State of Wisconsin
2001 – 2002 LEGISLATURE

LRB–3500/?
GMM:...:...

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** various changes to the worker's compensation law.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

SECTION 1. 15.227 (4) of the statutes is amended to read:

15.227 **(4)** COUNCIL ON WORKER'S COMPENSATION. There is created in the department of workforce development a council on worker's compensation appointed by the secretary of workforce development to consist of a ~~member or~~ designated employee of the department of workforce development as chairperson, 5 representatives of employers, and 5 representatives of employees. The secretary of workforce development shall also appoint 3 representatives of insurers authorized to do worker's compensation insurance business in this state as nonvoting members of the council.

History: History: 1971 c. 271; 1975 c. 147 s. 54; 1975 c. 404, 405; 1977 c. 17, 29, 325; 1979 c. 102, 189; 1979 c. 221 ss. 45, 46m; 1981 c. 237, 341; 1983 a. 122, 388; 1985 a. 332; 1987 a. 27, 399; 1989 a. 31, 64; 1991 a. 39, 269, 295; 1993 a. 126, 399; 1995 a. 27 ss. 152 to 165, 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 27, 39; 1999 a. 9, 14.

SECTION 2. 102.01 (2) (k) of the statutes is created to read:

102.01 **(2)** (k) "Workweek" means a calendar week, starting on Sunday and ending on Saturday.

SECTION 3. 102.04 (2) of the statutes is amended to read:

102.04 **(2)** Except with respect to a partner or member electing under s. 102.075, members of partnerships or limited liability companies shall not be counted as employees. Except as provided in s. 102.07 (5) (a), a person under contract of hire for the performance of any service for any employer subject to this section ~~(1961) shall not constitute an~~ is not the employer of any other person with respect to ~~such~~ that service, and ~~such~~ that other person shall, with respect to ~~such~~ that service, be ~~deemed~~ considered to be an employee only of ~~such~~ the employer for whom the service is being performed.

History: 1975 c. 199; 1983 a. 98; 1989 a. 64; 1993 a. 112; 1997 a. 38; 1999 a. 9.

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

102.07 **(7m)** An employee, volunteer, or member of an emergency management unit is an employee for purposes of this chapter as provided in s. 166.03 (8) (d), and a member of a regional emergency response team who is acting under a contract under s. 166.215 (1) is an employee for purposes of this chapter as provided in s. 166.215 (4).

SECTION 5. 102.07 (12m) of the statutes is amended 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 employee of a school district or private school that elects under s. 102.077 to name the student as its employee. ~~This subsection does not apply after December 31, 2001.~~

History: 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 29; 1979 c. 278; 1981 c. 325; 1983 a. 27, 98; 1985 a. 29, 83, 135; 1985 a. 150 s. 4; 1985 a. 176, 332; 1987 a. 63; 1989 a. 31, 64, 359; 1993 a. 16, 81, 112, 399; 1995 a. 24, 77, 96, 117, 225, 281, 289, 417; 1997 a. 35, 38, 118; 1999 a. 14, 162.

SECTION 6. 102.077 (3) of the statutes is repealed.

SECTION 7. 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~~ that 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, plus 10% of the employee's average weekly earnings, except that the average weekly earnings for temporary disability, permanent total disability, or death benefits for injuries occurring on or after January 1, ~~1998, and before January 1, 1999~~ 2006, shall be not more than ~~$784.50, resulting in a maximum compensation rate of $523, and the average weekly earnings for temporary disability, permanent total disability or death benefits for injuries occurring on or after January 1, 1999, and before January 1, 2000, shall be not more than $807, resulting in a maximum compensation rate of $538~~ the wage rate that 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. 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, ~~1998~~ 2002, and before January 1, ~~1999~~ 2003, not more than ~~$268.50~~ $318, resulting in a maximum compensation rate of ~~$179, and,~~ $212, for

permanent partial disability for injuries occurring on or after January 1, ~~1999~~ 2003, and before January 1, 2004, not more than ~~$276~~ $333, resulting in a maximum compensation rate of ~~$184~~ $222, for permanent partial disability for injuries occurring on or after January 1, 2004, and before January 1, 2005, not more than $348, resulting in a maximum compensation rate of $232, and, for permanent partial disability for injuries occurring on or after January 1, 2005, and before January 1, 2006, not more than $363, resulting in a maximum compensation rate of $242. Between such limits the average weekly earnings shall be determined as follows:

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81, 492; 1995 a. 117; 1997 a. 38, 253.

SECTION 8. 102.11 (1) (a) of the statutes is renumbered 102.11 (1) (a) 1. and amended to read:

102.11 **(1)** (a) 1. Daily earnings shall mean the daily earnings of the employee at the time of the injury in the employment in which the employee was then engaged. In determining daily earnings under this ~~paragraph, overtime~~ subdivision, any hours worked beyond an employee's normal full–time working day as established by the employer, whether compensated at the employee's regular rate of pay or at an increased rate of pay, shall not be considered.

2. If at the time of the injury the employee is working on part time for the day, the employee's daily earnings shall be arrived at by dividing the amount received, or to be received by the employee for such part–time service for the day, by the number of hours and fractional hours of such part–time service, and multiplying the result by the number of hours of the normal full–time working day established by the employer for the employment involved. The words "part time for the day" shall apply to Saturday half days and all other days upon which the employee works less than normal full–time working hours.

3. The average weekly earnings shall be arrived at by multiplying the employee's hourly earnings by the hours in the employee's normal full–time workweek as established by the employer, or by multiplying the employee's daily earnings by the number of days and fractional days ~~normally worked per week~~ in the employee's normal full–time workweek as established by the employer, at the time of the injury in the business operation of the employer for the particular employment in which the employee was engaged at the time of the employee's injury, whichever is greater.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81, 492; 1995 a. 117; 1997 a. 38, 253.

SECTION 9. 102.11 (1) (a) 4. of the statutes is created to read:

102.11 **(1)** (a) 4. It is presumed, unless rebutted by reasonably clear and complete documentation, that the normal full–time workweek established by the employer is 24 hours for a flight attendant, 56 hours for a firefighter, and not less than 40 hours for any other employee. If the employer has established a multi–week schedule with regular hours alternating between weeks, the normal full–time workweek is the average number of hours worked per week under the multi–week schedule.

SECTION 10. 102.11 (1) (b) of the statutes is amended to read:

102.11 **(1)** (b) In case of seasonal employment, average weekly earnings shall be arrived at by the method prescribed in par. (a), except that the number of hours of the normal full–time working day and the number of days of the normal full–time ~~working week~~ workweek shall be ~~such~~ the hours and ~~such~~ the days in similar service in the same or similar nonseasonal employment. Seasonal employment shall mean employment ~~which~~ that can be conducted only during certain times of the year, and

in no event shall employment be considered seasonal if it extends during a period of more than fourteen weeks within a calendar year.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81, 492; 1995 a. 117; 1997 a. 38, 253.

SECTION 11. 102.11 (1) (f) 1. of the statutes is renumbered 102.11 (1) (f) 1. (intro.) and amended to read:

102.11 **(1)** (f) 1. (intro.) Except as provided in subd. 2., average weekly earnings for an employee who is a member of a regularly–scheduled class of part–time employees may not be less than the employee's actual average weekly earnings or 24 times the employee's normal hourly earnings at the time of injury., whichever is greater. An employee is a member of a regularly–scheduled class of part–time employees if all of the following conditions are met:

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81, 492; 1995 a. 117; 1997 a. 38, 253.

SECTION 12. 102.11 (1) (f) 1. a. of the statutes is created to read:

102.11 **(1)** (f) 1. a. The employee is a member of a class of employees that does the same type of work at the same location, maintains the same regular work schedule, and, in the case of an employee in the service of the state, is employed in the same office, department, independent agency, authority, institution, association, society, or other body in state government or, if the department determines appropriate, in the same subunit of an office, department, independent agency, authority, institution, association, society, or other body in state government.

SECTION 13. 102.11 (1) (f) 1. b. of the statutes is created to read:

102.11 **(1)** (f) 1. b. The minimum and maximum weekly hours regularly scheduled by the employer for the members of the class or actually worked by any member of the class during the 13 weeks immediately preceding the date of the injury vary by no more than 5 hours. Subject to this requirement, the members of

the class do not need to work the same days or the same shift to be considered members of a regular–scheduled class of part–time employees.

SECTION 14. 102.11 (1) (f) 1. c. of the statutes is created to read:

102.11 **(1)** (f) 1. c. Not less than 10% of the employer's workforce doing the same type of work are members of the class.

SECTION 15. 102.11 (1) (f) 1. d. of the statutes is created to read:

102.11 **(1)** (f) 1. d. The class consists of more than one employee.

SECTION 16. 102.123 of the statutes is created to read:

102.123 Statement of employee. If an employee provides to the employer or the employer's insurer a signed statement relating to a claim for compensation by the employee, the employer or insurer shall provide a copy of the statement to the employee within a reasonable time after the statement is made. If an employer or insurer uses a recording device to take a statement from an employee relating to a claim for compensation by the employee, the employer or insurer shall reduce the statement to writing and provide a written copy of the entire statement to the employee within a reasonable time after the statement is taken. The employer or insurer shall also make the actual recording of the statement available as an exhibit if a hearing on the claim is held. An employer or insurer that fails to provide an employee with a copy of the employee's statement as required by this section or that fails to make available as an exhibit the actual recording of a statement recorded by a recording device as required by this section may not use that statement in any manner in connection with the employee's claim for compensation.

SECTION 17. 102.125 (1) of the statutes is renumbered 102.125 and amended to read:

Fraudulent claims reporting and investigation.

102.125 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~~ section 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.

History: 1993 a. 81.

SECTION 18. 102.125 (2) of the statutes is repealed.

SECTION 19. 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, 2002, the~~ 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 database 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 database 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 20. 102.16 (2m) (c) of the statutes is amended to read:

102.16 **(2m)** (c) Before determining under this subsection the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department shall obtain a written opinion on the necessity of the treatment in dispute from an expert selected by the department. Before determining under sub. (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured employee who claims benefits under this chapter, the department may, but is not required to, obtain such an expert opinion. To qualify as an expert, a person must be licensed to practice the same health care profession as the individual health service provider whose treatment is under review and must either be performing services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The department shall adopt the written opinion of the expert as the department's determination on the issues covered in the written opinion, unless the health service provider or the insurer or self–insured employer present clear and convincing written evidence that the expert's opinion is in error.

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185.

SECTION 21. 102.17 (1) (c) of the statutes is amended to read:

102.17 (1) (c) ~~Either~~ Any party shall have the right to be present at any hearing, in person or by attorney~~,~~ or any other agent, and to present such testimony as may be pertinent to the controversy before the department. No person, firm, or corporation, other than an attorney at law~~, duly~~ who is licensed to practice law in the state, may appear on behalf of any party in interest before the department or any member or employee of the department assigned to conduct any hearing, investigation, or inquiry relative to a claim for compensation or benefits under this chapter, unless the person is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified, and has obtained from the department a license with authorization to appear in matters or proceedings before the department. Except as provided under pars. (cm) and (cr), the license shall be issued by the department under rules ~~to be adopted~~ promulgated by the department. ~~There shall be maintained in the office of the department~~ The department shall maintain in its office a current list of persons to whom licenses have been issued. Any license may be suspended or revoked by the department for fraud or serious misconduct on the part of an agent, any license may be denied, suspended, nonrenewed, or otherwise withheld by the department for failure to pay court–ordered payments as provided in par. (cm) on the part of an agent, and any license may be denied or revoked if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. Before suspending or revoking the license of the agent on the grounds of fraud or misconduct, the department shall give notice in writing to the agent of the charges of fraud or misconduct~~,~~ and shall give the agent full opportunity to be heard in relation to ~~the same~~ those charges. In denying, suspending, restricting, refusing to renew, or otherwise withholding a license for failure to pay court–ordered payments

as provided in par. (cm), the department shall follow the procedure provided in a memorandum of understanding entered into under s. 49.857. The license and certificate of authority shall, unless otherwise suspended or revoked, be in force from the date of issuance until the June 30 following the date of issuance and may be renewed by the department from time to time, but each renewed license shall expire on the June 30 following the issuance ~~thereof~~ of the renewed license.

History: 1971 c. 148; 1971 c. 213 s. 5; 1973 c. 150, 282; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 20, 54; 1975 c. 199, 200; 1977 c. 29, 195, 273; 1979 c. 278; 1981 c. 92, 314; 1981 c. 317 s. 2202; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 83; 1989 a. 64, 139, 359; 1991 a. 85; 1993 a. 81, 492; 1995 a. 27, 117; 1997 a. 38, 191, 237; 1999 a. 9.

SECTION 22. 102.17 (1) (e) of the statutes is amended to read:

102.17 **(1)** (e) The department may, with or without notice to ~~either~~ any party, cause testimony to be taken, ~~or~~ an inspection of the premises where the injury occurred to be made, or the time books and payrolls of the employer to be examined by any examiner, and may direct any employee claiming compensation to be examined by a physician, chiropractor, psychologist, dentist, or podiatrist. The testimony so taken, and the results of any such inspection or examination, shall be reported to the department for its consideration upon final hearing. All ex parte testimony taken by the department shall be reduced to writing and ~~either~~ any party shall have opportunity to rebut ~~such~~ that testimony on final hearing.

History: 1971 c. 148; 1971 c. 213 s. 5; 1973 c. 150, 282; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 20, 54; 1975 c. 199, 200; 1977 c. 29, 195, 273; 1979 c. 278; 1981 c. 92, 314; 1981 c. 317 s. 2202; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 83; 1989 a. 64, 139, 359; 1991 a. 85; 1993 a. 81, 492; 1995 a. 27, 117; 1997 a. 38, 191, 237; 1999 a. 9.

SECTION 23. 102.17 (1) (h) of the statutes is amended to read:

102.17 **(1)** (h) The contents of certified reports of investigation, made by industrial safety specialists who are employed, contracted, or otherwise secured by the department and available for cross–examination, served upon the parties 15 days prior to hearing, shall constitute prima facie evidence as to matter contained ~~therein~~ in those reports.

History: 1971 c. 148; 1971 c. 213 s. 5; 1973 c. 150, 282; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 20, 54; 1975 c. 199, 200; 1977 c. 29, 195, 273; 1979 c. 278; 1981 c. 92, 314; 1981 c. 317 s. 2202; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 83; 1989 a. 64, 139, 359; 1991 a. 85; 1993 a. 81, 492; 1995 a. 27, 117; 1997 a. 38, 191, 237; 1999 a. 9.

SECTION 24. 102.17 (4) of the statutes is amended to read:

102.17 **(4)** The right of an employee, the employee's legal representative ~~or~~, or a dependent to proceed under this section shall not extend beyond 12 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. In the case of occupational disease, the loss or total impairment of a hand or any part of the rest of the arm or of a foot or any part of the rest of the leg, any loss of vision, any brain injury, or any injury causing the need for a total or partial knee or hip replacement, there shall be no statute of limitations, except that benefits or treatment expense becoming due after 12 years from the date of injury or death or last payment of compensation shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66. Payment of wages by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment.

History: 1971 c. 148; 1971 c. 213 s. 5; 1973 c. 150, 282; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 20, 54; 1975 c. 199, 200; 1977 c. 29, 195, 273; 1979 c. 278; 1981 c. 92, 314; 1981 c. 317 s. 2202; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 83; 1989 a. 64, 139, 359; 1991 a. 85; 1993 a. 81, 492; 1995 a. 27, 117; 1997 a. 35, 101, 237; 1999 a. 9.

SECTION 25. 102.18 (1) (b) of the statutes is amended to read:

102.18 **(1)** (b) Within 90 days after the final hearing and close of the record, the department shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the department may in its discretion after any hearing make interlocutory findings, orders, and awards, which may be enforced in the same manner as final awards. The department may include in any interlocutory or final award or order an order

directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve the employee from the effects of the injury. If the department finds that the employer or insurer has not paid any amount that the employer or insurer was directed to pay in any interlocutory order or award and that the nonpayment was not in good faith, the department may include in its final award, ~~as~~ a penalty ~~for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith,~~ not exceeding 25% of each amount ~~which shall not have been~~ that was not paid as directed ~~thereby. Where.~~ When there is a finding that the employee is in fact suffering from an occupational disease caused by the employment of the employer against whom the application is filed, a final award dismissing ~~such~~ the application upon the ground that the applicant has suffered no disability from ~~said~~ the disease shall not bar any claim ~~he or she~~ the employee may thereafter have for disability sustained after the date of the award.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 29, 195; 1979 c. 89, 278, 355; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1997 a. 38; 1999 a. 14.

SECTION 26. 102.18 (1) (e) of the statutes is created to read:

102.18 **(1)** (e) Except as provided in s. 102.21, if the department orders a party to pay an award of compensation, the party shall pay the award no later than 21 days after the date on which the order is mailed to the last–known address of the party, unless a party files a petition for review under sub. (3). This paragraph applies to all awards of compensation ordered by the department, whether the award results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department.

History: 1975 c. 147, 200; 1977 c. 195; 1981 c. 92, 314; 1983 a. 98; 1985 a. 83; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38; 1999 a. 14, 185.

SECTION 27. 102.20 of the statutes is amended to read:

102.20 Judgment on award. If ~~either~~ any party presents a certified copy of the award to the circuit court for any county, the court shall, without notice, render

judgment in accordance ~~therewith~~ with the award. A judgment rendered under this section shall have the same effect as though rendered in an action tried and determined by the court, and shall, with like effect, be entered in the judgment and lien docket.

History: 1995 a. 224.

SECTION 28. 102.23 (1) (d) of the statutes is amended to read:

102.23 **(1)** (d) The commission shall make return to the court of all documents and papers on file in the matter, ~~and of~~ all testimony ~~which~~ that has been taken, and ~~of~~ the commission's order, findings, and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers ~~mentioned~~ specified in s. 809.15, constitute a judgment roll in the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before the court upon the record by ~~either~~ any party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

History: 1973 c. 150; 1975 c. 199; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 29; 1977 c. 187 ss. 59, 135; 1977 c. 195, 272, 447; Sup. Ct. Order, 83 Wis. 2d xiii (1978); 1979 c. 278; 1981 c. 390 s. 252; 1983 a. 98, 122, 538; 1985 a. 83; 1997 a. 187.

SECTION 29. 102.26 (3) (b) 3. of the statutes is created to read:

102.26 **(3)** (b) 3. The claimant may request the insurer or self–insured employer to pay any compensation that is due the claimant by depositing the payment directly into an account maintained by the claimant at a financial institution. If the insurer or self–insured employer agrees to the request, the insurer or self–insured employer may deposit the payment by direct deposit, electronic funds transfer, or any other money transfer technique approved by the department. The claimant may revoke a request under this subdivision at any time by providing appropriate written notice to the insurer or self–insured employer.

SECTION 30. 102.29 (8) of the statutes is amended 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 employee 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, 2001.~~

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; 1999 a. 9, 14.

SECTION 31. 102.31 (8) of the statutes is amended to read:

102.31 **(8)** The Wisconsin compensation rating bureau shall provide the department with any information ~~it requests~~ that the department may request relating to worker's compensation insurance coverage, including ~~but not limited to~~ the names of employers insured and any insured employer's address, business status, type and date of coverage, manual premium code, and policy information including numbers, cancellations, terminations, endorsements, and reinstatement dates. The department may enter into contracts with the Wisconsin compensation rating bureau to share the costs of data processing and other services. No information obtained by the department under this subsection may be made public by the department except as authorized by the Wisconsin compensation rating bureau.

History: 1971 c. 260, 307; 1975 c. 39; 1975 c. 147 ss. 26, 54; 1975 c. 199, 371; 1977 c. 29, 195; 1979 c. 278; 1981 c. 92; 1983 a. 189 s. 329 (25); 1985 a. 29, 83; 1987 a. 179; 1989 a. 64, 332; 1993 a. 81, 112.

SECTION 32. 102.32 (5) of the statutes is amended to read:

102.32 **(5)** Any insured employer may, within the discretion of the department, compel the insurer to discharge, or to guarantee payment of ~~its~~, the employer's liabilities in any ~~such case under~~ case described in this section and thereby release

~~himself or herself~~ the employer from compensation liability ~~therein~~ in that case, but if for any reason a bond furnished or deposit made under sub. (4) does not fully protect, the compensation insurer or ~~uninsured~~ insured employer, as the case may be, shall still be liable to the beneficiary ~~thereof~~ of the bond or deposit.

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492.

SECTION 33. 102.32 (6) of the statutes is amended to read:

102.32 **(6)** If compensation is due for permanent disability following an injury or if death benefits are payable, payments shall be made to the employee or dependent on a monthly basis. Compensation for permanent disability shall begin within 30 days after the end of the employee's healing period or within 30 days after the employer or the employer's insurer receives a medical report that provides a permanent disability rating, whichever is later, except that if within the later of those 30–day periods the employer or insurer notifies the employee that the employer or insurer is requesting an examination under s. 102.13 (1) (a), compensation for permanent disability shall begin within 30 days after the employer or insurer receives the report of the examination or within 90 days after the date of the request for the examination, whichever is earlier. Payments for permanent disability, including payments based on minimum permanent disability ratings promulgated by the department by rule, shall continue on a monthly basis and shall accrue and be payable between intermittent periods of temporary disability so long as the employer or insurer knows the nature of the permanent disability.

(B) (6m) The department may direct an advance on a payment of unaccrued compensation or death benefits if ~~it~~ the department determines that the advance payment is in the best interest of the injured employee or ~~his or her~~ the employee's dependents. In directing the advance, the department shall give the employer or the

don't bold the scoring) just the number

employer's insurer an interest credit against its liability. The credit shall be computed at 7%.

History: 1977 c. 195; 1979 c. 278; 1983 a. 98, 368, 538; 1991 a. 221; 1993 a. 492.

SECTION 34. 102.33 (2) (a) of the statutes is amended to read:

102.33 **(2)** (a) Except as provided in ~~par.~~ pars. (b) and (c), the records of the department related to the administration of this chapter are subject to inspection and copying under s. 19.35 (1).

History: 1975 c. 147 s. 54; 1989 a. 64; 1991 a. 85; 1995 a. 117; 1997 a. 191, 237.

SECTION 35. 102.33 (2) (c) of the statutes is created to read:

102.33 **(2)** (c) Notwithstanding par. (a), a record maintained by the department that contains employer or insurer information obtained from the Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is confidential and not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin compensation rating bureau authorizes public inspection or copying of that information.

SECTION 36. 102.37 of the statutes is amended to read:

102.37 Employers' records. Every employer of 3 or more persons and every employer who is subject to this chapter shall keep a record of all accidents causing death or disability of any employee while performing services growing out of and incidental to the employment. This record shall give the name, address, age, and wages of the deceased or injured employee, the time and causes of the accident, the nature and extent of the injury, and any other information the department may require by rule or general order. Reports based upon this record shall be furnished to the department at such times and in such manner as ~~it~~ the department may require by rule or general order, ~~upon forms~~ in a format approved by the department.

History: 1975 c. 147 s. 54; 1985 a. 83.

SECTION 37. 102.38 of the statutes is amended to read:

102.38 Records and reports of payments; ~~reports thereon.~~ Every insurance company ~~which~~ that transacts the business of compensation insurance, and every employer who is subject to this chapter, but whose liability is not insured, shall keep a record of all payments made under this chapter and of the time and manner of making the payments, and shall furnish reports based upon these records and any other information to the department as ~~it~~ the department may require by rule or general order, ~~upon forms~~ in a format approved by the department.

History: 1975 c. 147 s. 54; 1975 c. 199; 1979 c. 89; 1985 a. 83.

SECTION 38. 102.39 of the statutes is amended to read:

102.39 ~~General~~ Rules and general orders; application of statutes. The provisions of s. 103.005 relating to the adoption, publication, modification, and court review of rules or general orders of the department shall apply to all rules promulgated or general orders adopted ~~pursuant to~~ under this chapter.

History: 1995 a. 27.

SECTION 39. 102.42 (1) of the statutes is amended to read:

102.42 **(1)** TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical, chiropractic, psychological, podiatric, dental, and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employee, if the employer has not filed notice as provided in sub. (4), Christian Science treatment in lieu of medical treatment, medicines, and medical supplies, as may be ~~reasonably required~~ necessary to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employee to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing such

treatment, medicines, supplies, and training. ~~Where~~ When the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies, and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational disease prior to the time that the employee knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employee or to maintain the existing status of such condition whether or not healing is completed.

History: 1971 c. 61; 1973 c. 150, 282; 1975 c. 147; 1977 c. 195 ss. 24 to 28, 45; 1977 c. 273; 1979 c. 278; 1981 c. 20; 1987 a. 179; 1989 a. 64; 1995 a. 27 ss. 3743m, 3744, 9130 (4); 1997 a. 3, 38; 1999 a. 9.

SECTION 40. 102.42 (1m) of the statutes is created to read:

102.42 **(1m)** If an employee who has sustained a compensable injury undertakes in good faith invasive treatment that is generally medically acceptable, but that is unnecessary, the employer shall pay disability indemnity for all disability incurred as a result of that treatment. An employer is not liable for disability indemnity for any disability incurred as a result of any unnecessary treatment undertaken in good faith that is noninvasive or not medically acceptable. This subsection applies to all findings that an employee has sustained a compensable injury, whether the finding results from a hearing, the default of a party, or a compromise or stipulation confirmed by the department.

SECTION 41. 102.43 (5) of the statutes is amended to read:

102.43 **(5)** Temporary disability, during which compensation shall be payable for loss of earnings, shall include such period as may be reasonably required for

training in the use of artificial members and appliances~~, and shall~~. Except as provided in s. 102.61 (1g), temporary disability shall also include such period as the employee may be receiving instruction pursuant to s. 102.61 (1) or (1m). Temporary disability on account of receiving instruction of the latter nature, and not otherwise resulting from the injury, shall not be in excess of 80 weeks. Such 80–week limitation does not apply to temporary disability benefits under this section, travel or maintenance expense under s. 102.61 (1), or private rehabilitation counseling or rehabilitative training costs under s. 102.61 (1m) if the department determines that additional training is warranted. The necessity for additional training as authorized by the department for any employee shall be subject to periodic review and reevaluation.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1993 a. 370, 492; 1995 a. 225, 413.

SECTION 42. 102.43 (6) (b) of the statutes is amended to read:

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

History: 1971 c. 148; 1973 c. 150; 1975 c. 147; 1977 c. 195; 1979 c. 278; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1993 a. 370, 492; 1995 a. 225, 413.

SECTION 43. 102.44 (1) (intro.) of the statutes is amended to read:

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102.44 **(1)** (intro.) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, ~~1976~~ 1978, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~1978~~, and shall continue during the period of such total disability subsequent to that date.

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History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117.

SECTION 44. 102.44 (1) (a) of the statutes is amended to read:

102.44 **(1)** (a) If such employee 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 ~~$150~~ $202.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117.

SECTION 45. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If such employee 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 ~~$150~~ $202 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117.

SECTION 46. 102.57 of the statutes is amended to read:

102.57 Violations of safety provisions, penalty. If injury is caused by the failure of the employer to comply with any statute ~~or any lawful~~, rule, or order of the department, compensation and death benefits provided in this chapter shall be

increased 15% but the total increase may not exceed $15,000. Failure of an employer reasonably to enforce compliance by employees with ~~that~~ any statute, rule, or order of the department constitutes failure by the employer to comply with that statute, rule, or order.

History: 1981 c. 92; 1983 a. 98.

SECTION 47. 102.58 of the statutes is amended to read:

102.58 Decreased compensation. If injury is caused by the failure of the employee to use safety devices ~~which~~ that are provided in accordance with any statute ~~or lawful, rule, or~~ order of the department and that are adequately maintained, and the use of which is reasonably enforced by the employer, ~~or~~ if injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, or if injury results from the intoxication of the employee by alcohol beverages, as defined in s. 125.02 (1), or use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m), the compensation and death benefit provided in this chapter shall be reduced 15% but the total reduction may not exceed $15,000.

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History: 1971 c. 148; 1981 c. 92; 1983 a. 98; 1987 a. 179; 1995 a. 448.

SECTION 48. 102.61 (1) of the statutes is amended to read:

102.61 **(1)** Subject to ~~sub.~~ subs. (1g) and (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instructions under 29 USC 701 to 797b, as administered by the state in which the employee resides or in which the employee resided at the time of becoming physically disabled, shall, in addition to other indemnity, be paid the actual and necessary expenses of travel and, if the employee receives instructions elsewhere

than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r).

History: 1975 c. 147; 1985 a. 83, 135; 1993 a. 370; 1995 a. 27 ss. 3745, 9126 (19), 9130 (4); 1997 a. 3, 112.

SECTION 49. 102.61 (1g) of the statutes is created to read:

102.61 **(1g)** (a) In this subsection, "suitable employment" means employment that is within an employee's permanent work restrictions, that the employee has the necessary physical capacity, knowledge, transferable skills, and ability to perform, and that pays not less than 90% of the employee's preinjury average weekly wage, except that employment that pays 90% or more of the employee's preinjury average weekly wage does not constitute suitable employment if any of the following apply:

1. The employee's education, training, or employment experience demonstrates that the employee is on a career or vocational path, the employee's average weekly wage on the date of injury does not reflect the average weekly wage that the employee reasonably could have been expected to earn in the demonstrated career or vocational path, and the permanent work restrictions caused by the injury impede the employee's ability to pursue the demonstrated career or vocational path.

2. The employee was performing part–time employment at the time of the injury, the employee's average weekly wage for compensation purposes is calculated under s. 102.11 (1) (f) 1. or 2., and that average weekly wage exceeds the employee's gross average weekly wage for the part–time employment.

(b) If an employer offers an employee suitable employment as provided in par. (c), the employer or the employer's insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) or for travel and maintenance expenses under sub. (1). Ineligibility for compensation under this paragraph does not preclude an

employee from receiving vocational rehabilitation services under 29 USC 701 to 797b if the department determines that the employee is eligible to receive those services.

(c) On receiving notice that he or she is eligible to receive vocational rehabilitation services under 29 USC 701 to 797a, an employee shall provide the employer with a written report from a physician, chiropractor, psychologist, or podiatrist stating the employee's permanent work restrictions. Within 60 days after receiving that report, the employer shall provide to the employee in writing an offer of suitable employment, a statement that the employer has no suitable employment for the employee, or a report from a physician, chiropractor, psychologist, or podiatrist showing that the permanent work restrictions provided by the employee's practitioner are in dispute and documentation showing that the difference in work restrictions would materially affect either the employer's ability to provide suitable employment or a vocational rehabilitation counselor's ability to recommend a rehabilitative training program. If the employer and employee cannot resolve the dispute within 30 days after the employee receives the employer's report and documentation, the employer or employee may request a hearing before the department to determine the employee's work restrictions. Within 30 days after the department determines the employee's work restrictions, the employer shall provide to the employee in writing an offer of suitable employment or a statement that the employer has no suitable employment for the employee.

SECTION 50. 102.61 (1m) (c) of the statutes is amended to read:

102.61 **(1m)** (c) The employer or insurance carrier shall pay the reasonable cost of any services provided for an employee by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative

training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including tuition, fees, books, and maintenance and travel expenses. Notwithstanding that the department ~~of workforce development~~ may authorize under s. 102.43 (5) a rehabilitative training program that lasts longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to be reasonable.

History: 1975 c. 147; 1985 a. 83, 135; 1993 a. 370; 1995 a. 27 ss. 3745, 9126 (19), 9130 (4); 1997 a. 3, 112.

SECTION 51. 102.61 (1m) (d) of the statutes is amended to read:

102.61 (1m) (d) If an employee receives services from a private rehabilitation counselor under par. (a) and later receives similar services from the department ~~of health and family services~~ under sub. (1) without the prior approval of the employer or insurance carrier, the employer or insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) or for travel and maintenance expenses under sub. (1) that exceed what the employer or insurance carrier would have been liable for under the rehabilitative training program developed by the private rehabilitation counselor.

History: 1975 c. 147; 1985 a. 83, 135; 1993 a. 370; 1995 a. 27 ss. 3745, 9126 (19), 9130 (4); 1997 a. 3, 112.

SECTION 52. 102.61 (1m) (e) of the statutes is amended to read:

102.61 (1m) (e) Nothing in this subsection prevents an employer or insurance carrier from providing an employee with the services of a private rehabilitation counselor or with rehabilitative training under sub. (3) before the department ~~of health and family services~~ makes its determination under par. (a).

History: 1975 c. 147; 1985 a. 83, 135; 1993 a. 370; 1995 a. 27 ss. 3745, 9126 (19), 9130 (4); 1997 a. 3, 112.

SECTION 53. 102.61 (1m) (f) of the statutes is amended to read:

102.61 (1m) (f) The department ~~of workforce development~~ shall promulgate rules establishing procedures and requirements for the private rehabilitation counseling and rehabilitative training process under this subsection. Those rules

shall include rules specifying the procedure and requirements for certification of private rehabilitation counselors.

History: 1975 c. 147; 1985 a. 83, 135; 1993 a. 370; 1995 a. 27 ss. 3745, 9126 (19), 9130 (4); 1997 a. 3, 112.

SECTION 54. 102.61 (2) of the statutes is amended to read:

102.61 **(2)** The department ~~of workforce development~~, the commission, and the courts shall determine the rights and liabilities of the parties under this section in like manner and with like effect as ~~that~~ the department, the commission, and the courts ~~do~~ determine other issues under ~~compensation~~ this chapter. A determination under this subsection may include a determination based on the evidence regarding the cost or scope of the services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

History: 1975 c. 147; 1985 a. 83, 135; 1993 a. 370; 1995 a. 27 ss. 3745, 9126 (19), 9130 (4); 1997 a. 3, 112.

SECTION 55. 102.66 (1) of the statutes is amended to read:

102.66 **(1)** In the event that there is an otherwise meritorious claim for occupational disease, the loss or total impairment of a hand or any part of the rest of the arm or of a foot or any part of the rest of the leg, any loss of vision, any brain injury, or any injury causing the need for a total or partial knee or hip replacement and the claim is barred solely by the statute of limitations under s. 102.17 (4), the department may, in lieu of worker's compensation benefits, direct payment from the work injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy ~~where the~~ whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or

medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

History: 1975 c. 147; 1979 c. 278.

SECTION 56. 102.66 (2) of the statutes is amended to read:

102.66 **(2)** In the case of occupational disease, the loss or total impairment of a hand or any part of the rest of the arm or of a foot or any part of the rest of the leg, any loss of vision, any brain injury, or any injury causing the need for a total or partial knee or hip replacement, appropriate benefits may be awarded from the work injury supplemental benefit fund ~~where~~ when the status or existence of the employer or its insurance carrier cannot be determined or ~~where~~ when there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

History: 1975 c. 147; 1979 c. 278.

SECTION 57. 626.32 (1) (a) of the statutes is amended to read:

626.32 **(1)** (a) *General.* Every insurer writing any insurance specified under s. 626.03 shall report its insurance in this state to the bureau at least annually, on forms and under rules prescribed by the bureau. The bureau ~~must~~ shall file, ~~pursuant to~~ under rules ~~adopted~~ promulgated by the department of workforce development, a record of such reports with ~~the~~ that department. No such information may be made public by the bureau or any of its employees except as required by law and in accordance with its rules. No such information may be made public by the department of workforce development or any of its employees except as authorized by the bureau.

Initial applicability. B

History: 1975 c. 148, 199; 1995 a. 27 s. 9130 (4); 1997 a. 3.

SECTION 58. Nonstatutory provisions.

(1) NECESSITY OF TREATMENT DETERMINATIONS. The treatment of section 102.16 (2m) (c) of the statutes first applies to necessity of treatment determinations made on the effective date of this subsection.

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(2) PAYMENTS OF AWARDS. The treatment of section 102.18 (1) (e) of the statutes first applies to orders awarding compensation entered on the effective date of this subsection.

(3) DISABILITY AS A RESULT OF UNNECESSARY TREATMENT. The treatment of section 102.42 (1m) of the statutes first applies to treatment provided on the effective date of this subsection.

(4) STATUTE OF LIMITATIONS; PAYMENTS FROM SUPPLEMENTAL WORK INJURY BENEFIT FUND. The treatment of sections 102.17 (4) and 102.66 (1) and (2) of the statutes first applies to benefits or treatment expenses that are payable on the effective date of this subsection, regardless of the date of the injury.

(5) PERMANENT DISABILITY PAYMENTS. The treatment of section 102.32 (6) of the statutes first applies to compensation that becomes due on the effective date of this subsection.

SECTION 59. Effective date.

(1) This act takes effect on January 1, 2002, or on the day after publication, whichever is later.

(END)

(INSERT A)

This bill makes various changes relating to worker's compensation law, as administered by the department of workforce development (DWD).

Liability for disability caused by unnecessary treatment

Under current law, an employer that is subject to the worker's compensation law is liable for worker's compensation when an employee sustains an injury while performing services growing out of and incidental to the employee's employment (compensable injury). Worker's compensation for which an employer is liable includes benefits for temporary or permanent disability arising out of a compensable injury and the expense of reasonably required medical treatment to cure and relieve the employee from the effects of the compensable injury. In addition, the Wisconsin Supreme Court, in *Spencer v. ILHR Department,* 55 Wis. 2d 525 (1972), held that an employer is liable not only for the consequences of the original compensable injury, but also for the consequences, such as an increased period of temporary disability or an increased permanent disability rating, of any medical treatment for the compensable injury that the employee accepts in good faith even if the treatment on further review turns out to be unnecessary.

This bill codifies the *Spencer* doctrine with respect to liability for disability incurred as a result of unnecessary treatment undertaken in good faith that is invasive and generally medically acceptable. The bill, however, repeals the *Spencer* doctrine with respect to liability for disability incurred as a result of unnecessary treatment undertaken in good faith that is either noninvasive or not medically acceptable.

Maximum compensation amounts

Under current law, temporary and permanent disability benefits are subject to maximum weekly compensation rates specified in statute. Specifically, the maximum weekly compensation rate for temporary disability and for permanent total disability is the ~~state~~ state's average weekly earnings as of June 30 of the previous year. This bill provides that, for injuries occurring before January 1, 2006, the maximum weekly compensation rate for temporary disability and for permanent total disability is the state's average weekly earnings as of June 30 of the previous year, plus 10% of the employee's average weekly earnings. For injuries occurring on or after January 1, 2006, that maximum weekly compensation rate reverts to the state's average weekly earnngs as under current law.

Currently, the maximum weekly compensation rate for permanent partial disability is $184. This bill increases that maximum weekly compensation rate to $212 for injuries occurring in 2002, $222 for injuries occurring in 2003, $232 for injuries occurring in 2004, and $242 for injuries occurring in 2005.

Under current law, an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 1976, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals $150. The bill makes an employee who is injured prior to January 1, 1978, eligible for those supplemental benefits. The bill

also increases the supplemental benefit amount to an amount that, when added to the employee's regular benefits, equals $202.

Method of calculating compensation

Current law specifies the method by which an employee's average weekly earnings are calculated for purposes of determining the employee's compensation rate. Briefly, that method calls for multiplying the employee's average daily earnings, not including overtime, by the number of days and fractional days normally worked per week in the employment in which the employee was engaged at the time of the injury. This bill clarifies that hours worked beyond the employee's normal full–time working day as established by the employer, whether compensated at the employee's regular rate of pay or at an increased rate of pay, are not counted in determining the employee's average daily earnings. The bill also provides an alternate method of calculating an employee's average weekly earnings. Specifically, under the bill, an employee's average weekly earnings are the greater of the employee's daily earnings multiplied by the number of days and fractional days in the employee's normal full–time workweek as established by the employer or the employee's hourly earnings multiplied by the hours in the employee's normal full–time workweek as established by the employer. In addition, the bill creates a presumption that the normal full–time workweek is 24 hours for a flight attendant, 56 hours for a firefighter, and not less than 40 hours for any other employee and provides that the normal full–time workweek for an employee on a multi–week schedule with regular hours alternating between weeks is the average number of hours worked per week, that is, from Sunday to Saturday, under the schedule.

Under current law, the average weekly earnings of an employee who is working part–time for the day are arrived at by multiplying the employee's hourly earnings by the number of hours of the normal *full–time* working day for the employment involved and then multiplying that result by the number of days and fractional days normally worked per week in the employment. This method of calculating a part–time employee's average weekly wage is commonly known as "wage expansion" because it usually results in an average weekly wage that is based on a 40–hour week rather than on the part–time hours actually worked. If, however, the part–time employee is also receiving wages from another job at the time of the injury, the wages from the other job are offset when computing the employee's actual wage loss. Current law, however, does not specify the amount from which the wages from the other job are offset. This bill specifies that the wages from the employee's other job are offset against the employee's expanded wage and not against the employee's actual earnings from the part–time job in which the employee was engaged at the time of the injury.

The wage expansion method of calculating a part–time employee's average weekly earnings, however, does not apply to an employee who is a member of a regularly–scheduled class of part–time employees. For those employees, the average weekly earnings are ~~the greater of~~ the employee's actual average weekly earnings or 24 times the employee's normal hourly earnings at the time of the injury, whichever is greater. This bill provides that an employee is a member of a regularly–scheduled class of part–time employees for purposes of calculating the employee's average weekly earnings if the

employee is a member of a class of employees that does the same type of work at the same location and maintains the same regular work schedule, the minimum and maximum weekly hours regularly scheduled by the employer for the members of the class or actually worked by any member of the class during the 13 weeks immediately preceding the injury vary by no more than five hours, not less than 10% of the employer's workforce doing the same type of work are members of the class, and the class consists of more than one employee.

Vocational rehabilitation; offer of suitable employment

Under current law, an injured employee may be entitled to receive vocational rehabilitation instruction from DWD under the federal Rehabilitation Act of 1973, or, if the employee is eligible for that instruction, but DWD cannot provide that instruction, from a private rehabilitation counselor. An injured employee must be paid temporary disability benefits and the actual and necessary costs of travel and maintenance while receiving vocational rehabilitation instruction, except that current DWD administrative rules provide that an employer is not liable for those benefits or costs if the employee is receiving vocational rehabilitation services from a private vocational rehabilitation counselor and the employer makes an offer of suitable employment to the employee.

The rules define "suitable employment" to mean a job that is within the employee's permanent work restrictions, that the employee has the necessary physical capacity, knowledge, transferable skills, and ability to perform, and that pays not less than 85% of the employee's preinjury average weekly wage, except that a job that pays 85% or more of the employee's preinjury average weekly wage does not constitute suitable employment if the employee was working part–time at the time of the injury and the employee's average weekly wage as calculated for purposes of determining the employee's compensation rate exceeds the employee's actual average weekly wage for the part–time employment or if the employee was on a demonstrated career or vocational path at the time of the injury, the employee's average weekly wage at the time of the injury does not reflect the employee's earning potential in the demonstrated career or vocational path, and the permanent work restrictions caused by the injury impede the employee's ability to pursue the demonstrated career or vocational path.

This bill extends the offer of suitable employment rule to employees who are receiving vocational rehabilitation instruction from DWD. Specifically, the bill provides that if an employer makes an offer of suitable employment to an employee who is receiving vocational rehabilitation instruction from DWD, the employer is not liable for temporary disability benefits or for the costs of travel and maintenance during the employee's rehabilitation. The bill differs from the administrative rule, however, insofar as under the bill a job must pay not less than 90%, rather than 85%, of the employee's preinjury average weekly wage in order to be considered suitable employment

Statute of limitations

Under current law, an application for worker's compensation that is not filed within 12 years from the date of the injury or from the date that worker's compensation, other than treatment expenses, was last paid, whichever is later, is

barred (statute of limitations), except that in cases of occupational disease there is no statute of limitations. In cases of occupational disease, benefits or treatment expenses becoming due 12 years after the date of the injury or after the date that worker's compensation was last paid, whichever is later, are paid not by the employer or insurer, but rather by DWD from the work injury supplemental benefit fund. This bill eliminates the 12–year statute of limitations for the loss or total impairment of a hand or any part of the rest of the arm or of a foot or any part of the rest of the leg, any loss of vision, any brain injury, or any injury causing the need for a total or partial knee or hip replacement. The bill also provides that in those cases, benefits or treatment expenses becoming due 12 years after the date of the injury or after the date that worker's compensation was last paid, whichever is later, are paid from the work injury supplemental benefit fund.

Hearings and procedures

Under current law, DWD has jurisdiction to resolve disputes between health care providers and insurers or self–insured employers over the necessity of treatment provided for an injured employee. DWD may exercise that jurisdiction when confirming a compromise or stipulation agreed to between the insurer or self–insured employer and the employee, when making its findings following a hearing on a contested case, or when exercising its jurisdiction under a necessity of treatment dispute resolution process set forth in the statutes. Before determining the necessity of treatment provided for an injured employee, DWD must obtain a written opinion on the necessity of the treatment in dispute from an expert selected by DWD. This bill requires DWD to obtain such an expert opinion only when DWD is exercising its jurisdiction under the statutory necessity of treatment dispute resolution process. In all other cases, obtaining such an expert opinion is optional on the part of DWD.

Under current law, in a hearing on a contested case, the contents of certified investigation reports made by industrial safety specialists employed by DWD are *prima facie* evidence as to matter contained in those reports. This bill provides that certified investigation reports made by industrial safety specialists employed, contracted, or otherwise secured by DWD are *prima facie* evidence as to matter contained in those reports.

Under current law, within 90 days after the final hearing in a contested case DWD must make an order determining the rights of the parties, which order may include an award of worker's compensation. Pending the final determination of a case, DWD may also make interlocutory orders, which may be enforced in the same manner as a final order. This bill permits DWD to include in any interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve the employee from the effects of the employee's injury.

Payment of benefits

Current DWD administrative rules require a party that has been ordered to pay an award of worker's compensation following a contested case hearing or a default to pay that compensation within 21 days after DWD mails a copy of the order to the party's last–known address and a party that has been ordered to pay an award of

worker's compensation following a compromise or stipulation to pay that compensation within ten days after DWD mails a copy of the order to the party's last–known address. This bill requires a party that has been ordered to pay an award of worker's compensation to pay that compensation within 21 days after DWD mails a copy of the order to the party's last–known address, whether the award results from a hearing, a default, or a compromise or stipulation.

Under current law, subject to certain exceptions, worker's compensation exceeding $100 must be delivered directly to the claimant in person. This bill permits an insurer or self–insured employer to deposit a worker's compensation payment that is due a claimant directly into an account maintained by the claimant at a financial institution, if the claimant so requests and the insurer or self–insured employer so agrees. The claimant may revoke his or her request at any time by providing appropriate written notice to the insurer or self–insured employer.

Current law requires worker's compensation for permanent disability to be paid to an injured employee on a monthly basis. This bill requires worker's compensation for permanent disability to begin within 30 days after the end of the employee's healing period or within 30 days after the employer or insurer receives a medical report that provides a permanent disability rating, whichever is later, except that if the employer or insurer requests the employee to undergo an independent medical examination, that compensation must begin within 30 days after the employer or insurer receives a report of the examination or within 90 days after the date of the request, whichever is earlier. The bill also requires payments for permanent disability to continue on a monthly basis and to accrue and be payable between intermittent periods of temporary disability so long as the employer or insurer knows the nature of the permanent disability.

Program administration

Under current DWD administrative rules, when an employee provides to the employer or insurer a signed statement relating to a claim by the employee, the employer or insurer must provide a copy of the statement to the employee. When an employee's statement is taken by a recording device and not immediately reduced to writing, a copy of the entire statement must be given to the employee or to his attorney within a reasonable time after the employee files an application with DWD for a hearing on the claim. If a hearing is held, the employer or insurer must also make the actual recording of the statement available as an exhibit. Failure to comply with this rule precludes the employer or insurer from using the statement in any manner in connection with the claim. This bill codifies this rule in statute without change, except that the bill requires the employee's written or recorded statement to be provided to the employee within a reasonable time after the statement is made or taken.

Under current law, if an insurer or self–insured employer has evidence that a worker's compensation claim is false or fraudulent and if the insurer or self–insurer is satisfied that reporting the claim will not impede its ability to defend the claim, the insurer or self–insured employer must report the claim to DWD. DWD may then require the insurer or self–insured employer to investigate the claim and report the results of the investigation to DWD. If based on the investigation, DWD has a

reasonable basis to believe that criminal insurance fraud has occurred, DWD must refer the matter to the district attorney for prosecution. Current law also requires DWD to submit an annual report to the governor and to the appropriate standing committees of the legislature detailing for the previous year the number of reports of false or fraudulent claims received, the number of referrals for prosecution made, and the results of those referrals. This bill eliminates the requirement that DWD annually report that information to the governor and to the appropriate standing committees of the legislature.

Under current law, the Wisconsin compensation rating bureau (bureau), which is a rate service organization licensed by the commissioner of insurance to establish worker's compensation premium rates, must file certain information with DWD. That information includes information collected by the bureau from insurers writing worker's compensation insurance regarding employers insured for worker's compensation. Current law prohibits the bureau from making public any information reported to it by insurers except as required by law. Current law, however, provides that subject to certain exceptions, the records of DWD relating to the administration of workers compensation are subject to public inspection and copying. This bill prohibits DWD from making public any information obtained from the bureau except as authorized by the bureau.

Extension of expiring provisions

Under current law, a student of a public school or a private school who is performing services for an employer as part of a school work training, work experience, or work study program, who is not on the payroll of the employer or otherwise receiving compensation on which a worker's compensation premium could be assessed on the employer, and who is named as an employee of the school district or private school by an endorsement on the school district's or private school's worker's compensation policy is an employee of the school district or private school for purposes of worker's compensation coverage. A student who is named as an employee of a school district or private school for purposes of worker's compensation coverage and who makes a claim for worker's compensation against the school district or private school may not also make a claim for worker's compensation or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose. Currently, these provisions do not apply to injuries occurring after December 31, 2001. This bill eliminates that expiration date, thereby applying these provision to a student who is injured after December 31, 2001.

Under current law, DWD has jurisdiction to determine the reasonableness of the fees charged for health services provided to an injured employee. Current law specifies the procedure that DWD must follow in analyzing a fee dispute submitted to DWD before July 1, 2002. Specifically, DWD must compare the disputed ~~fee~~ fee to the mean fee for the health service procedure for which the disputed fee was charged as shown by a database of health service fees certified by DWD. If the disputed fee is at or below the mean fee, plus 1.5 standard deviations from the mean fee, DWD must determine that the fee is reasonable. If the disputed fee is above the mean fee, plus 1.5 standard deviations from the mean fee, DWD must determine that the fee

is unreasonable, unless the health services provider proves that a higher fee is justified. This bill eliminates the July 1, 2002, expiration date for this procedure, thereby applying this procedure to fee disputes submitted to DWD on or after July 1, 2002.

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

(END OF INSERT)

1999–2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB -3500/P1

GMM

INSERT Q

SECTION 1. 102.59 (1) of the statutes is amended to read:

102.59 **(1)** If an employee has at the time of injury permanent disability which if it had resulted from such injury would have entitled him or her to indemnity for 200 weeks and, as a result of such injury, incurs further permanent disability which entitles him or her to indemnity for 200 weeks, the employee shall be paid from the funds provided in this section additional compensation equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser. If said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from such injury is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No compromise agreement of liability for this additional compensation may provide for any lump sum payment.

History: 1971 c. 148; 1971 c. 260 s. 92 (4); 1973 c. 150; 1975 c. 147; 1977 c. 195; 1981 c. 92; 1985 a. 83, 173; 1987 a. 179.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3500/P1dn
GMM:cjs:jf

September 4, 2001

Dick:

In reviewing this draft, please note all of the following:

1. In addition to the changes requested by labor, management, and the department, this draft also corrects s. 15.227 (4) to delete a reference to "members" of the department. That reference should have been deleted in last session's bill when members of LIRC were removed from the council.

2. The draft does not include the department's recommended change to s. 102.07 (4m) because members of a religious sect that does not believe in worker's compensation who are engaged in farming are already covered in s. 102.07 (5) (d).

3. Section 102.07 (7m), relating to emergency response team members, cross–references regional emergency response team members under s. 166.215 as well as municipal, county, and state emergency response team members under s. 166.03 (8) (d).

4. Labor's instructions that the maximum compensation rate under s. 102.11 (1) (intro.) shall equal the state's average weekly earnings "plus 10%" do not specify 10% of what. Alternatives include 10% of the *state's* average weekly earnings or 10% of the *employee's* average weekly earnings. This preliminary draft specifies that the 10% refers to the *employee's* average weekly earnings. If that is incorrect, please advise.

5. The definition of "workweek" for purposes of s. 102.11 (1) (a) was inserted in s. 102.01 (2), the general definitions section for the chapter, because there was no place in s. 102.11 (1) (a) to squeeze in a definition. Accordingly, the draft also changes a reference to "working week" in s. 102.11 (1) (b) to "workweek" to conform that paragraph to the new definition.

References to "week" and "weekly" abound throughout the chapter. If any of those references actually refer to a calendar week beginning on Sunday and ending on Saturday, that is, a "workweek" as defined in the bill, rather than to a period of seven days that may begin on any day of the week, then those references might also need to be changed to "workweek."

6. In s. 102.11 (1) (f) 1., relating to the 24–hour floor for members of a class of part–time employees, the draft lays a foundation for the definition of "class of part–time

employees" by first clarifying that the provision only applies to an employee who is a member of such a class of employees. The draft also clarifies that the average weekly earnings of such an employee may be expanded to 24 times the employee's hourly wage *or the employee's actual weekly wage*, whichever is greater.

7. In s. 102.123, relating to statements provided by an employee, DWD 80.24 does not specify *when* a written statement must be given to the employee. Accordingly, this draft specifies that a written statement must given to the employee within a reasonable time after the statement is made. The draft treats a recorded statement similarly.

8. In ss. 102.17 (4) and 102.66 (1) and (2), relating to the statute of limitations for an employee who loses a hand or the rest of the arm or a foot or the rest of the leg, this draft refers to *any part* of the rest of the arm or leg because "the rest of the arm or leg" standing alone implies that the employee must lose his entire arm from the shoulder on down or his entire leg from the hip on down when, in fact, the employee might only lose his arm from the elbow on down or his leg from the knee on down.

Indeed, if we say "any part of the arm" does a reference to "hand" become redundant since the hand is part of the arm? Also, what about losing a part of the hand, *e.g.*, a thumb or finger, is that situation intended to be covered by this draft? If so, we should probably specify "any part of the hand."

9. In s. 102.18 (1) (e), relating to the 21–day payment period, note that s. 102.21 provides for a different procedure for municipal employers. Accordingly, the draft provides an exception for municipal employers covered under s. 102.21.

10. With respect to information received from the Wisconsin compensation rating bureau, note that the draft amends not only s. 102.31 (8), but also ss. 102.33 and 626.32 (1) (a) to provide for confidentiality of that information under those provisions as well.

11. In s. 102.32 (6), the department's proposed language refers to the insurer having "clear information regarding the nature of the injury or surgery." That subsection, however, contains no antecedent for the reference to "injury or surgery." Accordingly, this draft refers to the employer's knowledge of the *permanent disability*, which is what the subsection is talking about.

For alternative methods of expressing the employer's knowledge of the employee's injury, see, for example, ss. 102.17 (4) and 102.42 (1).

12. In s. 102.42 (1m), relating to liability for unnecessary treatment that causes further disability, the draft, for the sake of clarity, states not only when the employer is liable, but also when the employer is not liable, that is, the employer is liable when the treatment is invasive and medically acceptable, but is not liable when the treatment is either noninvasive or not medically acceptable.

13. In s. 102.43 (6) (b), relating to offsetting wages from another job when calculating the employee's wage loss, the concept of "wage expansion" is not expressed in the statutes in so many words. Accordingly, this draft describes that concept by reference to "average weekly earnings calculated under s. 102.11 (1) (a)."

If you have any questions about the draft or this drafter's note, please do not hesitate to contact me directly at the phone number or e–mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us

Malaise, Gordon

From: Smith, Richard
Sent: Monday, September 10, 2001 8:22 AM
To: Malaise, Gordon
Subject: RE: Redraft of Worker's Comp. Bill

Drafting
ıges to LRB 350C

Gordon,
I hope this is clear. Please call me at 26-6704 if you have any questions. Thanks. We are still working on 102.32(6). You may get a call from my senior judge, Jim O'Malley on that. He is trying to work out some language. Thanks for your help.
Richard D. Smith, Director
Bureau of Legal Services
Worker's Compensation Division.

-----Original Message-----
From: Malaise, Gordon
Sent: Friday, September 07, 2001 4:37 PM
To: Smith, Richard
Subject: Redraft of Worker's Comp. Bill

Dick:

If you are going to need a redraft of the worker's comp bill for the Council meeting on Thursday, September 13, I will need to receive the redrafting instructions as early in the day as possible on Monday, September 10. Monday is the best day next week for me to work on the draft as I will be tied up most of the day on Tuesday with a seminar and half of the day on Wednesday with an LRB staff meeting.

Gordon M. Malaise
Senior Legislative Attorney
Legislative Reference Bureau
266-9738

Drafting changes to LRB 3500/P1
9/10/01

Section 7

Page 9 Line 1 Delete "~~deemed~~ considered to be"

The LRB drafter proposed changing "deemed" to "considered." However, the entire phrase seems unnecessary. The sentence would read better as follows: "...and that other person shall, with respect to that service, *be an employee* only of the employer for whom the service is being performed."

Page 9 Line 23 Change 100% to 110%.
Line 24-25 Delete underscored material

This section sets the maximum rate. That rate should not vary based on the *employee's* wage level. It was intended to be 110% of the *state* rate. Everyone who has looked at it agrees this will address the concern.

Section 8.

Page 11 Lines, 1, 13, 16 Delete "employee's"
Line 1 Change "an" to "the"

It phrase should read: "...the normal full-time working day as established by the employer...." We have never used the employee's normal full time work week as anything more than an auditing tool for this part of the formula. The formula is the employee's hourly wage multiplied by the employer's schedule for this kind of work.

Section 11.

Page 12 Lines 14-19 Rewrite as follows

"102.11(1)(f)(intro.) Except as provided in subd. 2, average weekly earnings may not be less than 24 times the normal hourly earnings at the time of injury. For an employee who is a member of a regularly-scheduled class of part-time employees, average weekly earnings may not be less than the employee's actual average weekly earnings or 24 times the employee's normal hourly earnings at the time of injury, whichever is greater. An employee is a member of a regularly-scheduled class of part-time workers if all of the following conditions are met:"

Under current law, the 24-hour minimum applies to all employees. LRB 3500/P1, as drafted, the 24-hour minimum would only apply to part-time *part-of-class* employees. This was not the intent. This has to be restored.

Section 12.

Page 12 Lines 22-23 Delete "maintains the same regular work schedule,"

This phrase is inconsistent with the 5-hour variance (and the last sentence) in subdivision 102.11(1)(f)1.b. The purpose of subd. 1.b. is to eliminate arguments about the need to work "the same regular work schedule." Two people can be part of a class even their schedules are not the "same" and are not "regular." They can work different days. Those days can change from week to week. The only scheduling issue is whether their total weekly hours varied by more than 5 hours at any time over the prior 13 weeks.

Section 13.

Page 13 Lines 5-6 Delete "or actually worked by any member of the class"

A class should be based only on what the employer scheduled the employee to work, not whether the employee actually worked those hours. The Department initially suggested the phrase as an element for its auditors to consider in determining if there really was a class. But it was never intended that an employee's sickness or unexcused absence should take him or her out of the class.

Section 14.

Page 13 Lines 11-12 Change it to read: "Members of a class shall comprise at least 10% of the employers workforce doing the same type of work."

The phrase is easier to comprehend if it is stated in the affirmative rather than the negative. This will not change the meaning.

Section 16.

Page 13m	Line 21	After "shall" add "upon request of the employee or the employee's attorney"

Insurers routinely record statements. Most are never used again by anyone for any purpose. Transcribing every recording would add cost and work that has no value to anyone. Labor supports this clarification.

Sections 24, 56 and 57.

Page 18	Line 6	After "disease," add "and traumatic injuries resulting in"
	Line 7	After "arm" add "proximal to the hand"
	Line 8	After "leg" add "proximal to the foot"
	Line 8	After "any" and before "brain" add "permanent"
Page 32	Lines 14-15	Same changes
Page 33	Lines 4-5	Same changes.

The same issue arises in three places. Adding the reference to traumatic injuries makes it clear that the loss of hand (etc.) is not limited to occupational losses. The reference to "proximal" was recommended independently by DWD staff and outside attorneys to address LRB drafter's note 8. This provision was intended to apply to arm and leg injuries proximal from the hand and foot (toward the trunk), not distal from the hand and legs to the fingers and toes. Finally, it is permanent brain injury, not a casual bump to the brain should not result in benefits.

Section 33.

Jim O'Malley is consulting with several attorneys who have expressed a concern that there should be no delay in insurer payments based on an IME request in conceded cases with an amputation or where rule 80.32 applies. There may be a request for additional language here.

Section 39.

Page 24	Line 13	restore "reasonably" (or do not make any changes at all.)

The term "reasonable" is so much a part of the case law on medical issues that no one is comfortable deleting it.

Section 43.

Page 26	Line 23	Add some language to make $202 only apply after 2002

Section 102.03(4) exempts s. 102.44(1) from the rule that the date of injury controls benefits, allowing retroactive increases in the minimum benefits. These benefits are intended to apply to pre-1978 dates of injury, but only for weeks of disability after January 1, 2002. It is estimated that in 2002, there will be 170 workers eligible for benefits under this section. Employees should be able to make claims back to 1980, but only for the rates in effect at different times after 1980. It should be clear that despite 102.03(4), the $202 is clearly not intended to apply except after January 1, 2002.