



Legislative Fiscal Bureau

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October 29, 1997

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 565 and Senate Bill 323: Workforce Development--Worker's Compensation Law Changes

Assembly Bill 565 and Senate Bill 323 are identical bills which would modify numerous provisions governing the state's worker's compensation laws. The bills were developed and introduced on behalf of by the Worker's Compensation Advisory Council, a ten-member council appointed by the Labor and Industry Review Commission (LIRC) to advise the Legislature and the Department of Workforce Development (DWD) on worker's compensation matters. AB 565 and SB 323 were recommended for approval on October 23, 1997, by the Assembly Committee on Labor and Employment by a vote of 10 to 0 and by the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs by a vote of 7 to 0.

SUMMARY OF BILL

AB 565 and SB 323 would make several changes to the worker's compensation law. Unless otherwise noted, these provisions would take effect on January 1, 1998, or the day after publication of the bill, whichever is later.

Compensation

Compensation Amount. Under current law, an injured employe's worker's compensation benefit for permanent partial disability is 66.6% of the employe's average weekly earnings. The maximum weekly compensation rate is statutorily set at \$174 based on maximum weekly earnings of \$261. Under current law, for temporary disability, permanent total disability or death benefits, an injured employe receives 66.6% of the employe's average weekly earnings, subject to a maximum compensation rate of \$509 based on maximum weekly earnings of \$763.50. The

minimum weekly benefit is \$30 for permanent partial disability, temporary disability, permanent total disability or death benefits.

The bills would set the maximum weekly earnings and maximum compensation rates for permanent partial disability for injuries occurring on or after January 1, 1998, and on or after January 1, 1999. For injuries occurring during calendar year 1998, the maximum weekly earnings would be \$268.50, resulting in a maximum compensation rate of \$179 (66.6% of \$268.50). For injuries occurring in calendar year 1999, the maximum weekly earnings would be \$276, resulting in an increase in the maximum compensation rate from \$179 to \$184.

The bills would set the maximum weekly earnings and maximum compensation rate for temporary disability, permanent total disability or death benefits for injuries occurring after January 1, 1998, and before January 1, 1999, and for injuries occurring after January 1, 1999. For injuries occurring during calendar year 1998, the maximum earnings would be \$784.50, resulting in a maximum compensation rate of \$523. For injuries occurring during calendar year 1999, the maximum weekly earnings would be \$807, resulting in a maximum compensation rate of \$538.

The table below summarizes the compensation amounts:

	Current Maximum <u>Weekly Benefit</u>	<u>AB 565 and SB 323</u>	
		<u>Calendar Year 1998</u>	<u>Calendar Year 1999</u>
Permanent Partial Disability	\$174	\$179	\$184
Temporary Disability, Permanent Total Disability or Death Benefits	\$509	\$523	\$538

Average Weekly Earnings Computation Period. Currently, subject to the statutory limits, average weekly earnings used to determine compensation benefits cannot be less than the average weekly earnings of the employe for the four calendar quarters before his or her injury. The earnings must be in the business, in the kind of employment and for the employer for whom the employe worked when injured. The bills would change the period for computing average weekly earnings to the 52 weeks before the injury.

Coverage

Limiting Use of Out-of-State Medical Practitioners. Generally, an employe may choose to receive treatment from an out-of-state medical practitioner only with mutual agreement from the employer or worker's compensation insurer. However, the Wisconsin Supreme Court has

ruled that an employer or insurer is liable for treatment provided by an out-of-state practitioner where there is a referral by an in-state practitioner and not by the choice of the injured employee (UFE, Inc. v. LIRC, 201 Wis. 2d 274 [1996]).

The bills would reverse the Court ruling by specifying that the employer or insurer would not be liable for treatment provided by an out-of-state practitioner on referral from an in-state practitioner unless the employer or insurer agreed to be liable for the treatment. This provision would sunset on January 1, 2000, to allow the Worker's Compensation Advisory Council to study the issue during the next two years.

Temporary Help Agency. A temporary help agency is defined as an employer who places its employees with, or leases its employees to, another employer who controls the employees' work activities and compensates the temporary help agency for the employees' services, regardless of the duration of the services. The bills would specify that a temporary help agency is the employer of an employee whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employee's services, that the temporary help agency is liable for all worker's compensation payments, including related penalties, and that the temporary help agency may not seek or receive reimbursement from another employer as a result of the liability. These provisions would clarify that the temporary help employer is liable for all penalties, in addition to worker's compensation payments to employees, and that the temporary help agency may not seek reimbursement for penalty payments from work-site employers.

Election by Corporate Officer to be Excluded from Coverage. Generally, under current law, every person who usually employs three or more employees or who usually employs fewer than three employees but has paid wages of \$500 in any calendar quarter is subject to the state worker's compensation law. However, two officers of a corporation that has ten or fewer stockholders may elect not to be covered by the worker's compensation law. The election must be made by an endorsement on the worker's compensation insurance policy when the policy is issued.

The bills would permit an officer of such a corporation to elect not to be covered by the worker's compensation law and the insurance policy at any time during the period of the policy. The election could not be reversed during this period.

Alternative Insurance Benefits for Religious Sects. Under present law, every employer (except for certain small and farm employers) in the state must pay worker's compensation to an employee who is injured while performing services related to his or her employment. Covered employers must purchase worker's compensation insurance from an authorized insurer. An exemption is provided for an employer from the requirement to pay worker's compensation to certain employees who belong to a religious sect (for example, the Amish) 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 toward the cost of

medical care or provides medical care. An employer that applies for this exemption must submit certain information to DWD including:

- a. An agreement signed by the authorized representative of the religious sect to provide financial and medical assistance to the employee if the employee sustains an injury which, if not for the exemption, would be compensable under the worker's compensation law; and
- b. 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 DWD, a surety bond, an irrevocable letter of credit or some other financial commitment approved by DWD.

The bills would eliminate the requirement that to receive the exemption the employer must file proof of the religious sect's financial ability to provide financial and medical assistance. The provision that would be deleted is viewed as imposing an insurance requirement on the religious sect which the exemption was intended to eliminate.

Definition of Independent Contractor. Under current law, an independent contractor is defined as an employe of any employer that is subject to the worker's compensation law for whom the independent contractor is performing services in the course of the employer's trade, business, profession or occupation at the time of the injury. However, an independent contractor is not considered an employe of an employer for whom the independent contractor performs work if a number of conditions are met. One of those conditions is a requirement that the independent contractor holds or has applied for a federal identification number.

The bills would modify this requirement so that, as one of the conditions for not being considered an employe, the independent contractor would have to hold or have applied for a federal identification number with the federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the independent contractor's work or services in the previous year. This would conform the definition of independent contractor under this provision with that used for the state unemployment compensation law.

Students in Work Study Programs. Currently, a student of a public school or a private school is an employe of a school district or a private school that elects to name the student as an employe for purposes of worker's compensation coverage under certain circumstances. The student is a covered employe if the student is engaged in performing services as part of a school work training, work experience or work study program and is not on the payroll of an employer who 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. In addition, 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 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. These provisions do not apply to injuries occurring after December 31, 1997.

The bills would extend the sunset date for these provisions to December 31, 1999.

Participants in a Job Opportunities and Basic Skills (JOBS) Program. Under current law, a participant in a work experience component of a JOBS program under the aid to families with dependent children (AFDC) program who 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 also 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 31, 1997.

The bills would extend the sunset date of this provision to February 28, 1998. The AFDC program is replaced by the Wisconsin Works (W-2) program beginning March 1, 1998.

Participants in the Food Stamp Employment and Training (FSET) Program. Under the bills, a participant in an FSET program administered by DWD or a W-2 agency would be an employe of DWD or the W-2 agency for the purposes of worker's compensation coverage, except to the extent that the person for whom the participant was performing work provided that coverage. In addition, a participant in an FSET program who was provided worker's compensation coverage by DWD or a W-2 agency and who made a claim for worker's compensation could not also make a claim for worker's compensation or maintain an action in tort against the employer who provided the employment and training from which the claim arose. These provisions are similar to those (described above) which currently apply to JOBS program participants. The bill would also modify certain statutory provisions to clarify that participants in W-2 community service and transitional placement jobs would be provided worker's compensation coverage.

Examinations and Treatment

Dentists Included as Medical Practitioners. Under current law, practitioners to which provisions relating to examination and treatment of an injured employe, furnishing information and appointment by DWD generally include physicians, chiropractors, psychologists, podiatrists and dentists in certain cases. The bills would expand the provisions which would include dentists as practitioners. The bills also would require employers to offer to an injured employe his or her choice of any dentist licensed to practice and practicing in this state for treatment of the employe's injury.

Copies of Medical Reports. Currently, an employe must request a copy of his or her medical examination reports in order to receive them. The bills would require an employer or

insurer who requested that an employe submit to a medical examination to send a copy of those reports to the employe immediately upon receipt of those reports.

Hearings and Procedures

Fee and Necessity of Treatment Disputes. Under current law, there are separate statutory procedures provided for resolving disputes regarding worker's compensation claims, reasonableness of fees charged for services or the necessity of treatments provided to injured claimants, and for compromise, stipulation, agreement and default.

The bills would authorize DWD to resolve a dispute regarding the reasonableness of a fee charged for services or the necessity of a treatment provided by a health care provider under the general procedure used for resolving worker's compensation claims. If after a hearing on a disputed worker's compensation claim, DWD found that an insurer or self-insured employer was liable for any services or treatment provided and that the reasonableness of the fee or necessity of the treatment was in dispute, DWD could include in its order a determination as to the reasonableness of the fee or necessity of the treatment provided. Alternatively, the Department could notify the affected parties that the reasonableness of the fee or necessity of treatment was in dispute and, consequently, the health care provider could not collect the disputed charge or fee from the employe who received the services.

The bills would establish similar dispute resolution procedures for cases where an insurer or self-insured employer concedes liability for any health service or treatment under a compromise agreement or stipulation but disputes the reasonableness of the fee charged or necessity of the treatment provided. In cases where liability was conceded or otherwise resolved (including cases in which hearings were held), the bills would permit DWD, insurers, self-insured employers and health service providers to use the current dispute resolution process which authorizes DWD to determine the reasonableness of fees charged or the necessity of treatments provided. The bills would extend the sunset date for this dispute resolution process from July 1, 1998 to July 1, 2000.

DWD would be authorized to set aside, reverse or modify a determination made under the various dispute resolution processes within 30 days after the date of determination. Currently, a hearing examiner can set aside, reverse or modify a wage claim determination within 21 days after the date that a copy of the findings are mailed to the parties of interest. After a hearing or on confirming a compromise agreement or stipulation, DWD would be required to deny payment of a fee it determined was unreasonable or deny payment for any treatment it determined was unnecessary and the health service provider and insurer or self-insured employer would be bound by that determination unless the determination was set aside, reversed or modified by DWD or the Labor and Industry Review Commission or set aside by judicial review.

Uninsured Employers

Uninsured Employers Fund Benefit Reimbursements. The Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, the UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured.

The UEF is funded through penalties assessed against employers for illegally operating a business without worker's compensation insurance. In addition, uninsured employers are required to reimburse the UEF for any worker's compensation benefits paid to an employee of the uninsured employer.

The bills would require an uninsured employer to reimburse DWD for worker's compensation benefits paid to injured employees within 30 days after the date on which DWD notifies the employer that the reimbursement is owed. Interest of 1% per month would accrue on amounts not paid when due.

Liability of Corporate Officers. Under current law, officers and directors of illegally uninsured corporations are personally liable for unsatisfied warrants issued by DWD to collect penalties or reimbursement payments. The bills would extend personal liability for unsatisfied warrants issued by DWD to members or managers of limited liability companies (LLCs).

FISCAL EFFECT

The bills would increase the permanent partial disability maximum benefit payments and the temporary and permanent total disability and death benefit payments by 2.8% in both calendar year 1998 and 1999. The higher benefit levels would increase state worker's compensation benefits paid through the Department of Administration by an estimated \$37,000 PR in 1997-98 and \$73,900 PR in 1998-99. In addition, special death benefit payments for law enforcement officers, fire fighters, rescue squad members and emergency management personnel are referenced to worker's compensation benefit levels and would also increase. It is estimated that state special death benefit payments would increase by \$19,600 GPR in 1997-98 and \$39,100 GPR in 1998-99.

Prepared by: Ron Shanovich

MO# AB 565/323
adoption

2	BURKE	(Y)	N	A
	DECKER	(Y)	N	A
	GEORGE	Y	N	(A)
	JAUCH	(Y)	N	A
	WINEKE	(Y)	N	A
	SHIBILSKI	(Y)	N	A
	COWLES	(Y)	N	A
	PANZER	Y	N	(A)
/	JENSEN	(Y)	N	A
	OURADA	(Y)	N	A
	HARSDORF	(Y)	N	A
	ALBERS	(Y)	N	A
	PORTER	(Y)	N	A
	KAUFERT	(Y)	N	A
	LINTON	(Y)	N	(A)
	COGGS	(Y)	N	A

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