

1999 DRAFTING REQUEST

Bill

Received: **03/13/99**

Received By: **malaigm**

Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Dan Rossmiller**

This file may be shown to any legislator: **NO**

Drafter: **malaigm**

May Contact:

Alt. Drafters:

Subject: **Employ Priv - worker's comp**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Worker's compensation; payment of future benefits

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 03/19/99	chanaman 03/23/99		_____			S&L
/1			hhagen 03/25/99	_____	lrb_docadmin 03/25/99	lrb_docadmin 03/29/99	

FE Sent For: *6/15/99*

<END>

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1/?	malaigm	cmH 3/23 1	4/3/95	4/3/95			

FE Sent For:

<END>

State of Wisconsin



GARY R. GEORGE
SENATOR

MEMORANDUM

CONFIDENTIAL

TO: Gordon Malaise,
Legislative Reference Bureau Drafting Attorney

FROM: Dan Rossmiller *DR*

DATE: March 11, 1999

RE: Drafting Request

Senator George would like to have a bill drafted to amend s. 102.29 (1), Stats. as reflected by the attached language.

It is my understanding that this language change would affect the manner in which funds to pay future expenses (e.g., medical expenses) in workers compensation cases would be held.

Thank you. Please contact me (6-2500) if you have any questions.

Threshermans Mutual Ins. Co. v. Page,
212 Wis 2d 1 (Cr. App. 1997)

102.29(1) (a)

(1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employe shall not affect the right of the employe, the employe's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to 102.64 are applicable, or the adjustment of any such claim, affect the right of the injured employe or the employe's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under s. 102.81 (1), the department shall also have the right to maintain an action in tort against any other party for the employe's injury or

(a)

(b)

death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. If a party entitled to notice cannot be found, the department shall become the agent of such party for the giving of a notice as required in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in this subsection, the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and irrespective of whether or not all parties join in prosecuting such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employe or the employe's personal representative or other person entitled to bring action. Out of the balance remaining, the employer, insurance carrier or, if applicable, uninsured employers fund shall be reimbursed for all payments made by it, or which it may be obligated to make in the future, under this chapter, except that it shall not be reimbursed for any payments of increased compensation made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57 or 102.60. Any balance remaining shall be paid to the employe or the employe's personal representative or other person entitled to bring action, who shall not be entitled to additional benefits under this chapter until these future benefits exceeds the amount of that payment.

1.

2.

3.

delete x

add x

(d) If both the employe or the employe's personal representative or other person entitled to bring action, and the employer, compensation insurer or department, join in the pressing of said claim and are represented by counsel, the attorneys' fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court or by the department. A settlement of any 3rd party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.

In. App. - Impairment of Ins. K?

Injuries?
actions?
claims?

Settlements agreed to on eff. date.

Insurer can protect itself

estimated future payments? cost entire balance?

X ref 102.24 (2) (4)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2497^①
...GMM:.....
cmH

1 **AN ACT** ^{gen cat} **relating to:** the formula for distributing the proceeds of a 3rd-party
2 claim between an employe, or the employe's personal representative or other
3 person entitled bring action, and the employer, the employer's worker's
4 compensation insurer or the department of workforce development.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, worker's compensation is the exclusive remedy that an employe who sustains a work-related injury has against the employe's employer and the employer's worker's compensation insurer. Current law, however, provides that the making of a claim for worker's compensation for the injury or death of an employe does not affect the right of the employe, or the employe's personal representative or other person entitled to bring action, to make a claim or bring an action in tort against any party other than the employer or insurer (~~3rd~~^{third} party) for damages for the employe's injury or death. Current law also provides that if an employer or insurer has paid or is obligated to pay worker's compensation or if the department of workforce development (DWD) has paid or is obligated to pay an injured employe or a deceased employe's dependents from the uninsured employers fund, the employer, insurer or DWD may make a claim or bring an action in tort against a ~~3rd~~^{third} party for damages for the employe's injury or death. Currently, the proceeds of a ~~3rd~~^{third} party claim are divided as follows:

1. After deducting the reasonable cost of collection, one-third of the remainder is paid to the injured employe or the employe's personal representative or other person entitled to bring action.

third
third

The balance described in paragraph 3, above

2. Out of the balance remaining, the employer, insurer or uninsured employers fund is reimbursed for all payments that it has made or that it may be obligated to make in the future.

3. Any balance remaining is paid to the injured employe or the employe's personal representative or other person entitled to bring action.

third

This bill changes the formula for dividing the proceeds of a ~~3rd~~-party claim. Under the bill, an employer, an insurer or the uninsured employers fund is reimbursed only for payments that it has made and not for payments that it may be obligated to make in the future. Instead, the bill provides that the employer, insurer or uninsured employers fund shall ~~receive a credit for those future payments in an amount determined by the court before whom the 3rd-party action is pending or agreed to by the parties in settlement of the 3rd-party claim and approved by a court or DWD and that the employer, insurer or uninsured employers fund shall~~ be liable for any future payments for the employe's injury or death only to the extent that the amount of any future benefits for that injury or death to which the employe, or the employe's personal representative or other person entitled to bring action, becomes entitled exceeds the amount of that credit.

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:

X

1 SECTION 1. 102.29 (1) of the statutes is renumbered 102.29 (1) (a) and amended
2 to read:

3 102.29 (1) (a) The making of a claim for compensation against an employer or
4 compensation insurer for the injury or death of an employe shall does not affect the
5 right of the employe, the employe's personal representative, or other person entitled
6 to bring action, to make a claim or maintain an action in tort against any other 3rd
7 party for such that injury or death, ~~hereinafter referred to as a 3rd party~~; nor shall
8 does the making of a claim by any such person against a 3rd party for damages by
9 reason of an injury to which ss. 102.03 to 102.64 are applicable, or the adjustment
10 of any such claim, affect the right of the injured employe or the employe's dependents
11 to recover compensation. ~~The An~~ employer or compensation insurer who shall have
12 that has paid or is obligated to pay a lawful claim under this chapter shall have the

1 same right to make a claim or maintain an action in tort against any ~~other~~ 3rd party
2 for ~~such~~ the employe's injury or death. If the department pays or is obligated to pay
3 a claim under s. 102.81 (1), the department shall also have the right to make a claim
4 or maintain an action in tort against any other 3rd party for the employe's injury or
5 death. ~~However, each~~

6 (b) Any party that makes a claim or institutes an action under par. (a) shall give ✓
7 to ~~the other~~ all other interested parties reasonable notice and opportunity to join in
8 the making of ~~such~~ the claim or in the instituting of ~~an~~ the action and to be
9 represented by counsel. If a party that is entitled to receive notice cannot be found,
10 the department shall become the agent of ~~such~~ that party for the giving of a notice
11 as required in this ~~subsection~~ par[✓]agraph and the notice, when given to the
12 department, shall include an affidavit setting forth ~~the~~ such facts as show reasonable
13 diligence in attempting to provide notice to that party, including the steps taken to
14 locate ~~such~~ that [✓]party. Each party shall have an equal voice in the prosecution of said
15 the claim, and any disputes arising shall be passed upon by the court before whom
16 the case is pending, ~~and or~~, if no action is pending, then by a court of record or by the
17 department.

18 (c) If notice is given as provided in ~~this subsection~~ par. (b), the liability of the ✓
19 tort-feasor shall be determined as to all parties having a right to make a claim, and
20 irrespective of whether ~~or not~~ [✓]all parties join in prosecuting ~~such~~ the claim, the
21 proceeds of ~~such~~ the claim shall be divided as follows:

22 1. After deducting the reasonable cost of collection, ~~one-third of the remainder~~
23 shall in any event be paid to the injured employe or the employe's personal
24 representative or other person entitled to bring action.

Strike

1 2. Out of the balance remaining, the employer, the insurance carrier or, if
 2 applicable, the uninsured employers fund shall be reimbursed for all payments made
 3 by it, or which it may be obligated to make in the future, under this chapter, except
 4 that ~~it~~ an employer or insurer carrier shall not be reimbursed for any payments of
 5 increased compensation made ~~or to be made~~ under s. 102.18 (1) (bp), 102.22, 102.35
 6 (3), 102.57 or 102.60. An employer, an insurance carrier or the uninsured employers
 7 fund shall not be reimbursed for any payment under this chapter that it may be
 8 obligated to make in the future for the employee's injury or death. Instead, the
 9 employer, insurer or uninsured employers fund shall receive a credit for those future
 10 payments in an amount determined by the court before whom the action is pending
 11 or agreed to by the parties in settlement of the claim and approved under par. (d) and
 12 shall be liable for any future payments for the employee's injury or death only to the
 13 extent that the amount of any future benefits for that injury or death to which the
 14 employee, or the employee's personal representative or other person entitled to bring
 15 action, becomes entitled under this chapter exceeds the amount of that credit.

Insert
4-17

provided
in subd. 3

16 3. Any balance remaining shall be paid to the employee or the employee's personal
 17 representative or other person entitled to bring action.

18 (d) If both the employee or the employee's personal representative or other person
 19 entitled to bring action, and the employer, compensation insurer or department, join
 20 in the pressing of said a 3rd-party claim and are represented by counsel, the
 21 attorneys' attorney fees allowed as a part of the costs of collection shall be, unless
 22 otherwise agreed upon, divided between such the attorneys for the parties as
 23 directed by the court or by the department. A settlement of any 3rd party claim shall
 24 be void unless said the settlement and the distribution of the proceeds thereof of the

1 settlement is approved by the court before whom the action is pending and, or if no
2 action is pending, then by a court of record or by the department.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to a distribution of proceeds under section 102.29 (1) ✓
5 of the statutes, as affected by this act, determined by a court, or approved by a court
6 or by the department of workforce development, on the effective date of this
7 subsection.

8 History: 1975 c. 147 ss. 24, 54; 1977 c. 195; 1979 c. 323 s. 33; 1981 c. 92; 1985 a. 83 s. 44; 1985 a. 332 s. 253; 1987 a. 179; 1989 a. 64; 1995 a. 117, 289; 1997 a. 38.

(END)

Insert 4-17

(109)

If ~~the~~ the employee or the employee's ~~personal~~ personal representative or other person entitled to bring action becomes entitled to receive any ~~compensation~~ ^{benefits} under this chapter, other than ^{increased} compensation under s. 102.18(1)(b), 102.22, 102.35(3), 102.57 or 102.60, in the future for the employee's injury or death, the employee, personal representative or other person entitled to bring action shall be entitled to receive ^{future benefits} payment of ~~that compensation~~ ^{amount of those} only to the extent that the ^{benefits} future ~~compensation~~ exceeds the amount of the balance paid under this subdivision.

(ed of rest)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 3/25/99

To: Senator George

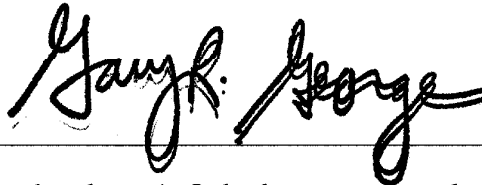
Relating to LRB drafting number: LRB-2497

Topic

Worker's compensation; payment of future benefits

Subject(s)

Employ Priv - worker's comp



1. **JACKET** the draft for introduction _____
in the Senate or the Assembly _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738