 1996, and January 1, 1997. For injuries occurring during calendar year 1996, the average weekly earnings are not more than $253.50, resulting in a maximum compensation rate of $169. For injuries occurring during calendar year 1997, the average weekly earnings are not more than $261, resulting in a maximum compensation rate of $174.

The bill also sets the average weekly earnings and maximum compensation rates for temporary disability, permanent total disability and death benefits for injuries occurring on or after January 1, 1996, and January 1, 1997. For injuries occurring during calendar year 1996, the average weekly earnings are not more than $741, resulting in a maximum compensation rate of $494. For injuries occurring during calendar year 1997, the average weekly earnings are not more than $763.50, resulting in a maximum compensation rate of $509.

The bill also raises the amount of supplemental benefits that are payable to an employe who is receiving compensation for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 1976. Currently, if that employe is receiving the maximum weekly benefit in effect at the time of the injury, the supplemental benefit is an amount that when added to the regular benefit, equals $125. This bill raises that amount to $150. If that employe is receiving less than the maximum weekly benefit in effect at the time of the injury, the supplemental benefit is an amount that is sufficient to bring the total weekly benefit to the same proportion of $150 as the employe's regular weekly benefit bears to the maximum weekly benefit in effect at the time of the injury.

Under current law, when the death of an employe results from an injury that is covered under the worker's compensation law, the employer or insurer must pay the reasonable cost of burial, not exceeding $4,000. The bill raises the burial expense limit to $6,000.

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:

SECTION 1. 20.445 (1) (ha) of the statutes is amended to read:

20.445 **(1)** (ha) *Worker's compensation operations.* The amounts in the schedule for the administration of the worker's compensation program by the department. All moneys received under ~~s.~~ ss. 102.28 (2) (b) and 102.75 for the department's activities shall be credited to this appropriation. From this appropriation, an amount not to

exceed $5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation.

SECTION 2. 20.445 (1) (ha) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

20.445 **(1)** (ha) *Worker's compensation operations.* The amounts in the schedule for the administration of the worker's compensation program by the department. All moneys received under ss. 102.28 (2) (b) and 102.75 for the department's activities and not appropriated under par. (hp) shall be credited to this appropriation. From this appropriation, an amount not to exceed $5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation.

SECTION 3. 20.445 (1) (sm) of the statutes is amended to read:

20.445 **(1)** (sm) *Uninsured employers fund; payments.* From the uninsured employers fund, a sum sufficient to make the payments under s. 102.81 (1). No moneys may be expended or encumbered under this paragraph until the first day of the ~~calendar quarter~~ first July beginning after the day that the secretary of industry, labor and human relations files the certificate under s. 102.80 (3) (a).

SECTION 4. 20.445 (1) (sp) of the statutes is renumbered 20.445 (1) (hp) and amended to read:

20.445 **(1)** (hp) (title) *Uninsured employers ~~fund~~ program; administration.* From the ~~uninsured employers fund~~ moneys received under s. 102.75, the amounts in the schedule for the administration of ss. 102.28 (4) and 102.80 to 102.89.

SECTION 5. 102.01 (1) (em) of the statutes is created to read:

102.01 **(1)** (em) "Religious sect" means a religious body of persons, or a division of a religious body of persons, who unite in holding certain special doctrines or

opinions concerning religion that distinguish those persons from others holding the same general religious beliefs.

SECTION 6. 102.06 of the statutes is amended to read:

102.06 Joint liability of employer and contractor. An employer shall be liable for compensation to an employe of a contractor or subcontractor under the employer who is not subject to this chapter, or who has not complied with the conditions of s. 102.28 (2) in any case where such employer would have been liable for compensation if such employe had been working directly for the employer, including also work in the erection, alteration, repair or demolition of improvements or of fixtures upon premises of such employer which are used or to be used in the operations of such employer. The contractor or subcontractor, if subject to this chapter, shall also be liable for such compensation, but the employe shall not recover compensation for the same injury from more than one party. The employer who becomes liable for and pays such compensation may recover the same from such contractor, subcontractor or other employer for whom the employe was working at the time of the injury if such contractor, subcontractor or other employer was an employer as defined in s. 102.04. This section does not apply to injuries occurring on or after the first day of the ~~calendar quarter~~ first July beginning after the day that the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag) this section does apply to claims for compensation filed on or after the date specified in that certificate.

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

102.07 **(1)** (a) Every person, including all officials, in the service of the state, or of any municipality therein whether elected or under any appointment, or contract of hire, express or implied, and whether a resident or employed or injured within or

without the state. The state and any municipality may require a bond from a contractor to protect the state or municipality against compensation to employes of such contractor or employes of a subcontractor under the contractor. This paragraph does not apply beginning on the first day of the ~~calendar quarter~~ first July beginning after the day that the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for compensation filed on or after the date specified in that certificate.

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

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

SECTION 9. 102.07 (4m) of the statutes is created to read:

102.07 **(4m)** For the purpose of determining the number of employes to be counted under s. 102.04 (1) (b), but for no other purpose, a member of a religious sect is not considered to be an employe if the conditions specified in s. 102.28 (3) (b) have been satisfied with respect to that member.

SECTION 10. 102.07 (5) (d) of the statutes is created to read:

102.07 **(5)** (d) A member of a religious sect is not considered to be an employe of a farmer if the conditions specified in s. 102.28 (3) (b) have been satisfied with respect to that member.

SECTION 11. 102.07 (11m) of the statutes is created to read:

102.07 **(11m)** Subject to sub. (11), a volunteer for a nonprofit organization described in section 501 (c) of the internal revenue code, as defined in s. 71.01 (6), that is exempt or eligible for exemption from federal income taxation under section 501 (a) of the internal revenue code who receives from that nonprofit organization nominal payments of money or other things of value totaling not more than $10 per week is not considered to be an employe of that nonprofit organization for purposes of this chapter.

SECTION 12. 102.07 (12m) of the statutes is created to read:

102.07 **(12m)** A student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), while he or she is engaged in performing services as part of a school work training, work experience or work study program, and who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employe of a school district or private school that elects under s. 102.077 to name the student as its employe. This subsection does not apply after December 31, 1997.

SECTION 13. 102.077 of the statutes is created to read:

102.077 Election by school district or private school. (1) A school district or a private school, as defined in s. 115.001 (3r), may elect to name as its employe for purposes of this chapter a student described in s. 102.07 (12m) by an endorsement on its policy of worker's compensation insurance or, if the school district or private school is exempt from the duty to insure under s. 102.28 (2), by filing a declaration with the department in the manner provided in s. 102.31 (2) (a) naming the student as an employe of the school district or private school for purposes of this chapter. A

declaration under this subsection shall list the name of the student to be covered under this chapter, the name and address of the employer that is providing the work training or work experience for that student and the title, if any, of the work training, work experience or work study program in which the student is participating.

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

(3) This section does not apply after December 31, 1997.

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

102.11 **(1)** (intro.) The average weekly earnings for temporary disability, permanent total disability or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than $30 nor more than the wage rate which results in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year, except that the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, ~~1994~~ 1996, and before January 1, ~~1995~~ 1997, shall be not more than ~~$699~~ $741, resulting in a maximum compensation rate of ~~$466~~ $494, and the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, ~~1995~~ 1997, and before January 1, ~~1996~~ 1998, shall be not more than ~~$718.50~~ $763.50, resulting in a maximum compensation rate of ~~$479~~ $509. The average weekly earnings for permanent partial disability shall be not less than $30 and, for permanent partial disability for injuries occurring on or after January 1,

~~1994~~ 1996, not more than ~~$237~~ $253.50, resulting in a maximum compensation rate of ~~$158~~ $169, and, for permanent partial disability for injuries occurring on or after January 1, ~~1995~~ 1997, not more than ~~$246~~ $261, resulting in a maximum compensation rate of ~~$164~~ $174. Between such limits the average weekly earnings shall be determined as follows:

SECTION 15. 102.16 (2) (d) of the statutes is amended to read:

102.16 **(2)** (d) For fee disputes that are submitted to the department before July 1, ~~1996~~ 1998, the department shall analyze the information provided to the department under par. (c) according to the criteria provided in this paragraph to determine the reasonableness of the disputed fee. The department shall determine that a disputed fee is reasonable and order that the disputed fee be paid if that fee is at or below the mean fee for the health service procedure for which the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown by data from a data base that is certified by the department under par. (h). The department shall determine that a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service procedure for which the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown by data from a data base that is certified by the department under par. (h), unless the health service provider proves to the satisfaction of the department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

SECTION 16. 102.16 (5) of the statutes is amended to read:

102.16 **(5)** ~~No~~ Except as provided in s. 102.28 (3), no agreement by an employe to waive the right to compensation is valid.

SECTION 17. 102.17 (1) (d) of the statutes is amended to read:

102.17 **(1)** (d) The contents of ~~verified~~ certified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and of ~~verified~~ 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 them, subject to any rules and limitations the department prescribes. ~~Verified~~ Certified reports of physicians, podiatrists, surgeons, dentists, psychologists and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if the practitioner or expert consents to subject himself or herself to cross–examination also constitute prima facie evidence as to the matter contained in them. ~~Verified~~ 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. ~~Verified~~ Certified reports by doctors of dentistry are admissible as evidence of the diagnosis and necessity for treatment but not of disability. ~~Physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and experts may certify instead of verify the reports. That certification is equivalent to verification.~~ Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor or expert who knowingly makes a false statement of fact or opinion in such a certified report may be fined or imprisoned, or both, under s. 943.395. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, or of any other hospital or sanatorium in this state which is satisfactory to the department, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist, surgeon, dentist, psychologist or chiropractor to be the

record of the patient in question, and made in the regular course of examination or treatment of such patient, constitutes prima facie evidence in any worker's compensation proceeding as to the matter contained in it, to the extent that it is otherwise competent and relevant. The department may, by rule, establish the qualifications of and the form used for ~~verified~~ certified reports submitted by experts who provide information concerning loss of earning capacity under s. 102.44 (2) and (3). The department may not admit into evidence a ~~verified~~ certified report of a practitioner or other expert or a record of a hospital or sanatorium that was not filed with the department and all parties in interest at least 15 days before the date of the hearing, unless the department is satisfied that there is good cause for the failure to file the report.

SECTION 18. 102.17 (2) of the statutes is amended to read:

102.17 **(2)** If the department shall have reason to believe that the payment of compensation has not been made, it 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 ~~had~~ held for the purpose of determining the facts. Such notice shall contain a statement of the matter to be considered. Thereafter all other provisions governing proceedings on application shall attach insofar as the same may be applicable. When the department schedules a hearing on its own motion, the department does not become a party in interest and is not required to appear at the hearing.

SECTION 19. 102.17 (7) (a) of the statutes is amended to read:

102.17 **(7)** (a) Except as provided in par. (b), in a claim under s. 102.44 (2) and (3), testimony or ~~verified~~ certified reports of expert witnesses on loss of earning

capacity may be received in evidence and considered with all other evidence to decide on an employe's actual loss of earning capacity.

SECTION 20. 102.17 (7) (b) of the statutes is amended to read:

102.17 **(7)** (b) Except as provided in par. (c), the department shall exclude from evidence testimony or ~~verified~~ 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 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 department shall exclude from evidence testimony or ~~verified~~ 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 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 21. 102.17 (7) (c) of the statutes is amended to read:

102.17 **(7)** (c) Notwithstanding the notice deadlines provided in par. (b), the department may receive in evidence testimony or ~~verified~~ 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 22. 102.28 (2) (a) of the statutes is amended to read:

102.28 **(2)** (a) *Duty to insure payment for compensation.* Unless exempted by the department under par. (b) or sub. (3), every employer, as described in s. 102.04 (1), shall insure payment for that compensation in an insurer authorized to do

business in this state. A joint venture may elect to be an employer under this chapter and obtain insurance for payment of compensation. If a joint venture that is subject to this chapter only because the joint venture elected to be an employer under this chapter is dissolved and cancels or terminates its contract for the insurance of compensation under this chapter, that joint venture is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

SECTION 23. 102.28 (2) (b) of the statutes is amended to read:

102.28 **(2)** (b) *Exemption from duty to insure.* The department may grant a written order of exemption to an employer who shows its financial ability to pay the amount of compensation, agrees to report faithfully all compensable injuries and agrees to comply with this chapter and the rules of the department. The department may condition the granting of an exemption upon the employer's furnishing of satisfactory security to guarantee payment of all claims under compensation. The department may require that bonds or other personal guarantees be enforceable against sureties in the same manner as an award may be enforced. The department may from time to time require proof of financial ability of the employer to pay compensation. Any exemption shall be void if the application for it contains a financial statement which is false in any material respect. An employer who files an application containing a false financial statement remains subject to par. (a). The department may promulgate rules establishing an amount to be charged ~~as~~ to an initial ~~application fee~~ applicant for exemption under this paragraph and an annual amount to be charged ~~as a renewal application fee to employers applying for exemption~~ to employers that have been exempted under this paragraph.

SECTION 24. 102.28 (3) of the statutes is created to read:

102.28 **(3)** PROVISION OF ALTERNATIVE BENEFITS. (a) An employer may file with the department an application for exemption from the duty to pay compensation under this chapter with respect to any employe who signs the waiver described in subd. 1. and the affidavit described in subd. 2. if an authorized representative of the religious sect to which the employe belongs signs the affidavit specified in subd. 3. and signs the agreement and provides the proof of financial ability described in subd. 4. An application for exemption under this paragraph shall include all of the following:

1. A written waiver by the employe or, if the employe is a minor, by the employe and his or her parent or guardian of all compensation under this chapter other than the alternative benefits provided under par. (c).

2. An affidavit by the employe or, if the employe is a minor, by the employe and his or her parent or guardian stating that the employe is a member of a recognized religious sect and that, as a result of the employe's adherence to the established tenets or teachings of the religious sect, the employe is conscientiously opposed to accepting the benefits of any public or private insurance that makes payments in the event of death, disability, old age or retirement, or that makes payments toward the cost of or provides medical care, including any benefits provided under the federal social security act, 42 USC 301 to 1397f.

3. An affidavit by an authorized representative of the religious sect to which the employe belongs stating that the religious sect has a long–standing history of providing its members who become dependent on the support of the religious sect as a result of work–related injuries, and the dependents of those members, 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.

4. An agreement signed by an authorized representative of the religious sect to which the employe belongs to provide the financial and medical assistance described in subd. 3. to the employe and to the employe's dependents if the employe sustains an injury which, but for the waiver under subd. 1., the employer would be liable for under s. 102.03, and proof of the financial ability of the religious sect to provide that financial and medical assistance which the religious sect may establish by maintaining, in an amount determined by the department, a surety bond issued by a company authorized to do business in this state, an irrevocable letter of credit from a financial institution, as defined in s. 705.01 (3), or some other financial commitment approved by the department.

(b) The department shall approve an application under par. (a) if the department determines that all of the following conditions are satisfied:

1. The employe has waived all compensation under this chapter other than the alternative benefits provided under par. (c).

2. The employe is a member of a religious sect whose established tenets or teachings oppose accepting the benefits of insurance as described in par. (a) 2. and that, as a result of adherence to those tenets or teachings, the employe conscientiously opposes accepting those benefits.

3. The religious sect to which the employe belongs has a long–established history of providing its members who become dependent on the religious sect as a result of work–related injuries, and the dependents of those members, 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. In determining whether the religious sect has a long–standing history of providing the financial and medical assistance described in this subdivision, the department

shall presume that a 25–year history of providing that financial and medical assistance is long–standing for purposes of this subdivision.

4. The religious sect to which the employe belongs has agreed to provide the financial and medical assistance described in subd. 3. to the employe and to the dependents of the employe if the employe sustains an injury that, but for the waiver under par. (a) 1., the employer would be liable for under s. 102.03 and that the religious sect has the financial ability to provide that financial and medical assistance.

(c) An employe 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 and proof of financial responsibility 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 employe's dependent, may request a hearing under s. 102.17 (1) to determine if the religious sect has provided the employe 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 department determines that the religious sect has not provided that standard of living or medical treatment, or both, the department may order the religious sect to provide alternative benefits to that employe 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 employe or dependent could have received under this chapter but for the waiver under par. (a) 1. If the religious sect does not provide the alternative benefits as ordered by the department, the department may use the

financial commitment under par. (a) 4. to pay the alternative benefits ordered, including any penalties that may be appropriate.

(d) The department shall provide a form for the application for exemption of an employer under par. (a) (intro.), the waiver and affidavit of an employe under par. (a) 1. and 2., the affidavit of a religious sect under par. (a) 3. and the agreement and proof of financial responsibility of a religious sect under par. (a) 4. A properly completed form is prima facie evidence of satisfaction of the conditions under par. (b) as to the matter contained in the form.

SECTION 25. 102.29 (8) of the statutes is created to read:

102.29 **(8)** No student of a public school, as described in s. 115.01 (1), or a private school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employe of the school district or private school for purposes of this chapter and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose. This subsection does not apply to injuries occurring after December 31, 1997.

SECTION 26. 102.29 (9) of the statutes is created to read:

102.29 **(9)** No participant in a work experience component of a job opportunities and basic skills program who, under s. 49.193 (6) (a), is considered to be an employe of the agency administering that program, or who, under s. 49.193 (6) (a), is provided worker's compensation coverage by the person administering the work experience component, and who makes a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the work experience from which the claim arose. This subsection does not apply to injuries occurring after December 31, 1997.

SECTION 27. 102.33 (2) (b) (intro.) of the statutes is amended to read:

102.33 **(2)** (b) (intro.) Notwithstanding par. (a), a record maintained by the department that reveals the identity of an employe who claims worker's compensation benefits, the nature of the employe's claimed injury, the employe's past or present medical condition, the extent of the employe's disability, the amount, type or duration of benefits paid to the employe or any financial information provided to the department by a self–insured employer or by an applicant for exemption under s. 102.28 (2) (b) is confidential and not open to public inspection or copying under s. 19.35 (1). The department 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 28. 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 ~~the claim~~ any worker's compensation claim involving the same employe or an attorney or authorized agent of that insurance carrier or employer, except that the department 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 in finding the record requested. An attorney or authorized agent of an insurance carrier or employer that is a party to an employe'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.

SECTION 29. 102.33 (2) (b) 4. of the statutes is created to read:

102.33 **(2)** (b) 4. A court of competent jurisdiction in this state orders the department to release the record.

SECTION 30. 102.44 (1) (a) of the statutes is amended to read:

102.44 **(1)** (a) If such employe is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit shall be an amount which, when added to the regular benefit established for the case, shall equal ~~$125~~ $150.

SECTION 31. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If such employe is receiving a weekly benefit which is less than the maximum benefit which was in effect on the date of the injury, the supplemental benefit shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~$125~~ $150 as the employe's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 32. 102.50 of the statutes is amended to read:

102.50 Burial expenses. In all cases where death of an employe proximately results from the injury the employer or insurer shall pay the reasonable expense for burial, not exceeding ~~$4,000~~ $6,000.

SECTION 33. 102.65 (3) (a) of the statutes is repealed.

SECTION 34. 102.65 (3) (b) of the statutes is renumbered 102.65 (3) and amended to read:

102.65 **(3)** If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the department shall, by order, direct an appropriate proportional reduction of the payments into such fund under ss. 102.47, 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year. ~~This paragraph applies after June 30, 1992.~~

SECTION 35. 102.75 (4) of the statutes is amended to read:

102.75 **(4)** From the appropriation under s. 20.445 (1) (ha), the department shall allocate the amounts that it collects in application fees from employers applying for exemption under s. 102.28 (2) and the annual amount that it collects from employers that have been exempted under s. 102.28 (2) to fund the activities of the department under s. 102.28 (2) (b) and (c).

SECTION 36. 102.80 (3) (a) of the statutes is amended to read:

102.80 **(3)** (a) If the cash balance in the uninsured employers fund equals or exceeds $4,000,000 ~~before July 1, 1996, and if, during the 6–month period immediately preceding the date on which the fund first equals or exceeds that cash balance or during any 6–month period after that date, the amounts specified in s. 102.81 (1) collected by the department equal or exceed 55% of the amounts assessed by the department under s. 102.82 during that 6–month period~~, the secretary shall consult the council on worker's compensation within 45 days after ~~those goals are achieved~~ that cash balance equals or exceeds $4,000,000. The secretary may file with the secretary of administration, within 15 days after consulting the council on worker's compensation, a certificate attesting that the ~~goals specified in this paragraph have been achieved~~ cash balance in the uninsured employers fund equals or exceeds $4,000,000.

SECTION 37. 102.80 (3) (ag) of the statutes is created to read:

102.80 **(3)** (ag) The secretary shall monitor the cash balance in, and incurred losses to, the uninsured employers fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the uninsured employers fund on known claims and on incurred, but not reported, claims exceed 85% of the cash balance in the uninsured employers fund, the secretary shall

consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the uninsured employers fund may become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with the secretary of administration a certificate attesting that the cash balance in the uninsured employer's fund is likely to become inadequate to fund all claims under s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will be paid.

SECTION 38. 102.80 (3) (am) of the statutes is amended to read:

102.80 **(3)** (am) If the secretary files the certificate under par. (a) ~~before August 15, 1996~~, the department may expend the moneys in the uninsured employers fund ~~to make payments under s. 102.81 (1) to employes of uninsured employers and to administer ss. 102.28 (4) and 102.80 to 102.89~~, beginning on the first day of the first July after the secretary files that certificate, to make payments under s. 102.81 (1) to employes of uninsured employers and to obtain reinsurance under s. 102.81 (2).

SECTION 39. 102.80 (3) (b) of the statutes is amended to read:

102.80 **(3)** (b) If the secretary does not file the certificate under par. (a) ~~before August 15, 1996~~, the department may expend the moneys in the uninsured employers fund only to administer ss. 102.28 (4) and 102.80 to 102.89.

SECTION 40. 102.80 (3) (b) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

102.80 **(3)** (b) If the secretary does not file the certificate under par. (a), the department may not expend the moneys in the uninsured employers fund.

SECTION 41. 102.80 (3) (c) of the statutes is created to read:

102.80 **(3)** (c) If, after filing the certificate under par. (a), the secretary files the certificate under par. (ag), the department may expend the moneys in the uninsured employers fund only to make payments under s. 102.81 (1) to employes of uninsured employers on claims made before the date specified in that certificate and to obtain reinsurance under s. 102.81 (2) for the payment of those claims.

SECTION 42. 102.80 (4) of the statutes is created to read:

102.80 **(4)** (a) If an uninsured employer who owes to the department any amount under s. 102.82 or 102.85 (4) transfers his or her business assets or activities, the transferee is liable for the amounts owed by the uninsured employer under s. 102.82 or 102.85 (4) if the department determines that all of the following conditions are satisfied:

1. At the time of the transfer, the uninsured employer and the transferee are owned or controlled in whole or in substantial part, either directly or indirectly, by the same interest or interests. Without limitation by reason of enumeration, it is presumed unless shown to the contrary that the "same interest or interests" includes the spouse, child or parent of the individual who owned or controlled the business, or any combination of more than one of them.

2. The transferee has continued or resumed the business of the uninsured employer, either in the same establishment or elsewhere; or the transferee has employed substantially the same employes as those the uninsured employer had employed in connection with the business assets or activities transferred.

(b) The department may collect from a transferee described in par. (a) an amount owed under s. 102.82 or 102.85 (4) using the procedures specified in ss. 102.83, 102.835 and 102.87 and the preference specified in s. 102.84 in the same manner as the department may collect from an uninsured employer.

SECTION 43. 102.81 (1) (a) of the statutes is amended to read:

102.81 **(1)** (a) If an employe of an uninsured employer, other than an employe who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for which the uninsured employer is liable under s. 102.03, the department or the department's reinsurer shall pay to the injured employe or the employe's dependents an amount equal to the compensation owed them by the uninsured employer under this chapter except penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57 and 102.60.

SECTION 44. 102.81 (1) (b) of the statutes is amended to read:

102.81 **(1)** (b) The department shall make the payments required under par. (a) from the uninsured employers fund, except that if the department has obtained reinsurance under sub. (2) and is unable to make those payments from the uninsured employers fund, the department's reinsurer shall make those payments according to the terms of the contract of reinsurance.

SECTION 45. 102.81 (2) of the statutes is amended to read:

102.81 **(2)** The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop–loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and subch. IV of ch. 16 do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation

under s. 20.445 (1) (sp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

SECTION 46. 102.81 (2) of the statutes, as affected by 1995 Wisconsin Act .... (this act), is repealed and recreated to read:

102.81 **(2)** The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop–loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and subch. IV of ch. 16 do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (hp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

SECTION 47. 102.81 (7) of the statutes is amended to read:

102.81 **(7)** This section first applies to injuries occurring on the first day of the ~~calendar quarter~~ first July beginning after the day that the secretary files a certificate under s. 102.80 (3) (a), except that if the secretary files a certificate under s. 102.80 (3) (ag) this section does not apply to claims filed on or after the date specified in that certificate.

SECTION 48. 102.83 (1) (a) of the statutes is amended to read:

102.83 **(1)** (a) If an uninsured employer fails to pay to the department any amount owed to the department under s. 102.82 and no ~~appeal or other~~ proceeding

for review is pending ~~and the time for taking an appeal has expired~~, the department or any authorized representative may issue a warrant directed to the clerk of circuit court for any county of the state. The clerk shall enter in the judgment docket the name of the uninsured employer mentioned in the warrant and the amount of the payments, interest, costs and other fees for which the warrant is issued and the date when the warrant is filed. A warrant so docketed shall be considered in all respects as a final judgment constituting a perfected lien on the uninsured employer's right, title and interest in all of the uninsured employer's real and personal property located in the county where the warrant is docketed. After the warrant is docketed, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk with the sheriff of any county where real or personal property of the uninsured employer is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the uninsured employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue of the warrant within 60 days after receipt of the warrant.

SECTION 49. 102.835 (1) (b) of the statutes is repealed.

SECTION 50. 102.835 (1) (c) of the statutes is repealed.

SECTION 51. 102.835 (12) of the statutes is amended to read:

102.835 **(12)** NOTICE BEFORE LEVY. If no ~~appeal or other~~ proceeding for review permitted by law is pending ~~and the time for taking an appeal has expired~~, the department shall make a demand to the uninsured employer for payment of the debt which is subject to levy and give notice that the department may pursue legal action for collection of the debt against the uninsured employer. The department shall

make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service which requires a signature of acceptance, at the address of the uninsured employer as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including costs and fees, and the name of the uninsured employer who is liable for the debt. The uninsured employer's failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same uninsured employer within one year after the date of service of the original levy.

SECTION 52. 102.835 (16) of the statutes is repealed.

SECTION 53. 102.835 (17) of the statutes is repealed.

SECTION 54. 626.125 of the statutes is created to read:

626.125 Qualified loss management program. (1) ELEMENTS OF PROGRAM. The bureau may file with the commissioner under s. 626.13 a qualified loss management program that contains all of the following elements:

(a) 1. Subject to subd. 2., the bureau shall restrict eligibility for participation in the qualified loss management program to an employer that has obtained any insurance specified in s. 626.03, that is eligible for an experience rating under s. 626.12 (1), that is eligible for coverage under a mandatory risk–sharing plan under s. 619.01 (1) and that, as of July 1, 1995, has a rate of not less than $10 on the risk classification that generates the most manual premium for that employer.

2. Notwithstanding subd. 1., the bureau may broaden eligibility for participation in the qualified loss management program to an entire specific classification of employers that have obtained any insurance specified in s. 626.03 and that are ineligible for coverage under a mandatory risk–sharing plan under s.

619.01 (1) if the bureau determines that permitting that entire specific classification of employers to participate in the qualified loss management program is necessary to support the effective delivery of safety training to a high–risk industry.

(b) The bureau shall grant a prospective premium credit to an eligible employer that subscribes to a loss management action plan prepared by a loss management firm approved under sub. (2) that specifies the activities that the eligible employer will perform to reduce its loss experience.

(c) The bureau shall base the initial prospective premium credit granted to an eligible employer on the qualifications of the loss management firm that prepared the loss management action plan subscribed to by the eligible employer and on the improvement in the loss experience of the eligible employer anticipated by the bureau, in accordance with generally accepted actuarial principles, as a result of the loss management action plan.

(d) The bureau shall base subsequent prospective premium credits granted to an eligible employer on the aggregate loss experience of all eligible employers served by the loss management firm serving the eligible employer.

(e) The bureau shall adjust the prospective premium credits granted under pars. (c) and (d) to reflect any credits granted under s. 626.12 (1) as a result of the same improved loss experience.

(2) APPROVAL OF LOSS MANAGEMENT FIRMS. The bureau may approve a loss management firm for the purpose of preparing loss management action plans for eligible employers if the loss management firm demonstrates an ability to reduce the worker's compensation loss experiences of its clients and if the loss management firm submits a loss management program that is approved by the bureau. In reviewing the qualifications of a loss management firm, the bureau shall consider the training,

experience and qualifications of the loss management firm's key personnel and the loss management firm's approach to focussing the attention of its clients on the issue of safety and to assuring and measuring the commitment of its clients to implementing safe work practices. In reviewing the loss management program of a loss management firm, the bureau shall consider the program's plan of action and techniques for assisting an injured employe in obtaining medical care, for continuing communication with the employe and monitoring his or her progress during the recuperation period and for encouraging an injured employer to return to work as soon as possible.

(3) The bureau shall report annually to the commissioner and the secretary of industry, labor and human relations on the status of the program under this section. The report shall include an evaluation of the degree of success achieved by each loss management firm approved under sub. (2) in reducing the worker's compensation loss experience of its clients participating in the program.

(4) This section does not apply after December 31, 1997.

SECTION 55. Appropriation changes.

(1) UNINSURED EMPLOYERS PROGRAM ADMINISTRATION. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of industry, labor and human relations under section 20.445 (1) (hp) of the statutes, as affected by the acts of 1995, the dollar amount is increased by $500,000 for fiscal year 1996–97 to increase funding for the purpose for which the appropriation is made.

(2) UNINSURED EMPLOYERS FUND ADMINISTRATION LAPSE. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of industry, labor and human relations under section 20.445 (1) (hp) of the statutes, as affected by the acts of 1995, the dollar amount is increased for fiscal year 1996–97 by an

amount equal to the unencumbered balance in the appropriation under section 20.445 (1) (sp), 1993 stats., immediately before the effective date of the renumbering and amendment of section 20.445 (1) (sp), 1993 stats.

SECTION 56. Initial applicability.

(1) GENERAL COVERAGE. The treatment of sections 102.07 (11m) and (12m), 102.077 and 102.29 (8) and (9) of the statutes first applies to injuries occurring on the effective date of this subsection.

(2) CERTIFIED REPORTS. The treatment of section 102.17 (1) (d) and (7) (a), (b) and (c) of the statutes first applies to hearings noticed under section 102.17 (1) (a) of the statutes on the effective date of this subsection.

(3) BUSINESS TRANSFEREE LIABILITY. The treatment of section 102.80 (4) of the statutes first applies to business asset or activities transfers that occur on the effective date of this subsection.

(4) ALTERNATIVE BENEFITS COVERAGE. The treatment of sections 102.01 (1) (em), 102.07 (4m) and (5) (d), 102.16 (5) and 102.28 (2) (a) and (3) of the statutes first applies to injuries occurring on the effective date of this subsection.

SECTION 57. Effective dates. This act takes effect on January 1, 1996, or on the day after publication, whichever is later, except as follows:

(1) ALTERNATIVE BENEFITS. The treatment of sections 102.01 (1) (em), 102.07 (4m) and (5) (d), 102.16 (5) and 102.28 (2) (a) and (3) of the statutes and SECTION 56 (4) of this act take effect on the day after publication.

(2) UNINSURED EMPLOYERS PROGRAM ADMINISTRATION. The treatment of section 20.445 (1) (sp) of the statutes and the repeal and recreation of sections 20.445 (1) (ha), 102.80 (3) (b) and 102.81 (2) of the statutes take effect on July 1, 1996.

(END)