

2001 SENATE BILL 251

1 **AN ACT** *to repeal* 102.077 (3) and 102.125 (2); *to renumber and amend* 102.11
2 (1) (a) and 102.125 (1); *to amend* 15.227 (4), 102.04 (2), 102.07 (12m), 102.11
3 (1) (intro.), 102.11 (1) (b), 102.16 (2) (d), 102.16 (2m) (c), 102.17 (1) (c), 102.17
4 (1) (e), 102.17 (1) (h), 102.17 (4), 102.18 (1) (b), 102.20, 102.23 (1) (d), 102.29 (8),
5 102.31 (8), 102.32 (5), 102.32 (6), 102.33 (2) (a), 102.37, 102.38, 102.39, 102.43
6 (5), 102.43 (6) (b), 102.44 (1) (intro.), 102.44 (1) (a), 102.44 (1) (b), 102.57, 102.58,
7 102.59 (1), 102.61 (1), 102.61 (1m) (c), 102.61 (1m) (d), 102.61 (1m) (e), 102.61
8 (1m) (f), 102.61 (2), 102.66 (1), 102.66 (2) and 626.32 (1) (a); and *to create*
9 102.01 (2) (k), 102.07 (7m), 102.11 (1) (a) 4., 102.11 (1) (am), 102.123, 102.18 (1)
10 (e), 102.26 (3) (b) 3., 102.33 (2) (c), 102.42 (1m) and 102.61 (1g) of the statutes;
11 **relating to:** various changes to the worker's compensation law.

Analysis by the Legislative Reference Bureau

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

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

2 15.227 (4) COUNCIL ON WORKER'S COMPENSATION. There is created in the
3 department of workforce development a council on worker's compensation appointed
4 by the secretary of workforce development to consist of a member or designated
5 employee of the department of workforce development as chairperson, 5
6 representatives of employers, and 5 representatives of employees. The secretary of
7 workforce development shall also appoint 3 representatives of insurers authorized
8 to do worker's compensation insurance business in this state as nonvoting members
9 of the council.

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

11 102.01 (2) (k) "Workweek" means a calendar week, starting on Sunday and
12 ending on Saturday.

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

14 102.04 (2) Except with respect to a partner or member electing under s.
15 102.075, members of partnerships or limited liability companies shall not be counted
16 as employees. Except as provided in s. 102.07 (5) (a), a person under contract of hire
17 for the performance of any service for any employer subject to this section (1961)
18 ~~shall not constitute an~~ is not the employer of any other person with respect to such
19 that service, and such that other person shall, with respect to such that service, be
20 ~~deemed to be an employee only of such~~ the employer for whom the service is being
21 performed.

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

23 102.07 (7m) An employee, volunteer, or member of an emergency management
24 unit is an employee for purposes of this chapter as provided in s. 166.03 (8) (d), and
25 a member of a regional emergency response team who is acting under a contract

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1 under s. 166.215 (1) is an employee for purposes of this chapter as provided in s.
2 166.215 (4).

3 **SECTION 5.** 102.07 (12m) of the statutes is amended to read:

4 102.07 **(12m)** A student of a public school, as described in s. 115.01 (1), or a
5 private school, as defined in s. 115.001 (3r), while he or she is engaged in performing
6 services as part of a school work training, work experience or work study program,
7 and who is not on the payroll of an employer that is providing the work training or
8 work experience or who is not otherwise receiving compensation on which a worker's
9 compensation carrier could assess premiums on that employer, is an employee of a
10 school district or private school that elects under s. 102.077 to name the student as
11 its employee. ~~This subsection does not apply after December 31, 2001.~~

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

13 **SECTION 7.** 102.11 (1) (intro.) of the statutes is amended to read:

14 102.11 **(1)** (intro.) The average weekly earnings for temporary disability,
15 permanent total disability, or death benefits for injury in each calendar year on or
16 after January 1, 1982, shall be not less than \$30 nor more than the wage rate ~~which~~
17 that results in a maximum compensation rate of ~~100%~~ 110% of the state's average
18 weekly earnings as determined under s. 108.05 as of June 30 of the previous year,
19 except that the average weekly earnings for temporary disability, permanent total
20 disability, or death benefits for injuries occurring on or after January 1, 1998, and
21 before January 1, 1999 2006, shall be not more than \$784.50, ~~resulting in a~~
22 ~~maximum compensation rate of \$523, and the average weekly earnings for~~
23 ~~temporary disability, permanent total disability or death benefits for injuries~~
24 ~~occurring on or after January 1, 1999, and before January 1, 2000, shall be not more~~
25 ~~than \$807, resulting in a maximum compensation rate of \$538~~ the wage rate that

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1 results in a maximum compensation rate of 100% of the state's average weekly
2 earnings as determined under s. 108.05 as of June 30 of the previous year. The
3 average weekly earnings for permanent partial disability shall be not less than \$30
4 and, for permanent partial disability for injuries occurring on or after January 1,
5 ~~1998~~ 2002, and before January 1, ~~1999~~ 2003, not more than ~~\$268.50~~ \$318, resulting
6 in a maximum compensation rate of ~~\$179~~, ~~and, \$212~~, for permanent partial disability
7 for injuries occurring on or after January 1, ~~1999~~ 2003, and before January 1, 2004,
8 not more than ~~\$276~~ \$333, resulting in a maximum compensation rate of ~~\$184~~ \$222,
9 for permanent partial disability for injuries occurring on or after January 1, 2004,
10 and before January 1, 2005, not more than \$348, resulting in a maximum
11 compensation rate of \$232, and, for permanent partial disability for injuries
12 occurring on or after January 1, 2005, and before January 1, 2006, not more than
13 \$363, resulting in a maximum compensation rate of \$242. Between such limits the
14 average weekly earnings shall be determined as follows:

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

17 102.11 **(1)** (a) 1. Daily earnings shall mean the daily earnings of the employee
18 at the time of the injury in the employment in which the employee was then engaged.
19 In determining daily earnings under this ~~paragraph, overtime~~ subdivision, any
20 hours worked beyond the normal full-time working day as established by the
21 employer, whether compensated at the employee's regular rate of pay or at an
22 increased rate of pay, shall not be considered.

23 2. If at the time of the injury the employee is working on part time for the day,
24 the employee's daily earnings shall be arrived at by dividing the amount received,
25 or to be received by the employee for such part-time service for the day, by the

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1 number of hours and fractional hours of such part-time service, and multiplying the
2 result by the number of hours of the normal full-time working day established by the
3 employer for the employment involved. The words “part time for the day” shall apply
4 to Saturday half days and all other days upon which the employee works less than
5 normal full-time working hours.

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

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

14 102.11 **(1)** (a) 4. It is presumed, unless rebutted by reasonably clear and
15 complete documentation, that the normal full-time workweek established by the
16 employer is 24 hours for a flight attendant, 56 hours for a firefighter, and not less
17 than 40 hours for any other employee. If the employer has established a multi-week
18 schedule with regular hours alternating between weeks, the normal full-time
19 workweek is the average number of hours worked per week under the multi-week
20 schedule.

21 **SECTION 10.** 102.11 (1) (am) of the statutes is created to read:

22 102.11 **(1)** (am) In the case of an employee who is a member of a
23 regularly-scheduled class of part-time employees, average weekly earnings shall be
24 arrived at by the method prescribed in par. (a), except that the number of hours of
25 the normal working day and the number of hours and days of the normal workweek

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1 shall be the hours and days established by the employer for that class. An employee
2 is a member of a regularly-scheduled class of part-time employees if all of the
3 following conditions are met:

4 1. The employee is a member of a class of employees that does the same type
5 of work at the same location and, in the case of an employee in the service of the state,
6 is employed in the same office, department, independent agency, authority,
7 institution, association, society, or other body in state government or, if the
8 department determines appropriate, in the same subunit of an office, department,
9 independent agency, authority, institution, association, society, or other body in state
10 government.

11 2. The minimum and maximum weekly hours regularly scheduled by the
12 employer for the members of the class during the 13 weeks immediately preceding
13 the date of the injury vary by no more than 5 hours. Subject to this requirement, the
14 members of the class do not need to work the same days or the same shift to be
15 considered members of a regularly-scheduled class of part-time employees.

16 3. At least 10% of the employer's workforce doing the same type of work are
17 members of the class.

18 4. The class consists of more than one employee.

19 **SECTION 11.** 102.11 (1) (b) of the statutes is amended to read:

20 102.11 (1) (b) In case of seasonal employment, average weekly earnings shall
21 be arrived at by the method prescribed in par. (a), except that the number of hours
22 of the normal full-time working day and the number of days of the normal full-time
23 ~~working week~~ workweek shall be such the hours and such the days in similar service
24 in the same or similar nonseasonal employment. Seasonal employment shall mean
25 employment ~~which~~ that can be conducted only during certain times of the year, and

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

3 **SECTION 12.** 102.123 of the statutes is created to read:

4 **102.123 Statement of employee.** If an employee provides to the employer or
5 the employer's insurer a signed statement relating to a claim for compensation by
6 the employee, the employer or insurer shall provide a copy of the statement to the
7 employee within a reasonable time after the statement is made. If an employer or
8 insurer uses a recording device to take a statement from an employee relating to a
9 claim for compensation by the employee, the employer or insurer, on the request of
10 the employee or the employee's attorney or other authorized agent, shall reduce the
11 statement to writing and provide a written copy of the entire statement to the
12 employee, attorney, or agent within a reasonable time after the statement is taken.
13 The employer or insurer shall also make the actual recording of the statement
14 available as an exhibit if a hearing on the claim is held. An employer or insurer that
15 fails to provide an employee with a copy of the employee's statement as required by
16 this section or that fails to make available as an exhibit the actual recording of a
17 statement recorded by a recording device as required by this section may not use that
18 statement in any manner in connection with the employee's claim for compensation.

19 **SECTION 13.** 102.125 (1) of the statutes is renumbered 102.125 and amended
20 to read:

21 **102.125 Fraudulent claims reporting and investigation.** If an insurer or
22 self-insured employer has evidence that a claim is false or fraudulent in violation of
23 s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the
24 claim to the department will not impede its ability to defend the claim, the insurer
25 or self-insured employer shall report the claim to the department. The department

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1 may require an insurer or self-insured employer to investigate an allegedly false or
2 fraudulent claim and may provide the insurer or self-insured employer with any
3 records of the department relating to that claim. An insurer or self-insured
4 employer that investigates a claim under this ~~subsection~~ section shall report on the
5 results of that investigation to the department. If based on the investigation the
6 department has a reasonable basis to believe that a violation of s. 943.395 has
7 occurred, the department shall refer the results of the investigation to the district
8 attorney of the county in which the alleged violation occurred for prosecution.

9 **SECTION 14.** 102.125 (2) of the statutes is repealed.

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

11 102.16 (2) (d) ~~For fee disputes that are submitted to the department before~~
12 ~~July 1, 2002, the~~ The department shall analyze the information provided to the
13 department under par. (c) according to the criteria provided in this paragraph to
14 determine the reasonableness of the disputed fee. The department shall determine
15 that a disputed fee is reasonable and order that the disputed fee be paid if that fee
16 is at or below the mean fee for the health service procedure for which the disputed
17 fee was charged, plus 1.5 standard deviations from that mean, as shown by data from
18 a database that is certified by the department under par. (h). The department shall
19 determine that a disputed fee is unreasonable and order that a reasonable fee be paid
20 if the disputed fee is above the mean fee for the health service procedure for which
21 the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown
22 by data from a database that is certified by the department under par. (h), unless the
23 health service provider proves to the satisfaction of the department that a higher fee
24 is justified because the service provided in the disputed case was more difficult or
25 more complicated to provide than in the usual case.

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

2 102.16 **(2m)** (c) Before determining under this subsection the necessity of
3 treatment provided for an injured employee who claims benefits under this chapter,
4 the department shall obtain a written opinion on the necessity of the treatment in
5 dispute from an expert selected by the department. Before determining under sub.
6 (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured
7 employee who claims benefits under this chapter, the department may, but is not
8 required to, obtain such an expert opinion. To qualify as an expert, a person must
9 be licensed to practice the same health care profession as the individual health
10 service provider whose treatment is under review and must either be performing
11 services for an impartial health care services review organization or be a member of
12 an independent panel of experts established by the department under par. (f). The
13 department shall adopt the written opinion of the expert as the department's
14 determination on the issues covered in the written opinion, unless the health service
15 provider or the insurer or self-insured employer present clear and convincing
16 written evidence that the expert's opinion is in error.

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

18 102.17 **(1)** (c) ~~Either~~ Any party shall have the right to be present at any hearing,
19 in person or by attorney, or any other agent, and to present such testimony as may
20 be pertinent to the controversy before the department. No person, firm, or
21 corporation, other than an attorney at law, ~~duly~~ who is licensed to practice law in the
22 state, may appear on behalf of any party in interest before the department or any
23 member or employee of the department assigned to conduct any hearing,
24 investigation, or inquiry relative to a claim for compensation or benefits under this
25 chapter, unless the person is 18 years of age or older, does not have an arrest or

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1 conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified,
2 and has obtained from the department a license with authorization to appear in
3 matters or proceedings before the department. Except as provided under pars. (cm)
4 and (cr), the license shall be issued by the department under rules ~~to be adopted~~
5 promulgated by the department. ~~There shall be maintained in the office of the~~
6 ~~department~~ The department shall maintain in its office a current list of persons to
7 whom licenses have been issued. Any license may be suspended or revoked by the
8 department for fraud or serious misconduct on the part of an agent, any license may
9 be denied, suspended, nonrenewed, or otherwise withheld by the department for
10 failure to pay court-ordered payments as provided in par. (cm) on the part of an
11 agent, and any license may be denied or revoked if the department of revenue
12 certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes.
13 Before suspending or revoking the license of the agent on the grounds of fraud or
14 misconduct, the department shall give notice in writing to the agent of the charges
15 of fraud or misconduct, and shall give the agent full opportunity to be heard in
16 relation to ~~the same~~ those charges. In denying, suspending, restricting, refusing to
17 renew, or otherwise withholding a license for failure to pay court-ordered payments
18 as provided in par. (cm), the department shall follow the procedure provided in a
19 memorandum of understanding entered into under s. 49.857. The license and
20 certificate of authority shall, unless otherwise suspended or revoked, be in force from
21 the date of issuance until the June 30 following the date of issuance and may be
22 renewed by the department from time to time, but each renewed license shall expire
23 on the June 30 following the issuance ~~thereof~~ of the renewed license.

24 **SECTION 18.** 102.17 (1) (e) of the statutes is amended to read:

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

10 **SECTION 19.** 102.17 (1) (h) of the statutes is amended to read:

11 102.17 (1) (h) The contents of certified reports of investigation, made by
12 industrial safety specialists who are employed, contracted, or otherwise secured by
13 the department and available for cross-examination, served upon the parties 15
14 days prior to hearing, shall constitute prima facie evidence as to matter contained
15 therein in those reports.

16 **SECTION 20.** 102.17 (4) of the statutes is amended to read:

17 102.17 (4) The right of an employee, the employee's legal representative ~~or~~ or
18 a dependent to proceed under this section shall not extend beyond 12 years from the
19 date of the injury or death or from the date that compensation, other than treatment
20 or burial expenses, was last paid, or would have been last payable if no advancement
21 were made, whichever date is latest. In the case of occupational disease, a traumatic
22 injury resulting in the loss or total impairment of a hand or any part of the rest of
23 the arm proximal to the hand or of a foot or any part of the rest of the leg proximal
24 to the foot, any loss of vision, any permanent brain injury, or any injury causing the
25 need for a total or partial knee or hip replacement, there shall be no statute of

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1 limitations, except that benefits or treatment expense becoming due after 12 years
2 from the date of injury or death or last payment of compensation shall be paid from
3 the work injury supplemental benefit fund under s. 102.65 and in the manner
4 provided in s. 102.66. Payment of wages by the employer during disability or absence
5 from work to obtain treatment shall be deemed payment of compensation for the
6 purpose of this section if the employer knew of the employee's condition and its
7 alleged relation to the employment.

8 **SECTION 21.** 102.18 (1) (b) of the statutes is amended to read:

9 102.18 (1) (b) Within 90 days after the final hearing and close of the record, the
10 department shall make and file its findings upon the ultimate facts involved in the
11 controversy, and its order, which shall state its determination as to the rights of the
12 parties. Pending the final determination of any controversy before it, the
13 department may in its discretion after any hearing make interlocutory findings,
14 orders, and awards, which may be enforced in the same manner as final awards. The
15 department may include in any interlocutory or final award or order an order
16 directing the employer or insurer to pay for any future treatment that may be
17 necessary to cure and relieve the employee from the effects of the injury. If the
18 department finds that the employer or insurer has not paid any amount that the
19 employer or insurer was directed to pay in any interlocutory order or award and that
20 the nonpayment was not in good faith, the department may include in its final award,
21 as a penalty for noncompliance with any such interlocutory order or award, if it finds
22 that noncompliance was not in good faith, not exceeding 25% of each amount which
23 shall not have been that was not paid as directed thereby. Where. When there is a
24 finding that the employee is in fact suffering from an occupational disease caused by
25 the employment of the employer against whom the application is filed, a final award

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1 dismissing such the application upon the ground that the applicant has suffered no
2 disability from said the disease shall not bar any claim ~~he or she~~ the employee may
3 thereafter have for disability sustained after the date of the award.

4 **SECTION 22.** 102.18 (1) (e) of the statutes is created to read:

5 102.18 (1) (e) Except as provided in s. 102.21, if the department orders a party
6 to pay an award of compensation, the party shall pay the award no later than 21 days
7 after the date on which the order is mailed to the last-known address of the party,
8 unless a party files a petition for review under sub. (3). This paragraph applies to
9 all awards of compensation ordered by the department, whether the award results
10 from a hearing, the default of a party, or a compromise or stipulation confirmed by
11 the department.

12 **SECTION 23.** 102.20 of the statutes is amended to read:

13 **102.20 Judgment on award.** If either any party presents a certified copy of
14 the award to the circuit court for any county, the court shall, without notice, render
15 judgment in accordance therewith with the award. A judgment rendered under this
16 section shall have the same effect as though rendered in an action tried and
17 determined by the court, and shall, with like effect, be entered in the judgment and
18 lien docket.

19 **SECTION 24.** 102.23 (1) (d) of the statutes is amended to read:

20 102.23 (1) (d) The commission shall make return to the court of all documents
21 and papers on file in the matter, ~~and of all testimony which~~ that has been taken, and
22 ~~of the commission's order, findings, and award.~~ Such return of the commission when
23 filed in the office of the clerk of the circuit court shall, with the papers mentioned
24 specified in s. 809.15, constitute a judgment roll in the action; and it shall not be
25 necessary to have a transcript approved. The action may thereupon be brought on

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1 for hearing before the court upon the record by either any party on 10 days' notice
2 to the other; subject, however, to the provisions of law for a change of the place of trial
3 or the calling in of another judge.

4 **SECTION 25.** 102.26 (3) (b) 3. of the statutes is created to read:

5 102.26 **(3)** (b) 3. The claimant may request the insurer or self-insured employer
6 to pay any compensation that is due the claimant by depositing the payment directly
7 into an account maintained by the claimant at a financial institution. If the insurer
8 or self-insured employer agrees to the request, the insurer or self-insured employer
9 may deposit the payment by direct deposit, electronic funds transfer, or any other
10 money transfer technique approved by the department. The claimant may revoke
11 a request under this subdivision at any time by providing appropriate written notice
12 to the insurer or self-insured employer.

13 **SECTION 26.** 102.29 (8) of the statutes is amended to read:

14 102.29 **(8)** No student of a public school, as described in s. 115.01 (1), or a private
15 school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employee
16 of the school district or private school for purposes of this chapter and who makes a
17 claim for compensation under this chapter may make a claim or maintain an action
18 in tort against the employer that provided the work training or work experience from
19 which the claim arose. ~~This subsection does not apply to injuries occurring after~~
20 ~~December 31, 2001.~~

21 **SECTION 27.** 102.31 (8) of the statutes is amended to read:

22 102.31 **(8)** The Wisconsin compensation rating bureau shall provide the
23 department with any information it requests that the department may request
24 relating to worker's compensation insurance coverage, including ~~but not limited to~~
25 the names of employers insured and any insured employer's address, business

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1 status, type and date of coverage, manual premium code, and policy information
2 including numbers, cancellations, terminations, endorsements, and reinstatement
3 dates. The department may enter into contracts with the Wisconsin compensation
4 rating bureau to share the costs of data processing and other services. No
5 information obtained by the department under this subsection may be made public
6 by the department except as authorized by the Wisconsin compensation rating
7 bureau.

8 **SECTION 28.** 102.32 (5) of the statutes is amended to read:

9 102.32 (5) Any insured employer may, within the discretion of the department,
10 compel the insurer to discharge, or to guarantee payment of ~~its, the employer's~~
11 liabilities in any such case under case described in this section and thereby release
12 ~~himself or herself~~ the employer from compensation liability therein in that case, but
13 if for any reason a bond furnished or deposit made under sub. (4) does not fully
14 protect, the compensation insurer or ~~uninsured~~ insured employer, as the case may
15 be, shall still be liable to the beneficiary thereof of the bond or deposit.

16 **SECTION 29.** 102.32 (6) of the statutes is amended to read:

17 102.32 (6) If compensation is due for permanent disability following an injury
18 or if death benefits are payable, payments shall be made to the employee or
19 dependent on a monthly basis. Compensation for permanent disability that results
20 from an injury for which the employer or the employer's insurer concedes liability
21 and that is based on a minimum permanent disability rating promulgated by the
22 department by rule shall begin within 30 days after the end of the employee's healing
23 period or within 30 days after the employer or the employer's insurer receives a
24 medical report that provides a permanent disability rating, whichever is later.
25 Compensation for permanent disability that results from an injury for which the

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1 employer or the employer's insurer does not concede liability or that is based on a
2 permanent disability rating that is above a minimum permanent disability rating
3 promulgated by the department by rule shall begin within the later of those 30-day
4 periods unless within the later of those 30-day periods the employer or insurer
5 notifies the employee that the employer or insurer is requesting an examination
6 under s. 102.13 (1) (a), in which case compensation for permanent disability shall
7 begin within 30 days after the employer or insurer receives the report of the
8 examination or within 90 days after the date of the request for the examination,
9 whichever is earlier. Payments for permanent disability, including payments based
10 on minimum permanent disability ratings promulgated by the department by rule,
11 shall continue on a monthly basis and shall accrue and be payable between
12 intermittent periods of temporary disability so long as the employer or insurer knows
13 the nature of the permanent disability.

14 **(6m)** The department may direct an advance on a payment of unaccrued
15 compensation or death benefits if ~~it~~ the department determines that the advance
16 payment is in the best interest of the injured employee or ~~his or her~~ the employee's
17 dependents. In directing the advance, the department shall give the employer or the
18 employer's insurer an interest credit against its liability. The credit shall be
19 computed at 7%.

20 **SECTION 30.** 102.33 (2) (a) of the statutes is amended to read:

21 102.33 **(2)** (a) Except as provided in ~~par.~~ pars. (b) and (c), the records of the
22 department related to the administration of this chapter are subject to inspection
23 and copying under s. 19.35 (1).

24 **SECTION 31.** 102.33 (2) (c) of the statutes is created to read:

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

7 **SECTION 32.** 102.37 of the statutes is amended to read:

8 **102.37 Employers' records.** Every employer of 3 or more persons and every
9 employer who is subject to this chapter shall keep a record of all accidents causing
10 death or disability of any employee while performing services growing out of and
11 incidental to the employment. This record shall give the name, address, age, and
12 wages of the deceased or injured employee, the time and causes of the accident, the
13 nature and extent of the injury, and any other information the department may
14 require by rule or general order. Reports based upon this record shall be furnished
15 to the department at such times and in such manner as it the department may
16 require by rule or general order, ~~upon forms in a format~~ approved by the department.

17 **SECTION 33.** 102.38 of the statutes is amended to read:

18 **102.38 Records and reports of payments; reports thereon.** Every
19 insurance company ~~which~~ that transacts the business of compensation insurance,
20 and every employer who is subject to this chapter, but whose liability is not insured,
21 shall keep a record of all payments made under this chapter and of the time and
22 manner of making the payments, and shall furnish reports based upon these records
23 and any other information to the department as it the department may require by
24 rule or general order, ~~upon forms in a format~~ approved by the department.

25 **SECTION 34.** 102.39 of the statutes is amended to read:

SENATE BILL 251**SECTION 34**

1 **102.39 General Rules and general orders; application of statutes.** The
2 provisions of s. 103.005 relating to the adoption, publication, modification, and court
3 review of rules or general orders of the department shall apply to all rules
4 promulgated or general orders adopted pursuant to under this chapter.

5 **SECTION 35.** 102.42 (1m) of the statutes is created to read:

6 102.42 (1m) If an employee who has sustained a compensable injury
7 undertakes in good faith invasive treatment that is generally medically acceptable,
8 but that is unnecessary, the employer shall pay disability indemnity for all disability
9 incurred as a result of that treatment. An employer is not liable for disability
10 indemnity for any disability incurred as a result of any unnecessary treatment
11 undertaken in good faith that is noninvasive or not medically acceptable. This
12 subsection applies to all findings that an employee has sustained a compensable
13 injury, whether the finding results from a hearing, the default of a party, or a
14 compromise or stipulation confirmed by the department.

15 **SECTION 36.** 102.43 (5) of the statutes is amended to read:

16 102.43 (5) Temporary disability, during which compensation shall be payable
17 for loss of earnings, shall include such period as may be reasonably required for
18 training in the use of artificial members and appliances, ~~and shall.~~ Except as
19 provided in s. 102.61 (1g), temporary disability shall also include such period as the
20 employee may be receiving instruction pursuant to s. 102.61 (1) or (1m). Temporary
21 disability on account of receiving instruction of the latter nature, and not otherwise
22 resulting from the injury, shall not be in excess of 80 weeks. Such 80-week limitation
23 does not apply to temporary disability benefits under this section, travel or
24 maintenance expense under s. 102.61 (1), or private rehabilitation counseling or
25 rehabilitative training costs under s. 102.61 (1m) if the department determines that

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1 additional training is warranted. The necessity for additional training as authorized
2 by the department for any employee shall be subject to periodic review and
3 reevaluation.

4 **SECTION 37.** 102.43 (6) (b) of the statutes is amended to read:

5 102.43 **(6)** (b) Wages ~~In the case of an employee whose average weekly earnings~~
6 are calculated under s. 102.11 (1) (a), wages received from other employment held by
7 the employee when the injury occurred shall be considered in computing actual wage
8 loss from the employer in whose employ the employee sustained the injury, ~~if the~~ as
9 provided in this paragraph. ~~If an employee's weekly temporary disability benefits~~
10 average weekly earnings are calculated under s. 102.11 (1) (a), wages received from
11 other employment held by the employee when the injury occurred shall be offset
12 against those average weekly earnings and not against the employee's actual
13 earnings in the employment in which the employee was engaged at the time of the
14 injury.

15 **SECTION 38.** 102.44 (1) (intro.) of the statutes is amended to read:

16 102.44 **(1)** (intro.) Notwithstanding any other provision of this chapter, every
17 employee who is receiving compensation under this chapter for permanent total
18 disability or continuous temporary total disability more than 24 months after the
19 date of injury resulting from an injury which occurred prior to January 1, ~~1976~~ 1978,
20 shall receive supplemental benefits which shall be payable in the first instance by
21 the employer or the employer's insurance carrier, or in the case of benefits payable
22 to an employee under s. 102.66, shall be paid by the department out of the fund
23 created under s. 102.65. These supplemental benefits shall be paid only for weeks
24 of disability occurring after January 1, ~~1978~~ 1980, and shall continue during the
25 period of such total disability subsequent to that date.

SENATE BILL 251**SECTION 39**

1 **SECTION 39.** 102.44 (1) (a) of the statutes is amended to read:

2 102.44 (1) (a) If such employee is receiving the maximum weekly benefits in
3 effect at the time of the injury, the supplemental benefit for a week of disability
4 occurring after January 1, 2002, shall be an amount which, when added to the
5 regular benefit established for the case, shall equal \$150 \$202.

6 **SECTION 40.** 102.44 (1) (b) of the statutes is amended to read:

7 102.44 (1) (b) If such employee is receiving a weekly benefit which is less than
8 the maximum benefit which was in effect on the date of the injury, the supplemental
9 benefit for a week of disability occurring after January 1, 2002, shall be an amount
10 sufficient to bring the total weekly benefits to the same proportion of \$150 \$202 as
11 the employee's weekly benefit bears to the maximum in effect on the date of injury.

12 **SECTION 41.** 102.57 of the statutes is amended to read:

13 **102.57 Violations of safety provisions, penalty.** If injury is caused by the
14 failure of the employer to comply with any statute ~~or any lawful, rule, or order~~ of the
15 department, compensation and death benefits provided in this chapter shall be
16 increased 15% but the total increase may not exceed \$15,000. Failure of an employer
17 reasonably to enforce compliance by employees with ~~that~~ any statute, rule, or order
18 of the department constitutes failure by the employer to comply with that statute,
19 rule, or order.

20 **SECTION 42.** 102.58 of the statutes is amended to read:

21 **102.58 Decreased compensation.** If injury is caused by the failure of the
22 employee to use safety devices ~~which~~ that are provided in accordance with any
23 statute ~~or lawful, rule, or order~~ of the department and that are adequately
24 maintained, and the use of which is reasonably enforced by the employer, ~~or~~ if injury
25 results from the employee's failure to obey any reasonable rule adopted and

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1 reasonably enforced by the employer for the safety of the employee and of which the
2 employee has notice, or if injury results from the intoxication of the employee by
3 alcohol beverages, as defined in s. 125.02 (1), or use of a controlled substance, as
4 defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m),
5 the compensation and death benefit provided in this chapter shall be reduced 15%
6 but the total reduction may not exceed \$15,000.

7 **SECTION 43.** 102.59 (1) of the statutes is amended to read:

8 102.59 (1) If an employee has at the time of injury permanent disability which
9 if it had resulted from such injury would have entitled him or her to indemnity for
10 200 weeks and, as a result of such injury, incurs further permanent disability which
11 entitles him or her to indemnity for 200 weeks, the employee shall be paid from the
12 funds provided in this section additional compensation equivalent to the amount
13 which would be payable for said previous disability if it had resulted from such injury
14 or the amount which is payable for said further disability, whichever is the lesser.
15 If said disabilities result in permanent total disability the additional compensation
16 shall be in such amount as will complete the payments which would have been due
17 had said permanent total disability resulted from such injury. This additional
18 compensation accrues from, and may not be paid to any person before, the end of the
19 period for which compensation for permanent disability resulting from such injury
20 is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No
21 compromise agreement of liability for this additional compensation may provide for
22 any lump sum payment.

23 **SECTION 44.** 102.61 (1) of the statutes is amended to read:

24 102.61 (1) Subject to ~~sub.~~ subs. (1g) and (1m), an employee who is entitled to
25 receive and has received compensation under this chapter, and who is entitled to and

SENATE BILL 251**SECTION 44**

1 is receiving instructions under 29 USC 701 to 797b, as administered by the state in
2 which the employee resides or in which the employee resided at the time of becoming
3 physically disabled, shall, in addition to other indemnity, be paid the actual and
4 necessary expenses of travel and, if the employee receives instructions elsewhere
5 than at the place of residence, the actual and necessary costs of maintenance, during
6 rehabilitation, subject to the conditions and limitations specified in sub. (1r).

7 **SECTION 45.** 102.61 (1g) of the statutes is created to read:

8 102.61 **(1g)** (a) In this subsection, “suitable employment” means employment
9 that is within an employee’s permanent work restrictions, that the employee has the
10 necessary physical capacity, knowledge, transferable skills, and ability to perform,
11 and that pays not less than 90% of the employee’s preinjury average weekly wage,
12 except that employment that pays 90% or more of the employee’s preinjury average
13 weekly wage does not constitute suitable employment if any of the following apply:

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

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

24 (b) If an employer offers an employee suitable employment as provided in par.

25 (c), the employer or the employer’s insurance carrier is not liable for temporary

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1 disability benefits under s. 102.43 (5) or for travel and maintenance expenses under
2 sub. (1). Ineligibility for compensation under this paragraph does not preclude an
3 employee from receiving vocational rehabilitation services under 29 USC 701 to 797b
4 if the department determines that the employee is eligible to receive those services.

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

23 **SECTION 46.** 102.61 (1m) (c) of the statutes is amended to read:

24 102.61 (1m) (c) The employer or insurance carrier shall pay the reasonable cost
25 of any services provided for an employee by a private rehabilitation counselor under

SENATE BILL 251**SECTION 46**

1 par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c)
2 and by rule, if the private rehabilitation counselor determines that rehabilitative
3 training is necessary, the reasonable cost of the rehabilitative training program
4 recommended by that counselor, including tuition, fees, books, and maintenance and
5 travel expenses. Notwithstanding that the department of ~~workforce development~~
6 may authorize under s. 102.43 (5) a rehabilitative training program that lasts longer
7 than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is
8 presumed to be reasonable.

9 **SECTION 47.** 102.61 (1m) (d) of the statutes is amended to read:

10 102.61 **(1m)** (d) If an employee receives services from a private rehabilitation
11 counselor under par. (a) and later receives similar services from the department of
12 ~~health and family services~~ under sub. (1) without the prior approval of the employer
13 or insurance carrier, the employer or insurance carrier is not liable for temporary
14 disability benefits under s. 102.43 (5) or for travel and maintenance expenses under
15 sub. (1) that exceed what the employer or insurance carrier would have been liable
16 for under the rehabilitative training program developed by the private rehabilitation
17 counselor.

18 **SECTION 48.** 102.61 (1m) (e) of the statutes is amended to read:

19 102.61 **(1m)** (e) Nothing in this subsection prevents an employer or insurance
20 carrier from providing an employee with the services of a private rehabilitation
21 counselor or with rehabilitative training under sub. (3) before the department of
22 ~~health and family services~~ makes its determination under par. (a).

23 **SECTION 49.** 102.61 (1m) (f) of the statutes is amended to read:

24 102.61 **(1m)** (f) The department of ~~workforce development~~ shall promulgate
25 rules establishing procedures and requirements for the private rehabilitation

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1 counseling and rehabilitative training process under this subsection. Those rules
2 shall include rules specifying the procedure and requirements for certification of
3 private rehabilitation counselors.

4 **SECTION 50.** 102.61 (2) of the statutes is amended to read:

5 102.61 (2) The department of workforce development, the commission, and the
6 courts shall determine the rights and liabilities of the parties under this section in
7 like manner and with like effect as that the department, the commission, and the
8 courts ~~do determine~~ other issues under compensation this chapter. A determination
9 under this subsection may include a determination based on the evidence regarding
10 the cost or scope of the services provided by a private rehabilitation counselor under
11 sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program
12 developed under sub. (1m) (a).

13 **SECTION 51.** 102.66 (1) of the statutes is amended to read:

14 102.66 (1) In the event that there is an otherwise meritorious claim for
15 occupational disease, a traumatic injury resulting in the loss or total impairment of
16 a hand or any part of the rest of the arm proximal to the hand or of a foot or any part
17 of the rest of the leg proximal to the foot, any loss of vision, any permanent brain
18 injury, or any injury causing the need for a total or partial knee or hip replacement,
19 and the claim is barred solely by the statute of limitations under s. 102.17 (4), the
20 department may, in lieu of worker's compensation benefits, direct payment from the
21 work injury supplemental benefit fund under s. 102.65 of such compensation and
22 such medical expenses as would otherwise be due, based on the date of injury, to or
23 on behalf of the injured employee. The benefits shall be supplemental, to the extent
24 of compensation liability, to any disability or medical benefits payable from any
25 group insurance policy where the whose premium is paid in whole or in part by any

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1 employer, or under any federal insurance or benefit program providing disability or
2 medical benefits. Death benefits payable under any such group policy do not limit
3 the benefits payable under this section.

4 **SECTION 52.** 102.66 (2) of the statutes is amended to read:

5 102.66 (2) In the case of occupational disease, a traumatic injury resulting in
6 the loss or total impairment of a hand or any part of the rest of the arm proximal to
7 the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss
8 of vision, any permanent brain injury, or any injury causing the need for a total or
9 partial knee or hip replacement, appropriate benefits may be awarded from the work
10 injury supplemental benefit fund ~~where~~ when the status or existence of the employer
11 or its insurance carrier cannot be determined or ~~where~~ when there is otherwise no
12 adequate remedy, subject to the limitations contained in sub. (1).

13 **SECTION 53.** 626.32 (1) (a) of the statutes is amended to read:

14 626.32 (1) (a) *General.* Every insurer writing any insurance specified under
15 s. 626.03 shall report its insurance in this state to the bureau at least annually, on
16 forms and under rules prescribed by the bureau. The bureau ~~must~~ shall file,
17 ~~pursuant to~~ under rules ~~adopted~~ promulgated by the department of workforce
18 development, a record of such reports with ~~the~~ that department. No such
19 information may be made public by the bureau or any of its employees except as
20 required by law and in accordance with its rules. No such information may be made
21 public by the department of workforce development or any of its employees except
22 as authorized by the bureau.

23 **SECTION 54. Initial applicability.**

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

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

7 (3) DISABILITY AS A RESULT OF UNNECESSARY TREATMENT. The treatment of section
8 102.42 (1m) of the statutes first applies to treatment provided on the effective date
9 of this subsection.

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

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

17 **SECTION 55. Effective date.**

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

20

(END)