

## 2001 SENATE BILL 251

September 26, 2001 – Introduced by Senators HANSEN and A. LASEE, cosponsored by Representatives HUNDERTMARK and TURNER. Referred to Committee on Labor and Agriculture.

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.

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### *Analysis by the Legislative Reference Bureau*

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

**SENATE BILL 251*****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 100% of the 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 110% of the state's average weekly earnings as of June 30 of the previous year. For injuries occurring on or after January 1, 2006, that maximum weekly compensation rate reverts to 100% of the state's average weekly earnings 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 for a week of disability occurring after January 1, 2002, to an amount that, when added to the employee's regular benefits, equals \$202.

**SENATE BILL 251*****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 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 normal full-time workweek as established by the employer or the employee's hourly earnings multiplied by the hours in the 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 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 has been limited by the Wisconsin Supreme Court, in *Carr's Inc. V. Industrial Commission*, 234 Wis. 466 (1940), in the case of an employee who is a member of a regularly-scheduled class of part-time employees. For those employees, the average weekly earnings are based on the normal workweek of the employee's class, subject to a minimum of 24 times the employee's normal hourly earnings at the time of the injury. 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

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employees that does the same type of work at the same location, the minimum and maximum weekly hours regularly scheduled by the employer for the members of the class during the 13 weeks immediately preceding the injury vary by no more than five hours, at least 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

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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 a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to, that is, toward the trunk from, the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, any permanent 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

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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 that results from an injury for which the employer or insurer concedes liability and that is based on a minimum disability rating promulgated by DWD by rule 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. The bill also requires worker's compensation for permanent disability that results from an injury for which the employer or insurer does not concede liability or that is based on a permanent disability rating that is above a minimum permanent disability rating promulgated by DWD by rule to begin within the later of those 30-day periods unless the employer or insurer requests the employee to undergo an independent medical examination, in which case 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 statement to be provided in all cases to the employee within a reasonable time after the statement is made and the employee's recorded statement to be provided, on the request of the employee or

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the employee's attorney or other authorized agent, to the employee, attorney, or agent within a reasonable time after the statement is 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.

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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 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.

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

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:



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1           102.04 (2) Except with respect to a partner or member electing under s.  
2           102.075, members of partnerships or limited liability companies shall not be counted  
3           as employees. Except as provided in s. 102.07 (5) (a), a person under contract of hire  
4           for the performance of any service for any employer subject to this section (1961)  
5           ~~shall not constitute an~~ is not the employer of any other person with respect to ~~such~~  
6           that service, and ~~such~~ that other person shall, with respect to ~~such~~ that service, be  
7           ~~deemed to be~~ an employee only of ~~such~~ the employer for whom the service is being  
8           performed.

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

10           102.07 (7m) An employee, volunteer, or member of an emergency management  
11           unit is an employee for purposes of this chapter as provided in s. 166.03 (8) (d), and  
12           a member of a regional emergency response team who is acting under a contract  
13           under s. 166.215 (1) is an employee for purposes of this chapter as provided in s.  
14           166.215 (4).

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

16           102.07 (12m) A student of a public school, as described in s. 115.01 (1), or a  
17           private school, as defined in s. 115.001 (3r), while he or she is engaged in performing  
18           services as part of a school work training, work experience or work study program,  
19           and who is not on the payroll of an employer that is providing the work training or  
20           work experience or who is not otherwise receiving compensation on which a worker's  
21           compensation carrier could assess premiums on that employer, is an employee of a  
22           school district or private school that elects under s. 102.077 to name the student as  
23           its employee. ~~This subsection does not apply after December 31, 2001.~~

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

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

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1           102.11 (1) (intro.) The average weekly earnings for temporary disability,  
2 permanent total disability, or death benefits for injury in each calendar year on or  
3 after January 1, 1982, shall be not less than \$30 nor more than the wage rate which  
4 that results in a maximum compensation rate of 100% 110% of the state's average  
5 weekly earnings as determined under s. 108.05 as of June 30 of the previous year,  
6 except that the average weekly earnings for temporary disability, permanent total  
7 disability, or death benefits for injuries occurring on or after January 1, 1998, and  
8 ~~before January 1, 1999~~ 2006, shall be not more than \$784.50, ~~resulting in a~~  
9 ~~maximum compensation rate of \$523, and the average weekly earnings for~~  
10 ~~temporary disability, permanent total disability or death benefits for injuries~~  
11 ~~occurring on or after January 1, 1999, and before January 1, 2000, shall be not more~~  
12 ~~than \$807, resulting in a maximum compensation rate of \$538~~ the wage rate that  
13 results in a maximum compensation rate of 100% of the state's average weekly  
14 earnings as determined under s. 108.05 as of June 30 of the previous year. The  
15 average weekly earnings for permanent partial disability shall be not less than \$30  
16 and, for permanent partial disability for injuries occurring on or after January 1,  
17 ~~1998~~ 2002, and before January 1, ~~1999~~ 2003, not more than ~~\$268.50~~ \$318, resulting  
18 in a maximum compensation rate of ~~\$179, and, \$212,~~ for permanent partial disability  
19 for injuries occurring on or after January 1, ~~1999~~ 2003, and before January 1, 2004,  
20 not more than ~~\$276~~ \$333, resulting in a maximum compensation rate of ~~\$184~~ \$222,  
21 for permanent partial disability for injuries occurring on or after January 1, 2004,  
22 and before January 1, 2005, not more than \$348, resulting in a maximum  
23 compensation rate of \$232, and, for permanent partial disability for injuries  
24 occurring on or after January 1, 2005, and before January 1, 2006, not more than

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1     \$363, resulting in a maximum compensation rate of \$242. Between such limits the  
2     average weekly earnings shall be determined as follows:

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

5             102.11 **(1)** (a) 1. Daily earnings shall mean the daily earnings of the employee  
6     at the time of the injury in the employment in which the employee was then engaged.  
7     In determining daily earnings under this ~~paragraph, overtime subdivision, any~~  
8     hours worked beyond the normal full-time working day as established by the  
9     employer, whether compensated at the employee's regular rate of pay or at an  
10    increased rate of pay, shall not be considered.

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

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

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

2           102.11 **(1)** (a) 4. It is presumed, unless rebutted by reasonably clear and  
3 complete documentation, that the normal full-time workweek established by the  
4 employer is 24 hours for a flight attendant, 56 hours for a firefighter, and not less  
5 than 40 hours for any other employee. If the employer has established a multi-week  
6 schedule with regular hours alternating between weeks, the normal full-time  
7 workweek is the average number of hours worked per week under the multi-week  
8 schedule.

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

10           102.11 **(1)** (am) In the case of an employee who is a member of a  
11 regularly-scheduled class of part-time employees, average weekly earnings shall be  
12 arrived at by the method prescribed in par. (a), except that the number of hours of  
13 the normal working day and the number of hours and days of the normal workweek  
14 shall be the hours and days established by the employer for that class. An employee  
15 is a member of a regularly-scheduled class of part-time employees if all of the  
16 following conditions are met:

17           1. The employee is a member of a class of employees that does the same type  
18 of work at the same location and, in the case of an employee in the service of the state,  
19 is employed in the same office, department, independent agency, authority,  
20 institution, association, society, or other body in state government or, if the  
21 department determines appropriate, in the same subunit of an office, department,  
22 independent agency, authority, institution, association, society, or other body in state  
23 government.

24           2. The minimum and maximum weekly hours regularly scheduled by the  
25 employer for the members of the class during the 13 weeks immediately preceding

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1 the date of the injury vary by no more than 5 hours. Subject to this requirement, the  
2 members of the class do not need to work the same days or the same shift to be  
3 considered members of a regularly-scheduled class of part-time employees.

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

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

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

8 102.11 (1) (b) In case of seasonal employment, average weekly earnings shall  
9 be arrived at by the method prescribed in par. (a), except that the number of hours  
10 of the normal full-time working day and the number of days of the normal full-time  
11 ~~working week~~ workweek shall be ~~such~~ the hours and ~~such~~ the days in similar service  
12 in the same or similar nonseasonal employment. Seasonal employment shall mean  
13 employment ~~which~~ that can be conducted only during certain times of the year, and  
14 in no event shall employment be considered seasonal if it extends during a period of  
15 more than fourteen weeks within a calendar year.

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

17 **102.123 Statement of employee.** If an employee provides to the employer or  
18 the employer's insurer a signed statement relating to a claim for compensation by  
19 the employee, the employer or insurer shall provide a copy of the statement to the  
20 employee within a reasonable time after the statement is made. If an employer or  
21 insurer uses a recording device to take a statement from an employee relating to a  
22 claim for compensation by the employee, the employer or insurer, on the request of  
23 the employee or the employee's attorney or other authorized agent, shall reduce the  
24 statement to writing and provide a written copy of the entire statement to the  
25 employee, attorney, or agent within a reasonable time after the statement is taken.

**SENATE BILL 251****SECTION 12**

1 The employer or insurer shall also make the actual recording of the statement  
2 available as an exhibit if a hearing on the claim is held. An employer or insurer that  
3 fails to provide an employee with a copy of the employee's statement as required by  
4 this section or that fails to make available as an exhibit the actual recording of a  
5 statement recorded by a recording device as required by this section may not use that  
6 statement in any manner in connection with the employee's claim for compensation.

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

9 **102.125 Fraudulent claims reporting and investigation.** If an insurer or  
10 self-insured employer has evidence that a claim is false or fraudulent in violation of  
11 s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the  
12 claim to the department will not impede its ability to defend the claim, the insurer  
13 or self-insured employer shall report the claim to the department. The department  
14 may require an insurer or self-insured employer to investigate an allegedly false or  
15 fraudulent claim and may provide the insurer or self-insured employer with any  
16 records of the department relating to that claim. An insurer or self-insured  
17 employer that investigates a claim under this subsection section shall report on the  
18 results of that investigation to the department. If based on the investigation the  
19 department has a reasonable basis to believe that a violation of s. 943.395 has  
20 occurred, the department shall refer the results of the investigation to the district  
21 attorney of the county in which the alleged violation occurred for prosecution.

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

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

24 102.16 (2) (d) ~~For fee disputes that are submitted to the department before~~  
25 ~~July 1, 2002, the~~ The department shall analyze the information provided to the

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1 department under par. (c) according to the criteria provided in this paragraph to  
2 determine the reasonableness of the disputed fee. The department shall determine  
3 that a disputed fee is reasonable and order that the disputed fee be paid if that fee  
4 is at or below the mean fee for the health service procedure for which the disputed  
5 fee was charged, plus 1.5 standard deviations from that mean, as shown by data from  
6 a database that is certified by the department under par. (h). The department shall  
7 determine that a disputed fee is unreasonable and order that a reasonable fee be paid  
8 if the disputed fee is above the mean fee for the health service procedure for which  
9 the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown  
10 by data from a database that is certified by the department under par. (h), unless the  
11 health service provider proves to the satisfaction of the department that a higher fee  
12 is justified because the service provided in the disputed case was more difficult or  
13 more complicated to provide than in the usual case.

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

15 102.16 **(2m)** (c) Before determining under this subsection the necessity of  
16 treatment provided for an injured employee who claims benefits under this chapter,  
17 the department shall obtain a written opinion on the necessity of the treatment in  
18 dispute from an expert selected by the department. Before determining under sub.  
19 (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured  
20 employee who claims benefits under this chapter, the department may, but is not  
21 required to, obtain such an expert opinion. To qualify as an expert, a person must  
22 be licensed to practice the same health care profession as the individual health  
23 service provider whose treatment is under review and must either be performing  
24 services for an impartial health care services review organization or be a member of  
25 an independent panel of experts established by the department under par. (f). The

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1 department shall adopt the written opinion of the expert as the department's  
2 determination on the issues covered in the written opinion, unless the health service  
3 provider or the insurer or self-insured employer present clear and convincing  
4 written evidence that the expert's opinion is in error.

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

6 102.17 (1) (c) ~~Either~~ Any party shall have the right to be present at any hearing,  
7 in person or by attorney, or any other agent, and to present such testimony as may  
8 be pertinent to the controversy before the department. No person, firm, or  
9 corporation, other than an attorney at law, ~~duly~~ who is licensed to practice law in the  
10 state, may appear on behalf of any party in interest before the department or any  
11 member or employee of the department assigned to conduct any hearing,  
12 investigation, or inquiry relative to a claim for compensation or benefits under this  
13 chapter, unless the person is 18 years of age or older, does not have an arrest or  
14 conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified,  
15 and has obtained from the department a license with authorization to appear in  
16 matters or proceedings before the department. Except as provided under pars. (cm)  
17 and (cr), the license shall be issued by the department under rules ~~to be adopted~~  
18 promulgated by the department. ~~There shall be maintained in the office of the~~  
19 department ~~The department shall maintain in its office~~ a current list of persons to  
20 whom licenses have been issued. Any license may be suspended or revoked by the  
21 department for fraud or serious misconduct on the part of an agent, any license may  
22 be denied, suspended, nonrenewed, or otherwise withheld by the department for  
23 failure to pay court-ordered payments as provided in par. (cm) on the part of an  
24 agent, and any license may be denied or revoked if the department of revenue  
25 certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes.



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1 Before suspending or revoking the license of the agent on the grounds of fraud or  
2 misconduct, the department shall give notice in writing to the agent of the charges  
3 of fraud or misconduct, and shall give the agent full opportunity to be heard in  
4 relation to ~~the same~~ those charges. In denying, suspending, restricting, refusing to  
5 renew, or otherwise withholding a license for failure to pay court-ordered payments  
6 as provided in par. (cm), the department shall follow the procedure provided in a  
7 memorandum of understanding entered into under s. 49.857. The license and  
8 certificate of authority shall, unless otherwise suspended or revoked, be in force from  
9 the date of issuance until the June 30 following the date of issuance and may be  
10 renewed by the department from time to time, but each renewed license shall expire  
11 on the June 30 following the issuance ~~thereof~~ of the renewed license.

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

13 102.17 (1) (e) The department may, with or without notice to either any party,  
14 cause testimony to be taken, ~~or~~ an inspection of the premises where the injury  
15 occurred to be made, or the time books and payrolls of the employer to be examined  
16 by any examiner, and may direct any employee claiming compensation to be  
17 examined by a physician, chiropractor, psychologist, dentist, or podiatrist. The  
18 testimony so taken, and the results of any such inspection or examination, shall be  
19 reported to the department for its consideration upon final hearing. All ex parte  
20 testimony taken by the department shall be reduced to writing and either any party  
21 shall have opportunity to rebut such that testimony on final hearing.

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

23 102.17 (1) (h) The contents of certified reports of investigation, made by  
24 industrial safety specialists who are employed, contracted, or otherwise secured by  
25 the department and available for cross-examination, served upon the parties 15

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1 days prior to hearing, shall constitute prima facie evidence as to matter contained  
2 therein in those reports.

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

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

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

21 102.18 (1) (b) Within 90 days after the final hearing and close of the record, the  
22 department shall make and file its findings upon the ultimate facts involved in the  
23 controversy, and its order, which shall state its determination as to the rights of the  
24 parties. Pending the final determination of any controversy before it, the  
25 department may in its discretion after any hearing make interlocutory findings,

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

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

17 102.18 (1) (e) Except as provided in s. 102.21, if the department orders a party  
18 to pay an award of compensation, the party shall pay the award no later than 21 days  
19 after the date on which the order is mailed to the last-known address of the party,  
20 unless a party files a petition for review under sub. (3). This paragraph applies to  
21 all awards of compensation ordered by the department, whether the award results  
22 from a hearing, the default of a party, or a compromise or stipulation confirmed by  
23 the department.

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

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1           **102.20 Judgment on award.** If either any party presents a certified copy of  
2 the award to the circuit court for any county, the court shall, without notice, render  
3 judgment in accordance ~~therewith~~ with the award. A judgment rendered under this  
4 section shall have the same effect as though rendered in an action tried and  
5 determined by the court, and shall, with like effect, be entered in the judgment and  
6 lien docket.

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

8           102.23 **(1)** (d) The commission shall make return to the court of all documents  
9 and papers on file in the matter, ~~and of all testimony which~~ that has been taken, and  
10 of the commission's order, findings, and award. Such return of the commission when  
11 filed in the office of the clerk of the circuit court shall, with the papers ~~mentioned~~  
12 specified in s. 809.15, constitute a judgment roll in the action; and it shall not be  
13 necessary to have a transcript approved. The action may thereupon be brought on  
14 for hearing before the court upon the record by either any party on 10 days' notice  
15 to the other; subject, however, to the provisions of law for a change of the place of trial  
16 or the calling in of another judge.

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

18           102.26 **(3)** (b) 3. The claimant may request the insurer or self-insured employer  
19 to pay any compensation that is due the claimant by depositing the payment directly  
20 into an account maintained by the claimant at a financial institution. If the insurer  
21 or self-insured employer agrees to the request, the insurer or self-insured employer  
22 may deposit the payment by direct deposit, electronic funds transfer, or any other  
23 money transfer technique approved by the department. The claimant may revoke  
24 a request under this subdivision at any time by providing appropriate written notice  
25 to the insurer or self-insured employer.

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

2           102.29 **(8)** No student of a public school, as described in s. 115.01 (1), or a private  
3 school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employee  
4 of the school district or private school for purposes of this chapter and who makes a  
5 claim for compensation under this chapter may make a claim or maintain an action  
6 in tort against the employer that provided the work training or work experience from  
7 which the claim arose. ~~This subsection does not apply to injuries occurring after~~  
8 ~~December 31, 2001.~~

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

10           102.31 **(8)** The Wisconsin compensation rating bureau shall provide the  
11 department with any information ~~it requests~~ that the department may request  
12 relating to worker's compensation insurance coverage, including ~~but not limited to~~  
13 the names of employers insured and any insured employer's address, business  
14 status, type and date of coverage, manual premium code, and policy information  
15 including numbers, cancellations, terminations, endorsements, and reinstatement  
16 dates. The department may enter into contracts with the Wisconsin compensation  
17 rating bureau to share the costs of data processing and other services. No  
18 information obtained by the department under this subsection may be made public  
19 by the department except as authorized by the Wisconsin compensation rating  
20 bureau.

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

22           102.32 **(5)** Any insured employer may, within the discretion of the department,  
23 compel the insurer to discharge, or to guarantee payment of its, the employer's  
24 liabilities in any ~~such case under~~ case described in this section and thereby release  
25 ~~himself or herself~~ the employer from compensation liability therein in that case, but

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1 if for any reason a bond furnished or deposit made under sub. (4) does not fully  
2 protect, the compensation insurer or ~~uninsured~~ insured employer, as the case may  
3 be, shall still be liable to the beneficiary ~~thereof~~ of the bond or deposit.

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

5 102.32 (6) If compensation is due for permanent disability following an injury  
6 or if death benefits are payable, payments shall be made to the employee or  
7 dependent on a monthly basis. Compensation for permanent disability that results  
8 from an injury for which the employer or the employer's insurer concedes liability  
9 and that is based on a minimum permanent disability rating promulgated by the  
10 department by rule shall begin within 30 days after the end of the employee's healing  
11 period or within 30 days after the employer or the employer's insurer receives a  
12 medical report that provides a permanent disability rating, whichever is later.  
13 Compensation for permanent disability that results from an injury for which the  
14 employer or the employer's insurer does not concede liability or that is based on a  
15 permanent disability rating that is above a minimum permanent disability rating  
16 promulgated by the department by rule shall begin within the later of those 30-day  
17 periods unless within the later of those 30-day periods the employer or insurer  
18 notifies the employee that the employer or insurer is requesting an examination  
19 under s. 102.13 (1) (a), in which case compensation for permanent disability shall  
20 begin within 30 days after the employer or insurer receives the report of the  
21 examination or within 90 days after the date of the request for the examination,  
22 whichever is earlier. Payments for permanent disability, including payments based  
23 on minimum permanent disability ratings promulgated by the department by rule,  
24 shall continue on a monthly basis and shall accrue and be payable between

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1 intermittent periods of temporary disability so long as the employer or insurer knows  
2 the nature of the permanent disability.

3 **(6m)** The department may direct an advance on a payment of unaccrued  
4 compensation or death benefits if ~~it~~ the department determines that the advance  
5 payment is in the best interest of the injured employee or ~~his or her~~ the employee's  
6 dependents. In directing the advance, the department shall give the employer or the  
7 employer's insurer an interest credit against its liability. The credit shall be  
8 computed at 7%.

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

10 102.33 **(2)** (a) Except as provided in ~~par.~~ pars. (b) and (c), the records of the  
11 department related to the administration of this chapter are subject to inspection  
12 and copying under s. 19.35 (1).

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

14 102.33 **(2)** (c) Notwithstanding par. (a), a record maintained by the department  
15 that contains employer or insurer information obtained from the Wisconsin  
16 compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is confidential and  
17 not open to public inspection or copying under s. 19.35 (1) unless the Wisconsin  
18 compensation rating bureau authorizes public inspection or copying of that  
19 information.

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

21 **102.37 Employers' records.** Every employer of 3 or more persons and every  
22 employer who is subject to this chapter shall keep a record of all accidents causing  
23 death or disability of any employee while performing services growing out of and  
24 incidental to the employment. This record shall give the name, address, age, and  
25 wages of the deceased or injured employee, the time and causes of the accident, the

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1 nature and extent of the injury, and any other information the department may  
2 require by rule or general order. Reports based upon this record shall be furnished  
3 to the department at such times and in such manner as ~~it~~ the department may  
4 require by rule or general order, ~~upon forms in a format~~ approved by the department.

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

6 **102.38 Records and reports of payments; ~~reports thereon~~.** Every  
7 insurance company which ~~that~~ transacts the business of compensation insurance,  
8 and every employer who is subject to this chapter, but whose liability is not insured,  
9 shall keep a record of all payments made under this chapter and of the time and  
10 manner of making the payments, and shall furnish reports based upon these records  
11 and any other information to the department as ~~it~~ the department may require by  
12 rule or general order, ~~upon forms in a format~~ approved by the department.

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

14 **102.39 General Rules and general orders; application of statutes.** The  
15 provisions of s. 103.005 relating to the adoption, publication, modification, and court  
16 review of rules or general orders of the department shall apply to all rules  
17 promulgated or general orders adopted pursuant to under this chapter.

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

19 102.42 (1m) If an employee who has sustained a compensable injury  
20 undertakes in good faith invasive treatment that is generally medically acceptable,  
21 but that is unnecessary, the employer shall pay disability indemnity for all disability  
22 incurred as a result of that treatment. An employer is not liable for disability  
23 indemnity for any disability incurred as a result of any unnecessary treatment  
24 undertaken in good faith that is noninvasive or not medically acceptable. This  
25 subsection applies to all findings that an employee has sustained a compensable



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1 injury, whether the finding results from a hearing, the default of a party, or a  
2 compromise or stipulation confirmed by the department.

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

4 102.43 (5) Temporary disability, during which compensation shall be payable  
5 for loss of earnings, shall include such period as may be reasonably required for  
6 training in the use of artificial members and appliances, ~~and shall.~~ Except as  
7 provided in s. 102.61 (1g), temporary disability shall also include such period as the  
8 employee may be receiving instruction pursuant to s. 102.61 (1) or (1m). Temporary  
9 disability on account of receiving instruction of the latter nature, and not otherwise  
10 resulting from the injury, shall not be in excess of 80 weeks. Such 80-week limitation  
11 does not apply to temporary disability benefits under this section, travel or  
12 maintenance expense under s. 102.61 (1), or private rehabilitation counseling or  
13 rehabilitative training costs under s. 102.61 (1m) if the department determines that  
14 additional training is warranted. The necessity for additional training as authorized  
15 by the department for any employee shall be subject to periodic review and  
16 reevaluation.

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

18 102.43 (6) (b) Wages In the case of an employee whose average weekly earnings  
19 are calculated under s. 102.11 (1) (a), wages received from other employment held by  
20 the employee when the injury occurred shall be considered in computing actual wage  
21 loss from the employer in whose employ the employee sustained the injury, if the as  
22 provided in this paragraph. If an employee's weekly temporary disability benefits  
23 average weekly earnings are calculated under s. 102.11 (1) (a), wages received from  
24 other employment held by the employee when the injury occurred shall be offset  
25 against those average weekly earnings and not against the employee's actual

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1 earnings in the employment in which the employee was engaged at the time of the  
2 injury.

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

4 102.44 (1) (intro.) Notwithstanding any other provision of this chapter, every  
5 employee who is receiving compensation under this chapter for permanent total  
6 disability or continuous temporary total disability more than 24 months after the  
7 date of injury resulting from an injury which occurred prior to January 1, ~~1976~~ 1978,  
8 shall receive supplemental benefits which shall be payable in the first instance by  
9 the employer or the employer's insurance carrier, or in the case of benefits payable  
10 to an employee under s. 102.66, shall be paid by the department out of the fund  
11 created under s. 102.65. These supplemental benefits shall be paid only for weeks  
12 of disability occurring after January 1, ~~1978~~ 1980, and shall continue during the  
13 period of such total disability subsequent to that date.

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

15 102.44 (1) (a) If such employee is receiving the maximum weekly benefits in  
16 effect at the time of the injury, the supplemental benefit for a week of disability  
17 occurring after January 1, 2002, shall be an amount which, when added to the  
18 regular benefit established for the case, shall equal \$150 \$202.

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

20 102.44 (1) (b) If such employee is receiving a weekly benefit which is less than  
21 the maximum benefit which was in effect on the date of the injury, the supplemental  
22 benefit for a week of disability occurring after January 1, 2002, shall be an amount  
23 sufficient to bring the total weekly benefits to the same proportion of \$150 \$202 as  
24 the employee's weekly benefit bears to the maximum in effect on the date of injury.

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

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1           **102.57 Violations of safety provisions, penalty.** If injury is caused by the  
2 failure of the employer to comply with any statute ~~or any lawful, rule, or~~ order of the  
3 department, compensation and death benefits provided in this chapter shall be  
4 increased 15% but the total increase may not exceed \$15,000. Failure of an employer  
5 reasonably to enforce compliance by employees with ~~that~~ any statute, rule, or order  
6 of the department constitutes failure by the employer to comply with that statute,  
7 rule, or order.

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

9           **102.58 Decreased compensation.** If injury is caused by the failure of the  
10 employee to use safety devices ~~which~~ that are provided in accordance with any  
11 statute ~~or lawful, rule, or~~ order of the department and that are adequately  
12 maintained, and the use of which is reasonably enforced by the employer, ~~or~~ if injury  
13 results from the employee's failure to obey any reasonable rule adopted and  
14 reasonably enforced by the employer for the safety of the employee and of which the  
15 employee has notice, or if injury results from the intoxication of the employee by  
16 alcohol beverages, as defined in s. 125.02 (1), or use of a controlled substance, as  
17 defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m),  
18 the compensation and death benefit provided in this chapter shall be reduced 15%  
19 but the total reduction may not exceed \$15,000.

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

21           **102.59 (1)** If an employee has at the time of injury permanent disability which  
22 if it had resulted from such injury would have entitled him or her to indemnity for  
23 200 weeks and, as a result of such injury, incurs further permanent disability which  
24 entitles him or her to indemnity for 200 weeks, the employee shall be paid from the  
25 funds provided in this section additional compensation equivalent to the amount

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1 which would be payable for said previous disability if it had resulted from such injury  
2 or the amount which is payable for said further disability, whichever is the lesser.  
3 If said disabilities result in permanent total disability the additional compensation  
4 shall be in such amount as will complete the payments which would have been due  
5 had said permanent total disability resulted from such injury. This additional  
6 compensation accrues from, and may not be paid to any person before, the end of the  
7 period for which compensation for permanent disability resulting from such injury  
8 is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No  
9 compromise agreement of liability for this additional compensation may provide for  
10 any lump sum payment.

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

12 102.61 (1) Subject to ~~sub.~~ subs. (1g) and (1m), an employee who is entitled to  
13 receive and has received compensation under this chapter, and who is entitled to and  
14 is receiving instructions under 29 USC 701 to 797b, as administered by the state in  
15 which the employee resides or in which the employee resided at the time of becoming  
16 physically disabled, shall, in addition to other indemnity, be paid the actual and  
17 necessary expenses of travel and, if the employee receives instructions elsewhere  
18 than at the place of residence, the actual and necessary costs of maintenance, during  
19 rehabilitation, subject to the conditions and limitations specified in sub. (1r).

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

21 102.61 (1g) (a) In this subsection, “suitable employment” means employment  
22 that is within an employee’s permanent work restrictions, that the employee has the  
23 necessary physical capacity, knowledge, transferable skills, and ability to perform,  
24 and that pays not less than 90% of the employee’s preinjury average weekly wage,

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1       except that employment that pays 90% or more of the employee's preinjury average  
2       weekly wage does not constitute suitable employment if any of the following apply:

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

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

13           (b) If an employer offers an employee suitable employment as provided in par.  
14       (c), the employer or the employer's insurance carrier is not liable for temporary  
15       disability benefits under s. 102.43 (5) or for travel and maintenance expenses under  
16       sub. (1). Ineligibility for compensation under this paragraph does not preclude an  
17       employee from receiving vocational rehabilitation services under 29 USC 701 to 797b  
18       if the department determines that the employee is eligible to receive those services.

19           (c) On receiving notice that he or she is eligible to receive vocational  
20       rehabilitation services under 29 USC 701 to 797a, an employee shall provide the  
21       employer with a written report from a physician, chiropractor, psychologist, or  
22       podiatrist stating the employee's permanent work restrictions. Within 60 days after  
23       receiving that report, the employer shall provide to the employee in writing an offer  
24       of suitable employment, a statement that the employer has no suitable employment  
25       for the employee, or a report from a physician, chiropractor, psychologist, or

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1 podiatrist showing that the permanent work restrictions provided by the employee's  
2 practitioner are in dispute and documentation showing that the difference in work  
3 restrictions would materially affect either the employer's ability to provide suitable  
4 employment or a vocational rehabilitation counselor's ability to recommend a  
5 rehabilitative training program. If the employer and employee cannot resolve the  
6 dispute within 30 days after the employee receives the employer's report and  
7 documentation, the employer or employee may request a hearing before the  
8 department to determine the employee's work restrictions. Within 30 days after the  
9 department determines the employee's work restrictions, the employer shall provide  
10 to the employee in writing an offer of suitable employment or a statement that the  
11 employer has no suitable employment for the employee.

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

13 102.61 (1m) (c) The employer or insurance carrier shall pay the reasonable cost  
14 of any services provided for an employee by a private rehabilitation counselor under  
15 par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c)  
16 and by rule, if the private rehabilitation counselor determines that rehabilitative  
17 training is necessary, the reasonable cost of the rehabilitative training program  
18 recommended by that counselor, including tuition, fees, books, and maintenance and  
19 travel expenses. Notwithstanding that the department of workforce development  
20 may authorize under s. 102.43 (5) a rehabilitative training program that lasts longer  
21 than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is  
22 presumed to be reasonable.

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

24 102.61 (1m) (d) If an employee receives services from a private rehabilitation  
25 counselor under par. (a) and later receives similar services from the department of

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1 ~~health and family services~~ under sub. (1) without the prior approval of the employer  
2 or insurance carrier, the employer or insurance carrier is not liable for temporary  
3 disability benefits under s. 102.43 (5) or for travel and maintenance expenses under  
4 sub. (1) that exceed what the employer or insurance carrier would have been liable  
5 for under the rehabilitative training program developed by the private rehabilitation  
6 counselor.

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

8 102.61 **(1m)** (e) Nothing in this subsection prevents an employer or insurance  
9 carrier from providing an employee with the services of a private rehabilitation  
10 counselor or with rehabilitative training under sub. (3) before the department of  
11 ~~health and family services~~ makes its determination under par. (a).

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

13 102.61 **(1m)** (f) The department of ~~workforce development~~ shall promulgate  
14 rules establishing procedures and requirements for the private rehabilitation  
15 counseling and rehabilitative training process under this subsection. Those rules  
16 shall include rules specifying the procedure and requirements for certification of  
17 private rehabilitation counselors.

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

19 102.61 **(2)** The department of ~~workforce development~~, the commission, and the  
20 courts shall determine the rights and liabilities of the parties under this section in  
21 like manner and with like effect as that the department, the commission, and the  
22 courts ~~do determine~~ other issues under ~~compensation~~ this chapter. A determination  
23 under this subsection may include a determination based on the evidence regarding  
24 the cost or scope of the services provided by a private rehabilitation counselor under

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1 sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program  
2 developed under sub. (1m) (a).

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

4 102.66 (1) In the event that there is an otherwise meritorious claim for  
5 occupational disease, a traumatic injury resulting in the loss or total impairment of  
6 a hand or any part of the rest of the arm proximal to the hand or of a foot or any part  
7 of the rest of the leg proximal to the foot, any loss of vision, any permanent brain  
8 injury, or any injury causing the need for a total or partial knee or hip replacement,  
9 and the claim is barred solely by the statute of limitations under s. 102.17 (4), the  
10 department may, in lieu of worker's compensation benefits, direct payment from the  
11 work injury supplemental benefit fund under s. 102.65 of such compensation and  
12 such medical expenses as would otherwise be due, based on the date of injury, to or  
13 on behalf of the injured employee. The benefits shall be supplemental, to the extent  
14 of compensation liability, to any disability or medical benefits payable from any  
15 group insurance policy where the whose premium is paid in whole or in part by any  
16 employer, or under any federal insurance or benefit program providing disability or  
17 medical benefits. Death benefits payable under any such group policy do not limit  
18 the benefits payable under this section.

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

20 102.66 (2) In the case of occupational disease, a traumatic injury resulting in  
21 the loss or total impairment of a hand or any part of the rest of the arm proximal to  
22 the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss  
23 of vision, any permanent brain injury, or any injury causing the need for a total or  
24 partial knee or hip replacement, appropriate benefits may be awarded from the work  
25 injury supplemental benefit fund where when the status or existence of the employer



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1 or its insurance carrier cannot be determined or ~~where~~ when there is otherwise no  
2 adequate remedy, subject to the limitations contained in sub. (1).

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

4 626.32 (1) (a) *General.* Every insurer writing any insurance specified under  
5 s. 626.03 shall report its insurance in this state to the bureau at least annually, on  
6 forms and under rules prescribed by the bureau. The bureau ~~must~~ shall file,  
7 ~~pursuant to~~ under rules ~~adopted~~ promulgated by the department of workforce  
8 development, a record of such reports with ~~the~~ that department. No such  
9 information may be made public by the bureau or any of its employees except as  
10 required by law and in accordance with its rules. No such information may be made  
11 public by the department of workforce development or any of its employees except  
12 as authorized by the bureau.

13 **SECTION 54. Initial applicability.**

14 (1) NECESSITY OF TREATMENT DETERMINATIONS. The treatment of section 102.16  
15 (2m) (c) of the statutes first applies to necessity of treatment determinations made  
16 on the effective date of this subsection.

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

20 (3) DISABILITY AS A RESULT OF UNNECESSARY TREATMENT. The treatment of section  
21 102.42 (1m) of the statutes first applies to treatment provided on the effective date  
22 of this subsection.

23 (4) STATUTE OF LIMITATIONS; PAYMENTS FROM SUPPLEMENTAL WORK INJURY BENEFIT  
24 FUND. The treatment of sections 102.17 (4) and 102.66 (1) and (2) of the statutes first

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1 applies to benefits or treatment expenses that are payable on the effective date of this  
2 subsection, regardless of the date of the injury.

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

6 **SECTION 55. Effective date.**

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

9 (END)