

1993 Assembly Bill 844

Date of enactment: **November 24, 1993**

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1993 WISCONSIN ACT 81

AN ACT *to repeal* 102.475 (1) (b); *to renumber* 102.07 (7), 102.175 and 102.475 (1) (a); *to renumber and amend* 102.16 (2) (e); *to amend* 102.05 (1), 102.11 (1) (intro.), 102.13 (1) (b) (intro.), 102.13 (1) (b) 1, 102.13 (1) (b) 4, 102.13 (1) (d) 1, 102.13 (1) (d) 4, 102.13 (1) (f), 102.13 (4), 102.16 (2) (c), 102.16 (2) (d), 102.16 (2) (h), 102.22 (1), 102.28 (2) (a), 102.31 (2) (a), 102.31 (2) (b) 2, 102.80 (3), 102.82 (2) (a) (intro.), 102.82 (2) (b) and 303.21 (1) (b); and *to create* 102.07 (7) (b), 102.125, 102.13 (1) (am), 102.13 (1) (b) 5, 102.16 (2) (e) 2, 102.17 (8), 102.175 (2), 102.54, 102.82 (2) (ag), 102.82 (2) (am), 102.82 (2) (ar), 102.83, 102.835, 102.84, 102.85 (2m), 102.85 (2p) and 303.215 of the statutes, **relating to**: various changes to the worker's compensation law, granting rule-making authority, making an appropriation and providing a penalty.

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

SECTION 2. 102.05 (1) of the statutes is amended to read:

102.05 (1) An employer who has had no employe at any time within a continuous period of 2 years shall be deemed to have effected withdrawal, which shall be effective on the last day of such period. An employer who has not usually employed 3 employes and who has not paid wages of at least \$500 for employment in this state in any calendar quarter in a calendar year may file a withdrawal notice with the department, which withdrawal shall take effect 30 days after the date of such filing or at such later date as is specified in the notice. If an employer who is subject to this chapter only because the employer elected to become subject to this chapter under sub. (2) cancels or terminates his or her contract for the insurance of compensation under this chapter, that employer is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

SECTION 3. 102.07 (7) of the statutes is renumbered 102.07 (7) (a).

SECTION 4. 102.07 (7) (b) of the statutes is created to read:

102.07 (7) (b) The department may issue an order under s. 102.31 (1) (b) permitting the county within which a volunteer fire company or fire department organized under ch. 213, a legally organized rescue squad or an ambulance service provider, as defined in s. 146.50 (1) (c), is organized to assume full liability for the compensation provided under this chapter of all volunteer members of that company, department, squad or provider.

SECTION 5. 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, 1992 1994, and before January 1, 1994 1995, shall be not more than \$675 \$699, resulting in a maximum compensation rate of \$450 \$466, and the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, 1995, and before January 1, 1996, shall be not more than \$718.50, result-

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ing in a maximum compensation rate of \$479. The average weekly earnings for permanent partial disability shall be not less than \$30. ~~The average weekly earnings and, for permanent partial disability for injuries occurring on or after January 1, 1992, shall be 1994,~~ not more than \$216 ~~\$237,~~ resulting in a maximum compensation rate of \$144. ~~The average weekly earnings \$158, and,~~ for permanent partial disability for injuries occurring on or after January 1, 1993, shall be 1995, not more than \$228 ~~\$246,~~ resulting in a maximum compensation rate of \$152 ~~\$164.~~ Between such limits the average weekly earnings shall be determined as follows:

SECTION 6. 102.125 of the statutes is created to read:

102.125 Fraudulent claims reporting and investigation. (1) If an insurer or self-insured employer has evidence that a claim is false or fraudulent in violation of s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the claim to the department will not impede its ability to defend the claim, the insurer or self-insured employer shall report the claim to the department. The department may require an insurer or self-insured employer to investigate an allegedly false or fraudulent claim and may provide the insurer or self-insured employer with any records of the department relating to that claim. An insurer or self-insured employer that investigates a claim under this subsection shall report on the results of that investigation to the department. If based on the investigation the department has a reasonable basis to believe that a violation of s. 943.395 has occurred, the department shall refer the results of the investigation to the district attorney of the county in which the alleged violation occurred for prosecution.

(2) Annually, the department shall submit a report to the appropriate standing committees under s. 13.172 (3) and the governor detailing, for the previous year, the number of reports under sub. (1) that the department received, the number of referrals for prosecution that the department made and the results of those referrals.

SECTION 7. 102.13 (1) (am) of the statutes is created to read:

102.13 (1) (am) When compensation is claimed for loss of earning capacity under s. 102.44 (2) or (3), the employe shall, on the written request of the employe's employer or insurer, submit to reasonable examinations by vocational experts provided and paid for by the employer or insurer.

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

102.13 (1) (b) (intro.) An employer or insurer who requests that an employe submit to reasonable examination under par. (a) or (am) shall tender to the employe, before the examination, all necessary expenses including transportation expenses. The employe is entitled to have a physician, chiropractor, psychologist or podiatrist provided by himself or herself present at the examination and to request and receive a copy of all reports of the

examination that are prepared by the examining physician, chiropractor, psychologist ~~or~~ podiatrist or vocational expert. The employe is also entitled to have a translator provided by himself or herself present at the examination if the employe has difficulty speaking or understanding the English language. The employer's or insurer's written request for examination shall notify the employe of all of the following:

SECTION 9. 102.13 (1) (b) 1. of the statutes is amended to read:

102.13 (1) (b) 1. The proposed date, time and place of the examination and the identity and area of specialization of the examining physician, chiropractor, psychologist ~~or~~ podiatrist or vocational expert.

SECTION 10. 102.13 (1) (b) 4. of the statutes is amended to read:

102.13 (1) (b) 4. The employe's right to request and receive a copy of all reports of the examination that are prepared by the examining physician, chiropractor, psychologist ~~or~~ podiatrist or vocational expert.

SECTION 11. 102.13 (1) (b) 5. of the statutes is created to read:

102.13 (1) (b) 5. The employe's right to have a translator provided by himself or herself present at the examination if the employe has difficulty speaking or understanding the English language.

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

102.13 (1) (d) 1. Any physician, chiropractor, psychologist ~~or~~ podiatrist or vocational expert who is present at any examination under par. (a) or (am) may be required to testify as to the results thereof.

SECTION 13. 102.13 (1) (d) 4. of the statutes is amended to read:

102.13 (1) (d) 4. The testimony of any physician, chiropractor, psychologist or podiatrist, who is licensed to practice where he or she resides or practices in any state and the testimony of any vocational expert may be received in evidence in compensation proceedings.

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

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

SECTION 15. 102.13 (4) of the statutes is amended to read:

102.13 (4) The rights of employes to begin or maintain proceedings for the collection of compensation and to receive weekly indemnities which accrue and become payable shall not be suspended or barred under sub. (1) when an employe refuses to submit to a physical examination, upon the request of the employer or worker's compensation insurer or at the direction of the department or an examiner, which would require the employe to travel a distance of 100 miles or more from

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

SECTION 16. 102.16 (2) (c) of the statutes is amended to read:

102.16 (2) (c) After a fee dispute is submitted to the department, the insurer or self-insured employer that is a party to the dispute shall provide to the department information on that fee and information on fees charged by other health service providers for comparable services. The insurer or self-insured employer shall obtain the information on comparable fees from a data base that is certified by the department under par. (h). Except as provided in par. (e) 1, if the insurer or self-insured employer does not provide the information required under this paragraph, the department shall determine that the disputed fee is reasonable and order that it be paid. If the insurer or self-insured employer provides the information required under this paragraph, the department shall use that information to determine the reasonableness of the disputed fee.

SECTION 17. 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, ~~1994~~ 1996, 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 18. 102.16 (2) (e) of the statutes is renumbered 102.16 (2) (e) 1. and amended to read:

102.16 (2) (e) 1. ~~If Subject to subd. 2, if an insurer or self-insured employer that disputes the reasonableness of a fee charged by a health service provider cannot provide information, from a data base that is certified by the department under par. (h), on fees charged by other health service providers for comparable services because no department-certified data base is~~ the data base to which the insurer or self-insured employer subscribes is not able to provide accurate information for the health service procedure at issue, the department may use any other information that the department considers to be reliable and relevant to the disputed fee to determine the reasonableness of the disputed fee.

SECTION 19. 102.16 (2) (e) 2. of the statutes is created to read:

102.16 (2) (e) 2. Notwithstanding subd. 1, the department may use only a hospital radiology data base that has been certified by the department under par. (h) to determine the reasonableness of a hospital fee for radiology services.

SECTION 20. 102.16 (2) (h) of the statutes is amended to read:

102.16 (2) (h) The department shall promulgate rules establishing procedures and requirements for the fee dispute resolution process under this subsection, including rules specifying the standards that health service fee data bases must meet for certification under this paragraph. Using those standards, the department shall certify data bases of the health service fees that various health service providers charge. In certifying data bases under this paragraph, the department shall certify at least one data base of hospital fees for radiology services, including diagnostic and interventional radiology, diagnostic ultrasound and nuclear medicine.

SECTION 21. 102.17 (8) of the statutes is created to read:

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

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SECTION 22. 102.175 of the statutes is renumbered 102.175 (1).

SECTION 23. 102.175 (2) of the statutes is created to read:

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

SECTION 24. 102.22 (1) of the statutes is amended to read:

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

SECTION 25. 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, 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 26. 102.31 (2) (a) of the statutes is amended to read:

102.31 (2) (a) No party to a contract of insurance may cancel it within the contract period or terminate or not renew it upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party intends to terminate ~~or~~ does not intend to renew the policy upon expiration. Except as provided in par. (b), ~~such a cancellation when an insurance company does not renew a policy upon expiration, the nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insured employer and the department. Cancellation or termination of a policy by an insurance company for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice has been given of the cancellation or termination to the insured employer and the department.~~ Notice to the department may be given either by personal service of the notice upon the department at its office in Madison or by sending the notice by facsimile machine transmission or certified mail addressed to the department at its office in Madison. The department may provide by rule that the notice of cancellation or termination be given by certified mail or facsimile machine transmission to the Wisconsin compensation rating bureau rather than to the department. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.

SECTION 27. 102.31 (2) (b) 2. of the statutes is amended to read:

102.31 (2) (b) 2. Regardless of whether ~~notice has the notices required under par. (a) have been given to the department,~~ a cancellation or termination is effective upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2).

SECTION 31. 102.475 (1) (a) of the statutes is renumbered 102.475 (1).

SECTION 32. 102.475 (1) (b) of the statutes is repealed.

SECTION 33. 102.54 of the statutes is created to read:

102.54 Injury to dominant hand. If an injury to an employe's dominant hand causes a disability specified in s. 102.52 (1) to (9) or amputation of more than two-thirds of the distal joint of a finger, the period for which indemnity is payable for that disability or amputation is increased by 25%. This increase is in addition to any other increase payable under s. 102.53 but, for cases in which an injury causes more than one permanent disability, the increase under this section shall be based on the periods specified in s. 102.52 (1) to (9) for each disability and not on any increased period specified in s. 102.53.

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SECTION 34. 102.80 (3) of the statutes is amended to read:

102.80 (3) (a) If the cash balance in the uninsured employers fund equals or exceeds ~~\$3,000,000~~ \$4,000,000 before July 1, ~~1994~~ 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 ~~the cash balance equals or exceeds \$3,000,000~~ those goals are achieved. 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 ~~cash balance equals or exceeds \$3,000,000~~ goals specified in this paragraph have been achieved.

(am) If the secretary files the certificate under par. (a) before August 15, ~~1994~~ 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.

(b) If the secretary does not file the certificate under par. (a) before August 15, ~~1994~~ 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 35. 102.82 (2) (a) (intro.) of the statutes is amended to read:

102.82 (2) (a) (intro.) All Except as provided in pars. (ag), (am) and (ar), all uninsured employers shall pay to the department the greater of the following:

SECTION 36. 102.82 (2) (ag) of the statutes is created to read:

102.82 (2) (ag) An uninsured employer who is liable to the department under par. (a) 2 shall pay to the department, in lieu of the payment required under par. (a) 2., \$100 per day for each day that the employer is uninsured if all of the following apply:

1. The employer is uninsured for 7 consecutive days or less.

2. The employer has not previously been uninsured.

3. No injury for which the employer is liable under s. 102.03 has occurred during the period in which the employer is uninsured.

SECTION 37. 102.82 (2) (am) of the statutes is created to read:

102.82 (2) (am) The department may waive any payment owed under par. (a) by an uninsured employer if the department determines that the uninsured employer is subject to this chapter only because the uninsured employer has elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

SECTION 38. 102.82 (2) (ar) of the statutes is created to read:

102.82 (2) (ar) The department may waive any payment owed under par. (a) or (ag) if the department determines that the sole reason for the uninsured employer's failure to comply with s. 102.28 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

SECTION 39. 102.82 (2) (b) of the statutes is amended to read:

102.82 (2) (b) The payment owed under par. (a) or (ag) is due within 30 days after the date on which the employer is notified. Interest shall accrue on amounts not paid when due at the rate of 1% per month.

SECTION 40. 102.83 of the statutes is created to read:

102.83 Collection of uninsured employer payments. (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.

(b) The clerk of circuit court shall accept, file and docket the warrant without prepayment of any fee, but the clerk shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31 unless a different billing period is agreed to between the clerk and the department. The fees shall then be paid by the department, but the fees provided by s. 814.61 (5) for filing and docketing the warrants shall be added to the amount of

the warrant and collected from the uninsured employer when satisfaction or release is presented for entry.

(2) The department may issue a warrant of like terms, force and effect to any employe or other agent of the department, who may file a copy of the warrant with the clerk of circuit court of any county in the state, and thereupon the clerk shall docket the warrant and it shall become a lien in the same manner, and with the same force and effect, as provided in sub. (1). In the execution of the warrant, the employe or other agent shall have all the powers conferred by law upon a sheriff, but may not collect from the uninsured employer any fee or charge for the execution of the warrant in excess of the actual expenses paid in the performance of his or her duty.

(3) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the amount due for payments, interest, costs and other fees as if the department had recovered judgment against the uninsured employer and an execution had been returned wholly or partially not satisfied.

(4) When the payments, interest costs and other fees specified in a warrant have been paid to the department, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk shall immediately make a record on the judgment docket of the satisfaction of the judgment. The department shall send a copy of the satisfaction to the uninsured employer.

(5) The department, if it finds that the interests of the state will not be jeopardized, and upon such conditions as it may exact, may issue a release of any warrant with respect to any real or personal property upon which the warrant is a lien or cloud upon title. The clerk of circuit court shall enter the release upon presentation of the release to the clerk and payment of the fee for filing the release and the release shall be conclusive proof that the lien or cloud upon the title of the property covered by the release is extinguished.

(6) At any time after the filing of a warrant, the department may commence and maintain a garnishee action as provided by ch. 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce a judgment. The place of trial of an action under ch. 811 or 812 may be either in Dane county or the county where the debtor resides and may not be changed from the county in which the action is commenced, except upon consent of the parties.

(7) If the department issues an erroneous warrant, the department shall issue a notice of withdrawal of the warrant to the clerk of circuit court for the county in which the warrant is filed. The clerk shall void the warrant and any liens attached by it.

(8) Any officer or director of an uninsured employer that is a corporation may be found individually and jointly and severally liable for the payments, interest, costs and other fees specified in a warrant under this section if after proper proceedings for the collection of those

amounts from the corporation, as provided in this section, the corporation is unable to pay those amounts to the department. The personal liability of the officers and directors of a corporation as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation and shall be set forth in a determination or decision issued under s. 102.82.

SECTION 41. 102.835 of the statutes is created to read:

102.835 Levy for delinquent payments. (1) DEFINITIONS. In this section:

(a) “Debt” means a delinquent payment.

(b) “Disposable earnings” means that part of the earnings of any individual after the deduction from those earnings of any amounts required by law to be withheld, any life, health, dental or similar type of insurance premiums, union dues, any amount necessary to comply with a court order to contribute to the support of minor children, and any levy, wage assignment or garnishment executed prior to the date of a levy under this section.

(c) “Federal minimum hourly wage” means that wage prescribed by 29 USC 206 (a) (1).

(d) “Levy” means all powers of distraint and seizure.

(e) “Payment” means a payment owed to the department under s. 102.82 and includes interest on that payment.

(f) “Property” includes all tangible and intangible personal property and rights to that property, including compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, amounts paid periodically pursuant to a pension or retirement program, rents, proceeds of insurance and amounts paid pursuant to a contract.

(2) POWERS OF LEVY AND DISTRAINT. If any uninsured employer who is liable for any debt fails to pay that debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the uninsured employer. If the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the uninsured employer until the debt and expenses of the levy are fully paid.

(3) DUTIES TO SURRENDER. Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the department, surrender the property or rights or discharge the obligation to the department, except that part of the property or rights which is, at the time of the demand, subject to any prior attachment or execution under any judicial process.

(4) FAILURE TO SURRENDER; ENFORCEMENT OF LEVY.

(a) Any uninsured employer who fails to surrender any property or rights to property that is subject to levy, upon

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demand by the department, is subject to proceedings to enforce the amount of the levy.

(b) Any 3rd party who fails to surrender any property or rights to property subject to levy, upon demand of the department, is subject to proceedings to enforce the levy. The 3rd party is not liable to the department under this paragraph for more than 25% of the debt. The department shall serve a final demand as provided under sub. (13) on any 3rd party who fails to surrender property. Proceedings may not be initiated by the department until 5 days after service of the final demand. The department shall issue a determination under s. 102.82 to the 3rd party for the amount of the liability.

(c) When a 3rd party surrenders the property or rights to the property on demand of the department or discharges the obligation to the department for which the levy is made, the 3rd party is discharged from any obligation or liability to the uninsured employer with respect to the property or rights to the property arising from the surrender or payment to the department.

(5) ACTIONS AGAINST THIS STATE. (a) If the department has levied upon property, any person, other than the uninsured employer who is liable to pay the debt out of which the levy arose, who claims an interest in or lien on that property and who claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane county. That action may be brought whether or not that property has been surrendered to the department. The court may grant only the relief under par. (b). No other action to question the validity of or to restrain or enjoin a levy by the department may be maintained.

(b) In an action under par. (a), if a levy would irreparably injure rights to property, the court may enjoin the enforcement of that levy. If the court determines that the property has been wrongfully levied upon, it may grant a judgment for the amount of money obtained by levy.

(c) For purposes of an adjudication under this subsection, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

(6) DETERMINATION OF EXPENSES. The department shall determine its costs and expenses to be paid in all cases of levy.

(7) USE OF PROCEEDS. (a) The department shall apply all money obtained under this section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the uninsured employer.

(b) The department may refund or credit any amount left after the applications under par. (a), upon submission of a claim for a refund or credit and satisfactory proof of the claim, to the person entitled to that amount.

(8) RELEASE OF LEVY. The department may release the levy upon all or part of property levied upon to facili-

tate the collection of the liability or to grant relief from a wrongful levy, but that release does not prevent any later levy.

(9) WRONGFUL LEVY. If the department determines that property has been wrongfully levied upon, the department may return the property at any time, or may return an amount of money equal to the amount of money levied upon.

(10) PRESERVATION OF REMEDIES. The availability of the remedy under this section does not abridge the right of the department to pursue other remedies.

(11) EVASION. Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized under this section with intent to evade or defeat the assessment or collection of any debt may be fined not more than \$5,000 or imprisoned for not more than 3 years or both, and shall be liable to the state for the costs of prosecution.

(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.

(13) SERVICE OF LEVY. (a) The department shall serve the levy upon the uninsured employer and 3rd party by personal service or by any type of mail service which requires a signature of acceptance.

(b) Personal service shall be made upon an individual, other than a minor or incapacitated person, by delivering a copy of the levy to the uninsured employer or 3rd party personally; by leaving a copy of the levy at the uninsured employer's dwelling or usual place of abode with some person of suitable age and discretion residing there; by leaving a copy of the levy at the business establishment of the uninsured employer with an officer or employe of the uninsured employer; or by delivering a copy of the levy to an agent authorized by law to receive service of process.

(c) The department representative who serves the levy shall certify service of process on the notice of levy

form and the person served shall acknowledge receipt of the certification by signing and dating it. If service is made by mail, the return receipt is the certificate of service of the levy.

(d) The uninsured employer's or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

(14) ANSWER BY 3RD PARTY. Within 20 days after the service of the levy upon a 3rd party, the 3rd party shall file an answer with the department stating whether the 3rd party is in possession of or obligated with respect to property or rights to property of the uninsured employer, including a description of the property or the rights to property and the nature and dollar amount of any such obligation.

(15) DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is satisfied, until the levy is released or until one year after the date of service, whichever occurs first.

(16) WAGES EXEMPT FROM LEVY. An uninsured employer is entitled to an exemption from levy of the greater of the following:

(a) A subsistence allowance of 75% of the uninsured employer's disposable earnings then due and owing.

(b) An amount equal to 30 times the federal minimum hourly wage for each full week of the uninsured employer's pay period.

(c) In the case of earnings for a period other than a week, a subsistence allowance computed so that it is equivalent to that provided in par. (b) using a multiple of the federal minimum hourly wage prescribed by rule of the department.

(17) EXEMPTIONS. The first \$1,000 of an account in a depository institution is exempt from any levy under this section. No other property is exempt from levy except as provided in sub. (16).

(18) RESTRICTION ON EMPLOYMENT PENALTIES BY REASON OF LEVY. No employer may discharge or otherwise discriminate with respect to the terms and conditions of employment against any employe by reason of the fact that his or her earnings have been subject to levy for any one levy or because of compliance with any provision of this section. Whoever wilfully violates this subsection may be fined not more than \$1,000 or imprisoned for not more than one year or both.

(19) HEARING. Any uninsured employer who is subject to a levy proceeding made by the department may request a hearing under s. 102.17 to review the levy proceeding. The hearing is limited to questions of prior payment of the debt that the department is proceeding against, and mistaken identity of the uninsured employer. The levy is not stayed pending the hearing in any case in which property is secured through the levy.

(20) COST OF LEVY. Any 3rd party is entitled to a levy fee of \$5 for each levy in any case where property is

secured through the levy. The 3rd party shall deduct the fee from the proceeds of the levy.

SECTION 42. 102.84 of the statutes is created to read:

102.84 Preference of required payments. Subject to the federal bankruptcy laws, in the event of an uninsured employer's dissolution, reorganization, bankruptcy, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation including the administration of estates in circuit courts, the payments required of the uninsured employer under s. 102.82 shall have preference over all claims of general creditors and shall be paid next after the payment of preferred claims for wages.

SECTION 43. 102.85 (2m) of the statutes is created to read:

102.85 (2m) The court may waive a forfeiture imposed under sub. (1) or (2) if the court finds that the employer is subject to this chapter only because the employer elected to become subject to this chapter under s. 102.05 (2) or 102.28 (2).

SECTION 44. 102.85 (2p) of the statutes is created to read:

102.85 (2p) The court may waive a forfeiture imposed under sub. (1) or (2) if the court finds that the sole reason for the uninsured employer's failure to comply with s. 102.82 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

SECTION 45. 303.21 (1) (b) of the statutes is amended to read:

303.21 (1) (b) Inmates are included under par. (a) if they are participating in a structured work program away from the institution grounds under s. 302.15. Inmates are not included under par. (a) if they are employed in a prison industry under s. 303.06 (2), participating in a work release program under s. 303.065 (2) or participating in the transitional employment program, but they are eligible for worker's compensation benefits as provided under ch. 102.

SECTION 46. 303.215 of the statutes is created to read:

303.215 Compensation to prisoners injured in prison industries employment. In accordance with s. 102.03 (2), for an inmate of a state institution employed under s. 303.06 (2), compensation under ch. 102 on being released from the institution, either on parole or on final discharge, is the exclusive remedy against the department and any employe of the department for any injury sustained by the inmate while performing service growing out of and incidental to that employment. The department shall make any payments required under this section from the revolving appropriation for the operation of prison industries or, if there is no revolving appropriation for the operation of prison industries, from the general fund.

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SECTION 47. Appropriation changes. (1) WORKER'S COMPENSATION ADMINISTRATION STAFF. 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) (ha) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$262,800 for fiscal year 1993–94 and the dollar amount is increased by \$364,300 for fiscal year 1994–95 to increase the authorized FTE positions for the department by 3.0 PR positions for the purpose of providing additional examiners, as described in section 102.18 (2) of the statutes, to hear and decide disputed worker's compensation claims and by 2.0 PR positions for the purpose of providing support staff to assist those examiners in the administration of the worker's compensation laws.

SECTION 48. Initial applicability. (1) WORKER'S COMPENSATION PROCEDURE. The treatment of sections 102.17 (8) and 102.175 (2) of the statutes first applies to hearings and prehearing conferences noticed under section 102.17 (1) (a) of the statutes on the effective date of this subsection.

(2) LATE PAYMENTS TO INJURED EMPLOYEES. The treatment of section 102.22 (1) of the statutes first applies to payments due on the effective date of this subsection.

(3) NOTICE OF INSURANCE CANCELLATION, TERMINATION OR NONRENEWAL. The treatment of section 102.31 (2) (a) and (b) 2. of the statutes first applies to contracts of worker's compensation insurance for which notice of cancellation, termination or nonrenewal is provided on the effective date of this subsection.

(4) UNINSURED EMPLOYERS. The treatment of sections 102.82 (2) (a) (intro.), (ag), (am) and (ar) and 102.85 (2m) and (2p) of the statutes first applies to violations of section 102.28 (2) of the statutes, as affected by this act, that occur on the effective date of this subsection.

SECTION 49. Effective dates. This act takes effect on January 1, 1994, or on the first day of the first month beginning after publication, whichever is later, except as follows:

(1) HEALTH SERVICE FEE DISPUTES AND WORKER'S COMPENSATION ADMINISTRATION STAFF. The treatment of section 102.16 (2) (c), (d), (e) and (h) of the statutes and SECTION 47 (1) of this act take effect on the day after publication.

(2) NOTICE OF INSURANCE CANCELLATION, TERMINATION OR NONRENEWAL. The treatment of section 102.31 (2) (a) and (b) 2. of the statutes takes effect on April 1, 1994, or on the first day of the first month beginning after publication, whichever is later.