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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2005-06

(session year)

## Senate

(Assembly, Senate or Joint)

## Committee on Labor and Election Process Reform...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

# Senate

## Record of Committee Proceedings

### Committee on Labor and Election Process Reform

#### Senate Bill 474

Relating to: making various changes in the worker's compensation law, requiring the exercise of rule-making authority, and making appropriations.

By Senator Schultz.

December 13, 2005 Referred to Committee on Labor and Election Process Reform.

January 25, 2006 **PUBLIC HEARING HELD**

Present: (4) Senators Reynolds, Kanavas, Hansen and Carpenter.  
Absent: (1) Senator Lazich.

#### Appearances For

- Frances Huntley-Cooper — Dept. of Workforce Development
- Paul Welnak, Mukwonago — WI AFL-CIO
- James Buchen, Madison — WMC
- Scott Shauer, Delafield — Worker's Comp. Advisory Council
- Jeff Beiriger, Milwaukee — Cook & Franke

#### Appearances Against

- David Goodman, Madison — Occ. Med Section of WI Medical Society

#### Appearances for Information Only

- Patricia Grillot, Madison — 25 S. Owen Drive

#### Registrations For

- Misha Lee, Madison — Sentry Insurance
- Eric Englund, Madison — WI Insurance Alliance
- Joanne Ricca, Milwaukee — WI AFL-CIO

#### Registrations Against

- None.

February 2, 2006 EXECUTIVE SESSION - POLLING

Moved by Senator Reynolds, seconded by Senator Kanavas that **Senate Bill 474** be recommended for passage.

Ayes: (5) Senators Reynolds, Lazich, Kanavas, Hansen and Carpenter.  
Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0

Patrick Henneger  
Committee Clerk

SENATE COMMITTEE ON LABOR AND ELECTION PROCESS  
REFORM

Paper Ballot: Senator Carpenter

Please return your vote via ballot to Senator Reynolds' office (306 South) by **4:00 p.m.**  
**on Thursday February 2<sup>nd</sup>, 2006.**

Thank you.

MOTION

Recommend Assembly Bill 377 for passage?

Aye  \_\_\_\_\_      Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 419 for passage?

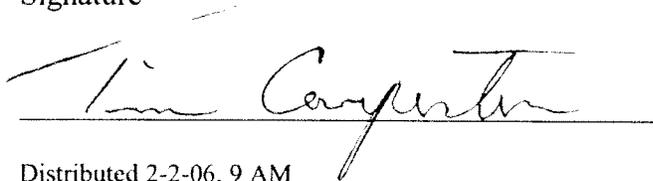
Aye  \_\_\_\_\_      Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 474 for passage?

Aye  \_\_\_\_\_      Nay \_\_\_\_\_

Signature

  
\_\_\_\_\_

Distributed 2-2-06, 9 AM

SENATE COMMITTEE ON LABOR AND ELECTION PROCESS  
REFORM

Paper Ballot: Senator Hansen

Please return your vote via ballot to Senator Reynolds' office (306 South) by **4:00 p.m.**  
**on Thursday February 2<sup>nd</sup>, 2006.**

Thank you.

MOTION

Recommend Assembly Bill 377 for passage?

Aye   X             Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 419 for passage?

Aye   X             Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 474 for passage?

Aye   X             Nay \_\_\_\_\_

Signature

  Daryl Hansen

SENATE COMMITTEE ON LABOR AND ELECTION PROCESS  
REFORM

Paper Ballot: Senator Kanavas

Please return your vote via ballot to Senator Reynolds' office (306 South) by **4:00 p.m.**  
**on Thursday February 2<sup>nd</sup>, 2006.**

Thank you.

MOTION

Recommend Assembly Bill 377 for passage?

Aye  \_\_\_\_\_      Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 419 for passage?

Aye  \_\_\_\_\_      Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 474 for passage?

Aye  \_\_\_\_\_      Nay \_\_\_\_\_

Signature

  
\_\_\_\_\_

Distributed 2-2-06, 9 AM

SENATE COMMITTEE ON LABOR AND ELECTION PROCESS  
REFORM

Paper Ballot: Senator Lazich

Please return your vote via ballot to Senator Reynolds' office (306 South) by **4:00 p.m.**  
on **Thursday February 2<sup>nd</sup>, 2006.**

Thank you.

MOTION

Recommend Assembly Bill 377 for passage?

Aye  \_\_\_\_\_ Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 419 for passage?

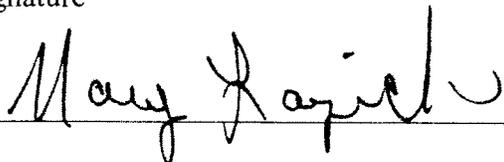
Aye  \_\_\_\_\_ Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 474 for passage?

Aye  \_\_\_\_\_ Nay \_\_\_\_\_

Signature

  
\_\_\_\_\_

Distributed 2-2-06, 9 AM

SENATE COMMITTEE ON LABOR AND ELECTION PROCESS  
REFORM

Paper Ballot: Senator Reynolds

Please return your vote via ballot to Senator Reynolds' office (306 South) by **4:00 p.m.**  
**on Thursday February 2<sup>nd</sup>, 2006.**

Thank you.

MOTION

Recommend Assembly Bill 377 for passage?

Aye   X              Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 419 for passage?

Aye   X              Nay \_\_\_\_\_

MOTION

Recommend Senate Bill 474 for passage?

Aye   X              Nay \_\_\_\_\_

Signature





# MEMORANDUM

OFFICE OF THE CITY ATTORNEY  
ROOM 800 – CITY HALL

TO: Jennifer Gonda, Legislative Fiscal Manager-Sr.

FROM: Heidi Wick Spoerl, Assistant City Attorney *HWS*

DATE: January 6, 2006

RE: Senate Bill 474 – Changes in Worker's Compensation Law

I have had an opportunity to review the proposed changes to the Worker's Compensation Act in Senate Bill 474. I understand that the Worker's Compensation Administrator, Burma Hudson, will also be addressing SB Bill 474.

The proposed changes involving the work injury supplemental benefit fund provision increase the employer's liability for payments into the fund to \$20,000. This 100% increase is accompanied by change which would all but obliterate the 12-year statute of limitations on worker's compensation claims by requiring the employer or insurer to pay benefits or treatment expenses becoming due 12 years after the date of the traumatic injury. The claims that would have previously been barred by the 12-year statute of limitations and therefore paid out of the state supplemental benefit fund will now be the responsibility of the City of Milwaukee. The legislation not only saddles the City of Milwaukee with claims that it was previously not obligated to pay by virtue of the statute of limitations, but it has doubled the amount of money the City of Milwaukee is obligated to pay into the fund. The City should oppose the changes to the work injury supplemental benefit fund provision.

The proposed change to bad faith penalties should also be opposed. The changes expose the City to a 100% increase in the bad faith penalty or \$30,000 for a bad faith claim. The \$30,000 maximum will increase litigation in the number of bad faith claims being made against the City of Milwaukee and will also increase the cost of settling any potential bad faith claims with the employee.

From a legal standpoint, the remaining changes in SB 474 have little effect on the City of Milwaukee. If you have any questions, please feel free to call my office at x2670.

HWS/ml:100581  
C: Burma Hudson



**CITY OF MILWAUKEE**  
DEPARTMENT OF ADMINISTRATION

**TERRY M. PERRY**  
LEGISLATIVE COORDINATOR SENIOR

CITY HALL ROOM 606  
200 EAST WELLS STREET  
MILWAUKEE, WI 53202

(414) 286-8553  
CELL (414) 708-3418  
FAX (414) 286-8547  
EMAIL [tperry@milwaukee.gov](mailto:tperry@milwaukee.gov)

## **Henneger, Patrick**

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**From:** Conway, John  
**Sent:** Friday, January 06, 2006 2:31 PM  
**To:** Henneger, Patrick  
**Subject:** Worker's Compensation Bill

**Attachments:** PLAIN LANGUAGE SUMMARY 2005 BILL JTO DRAFT 1 6 06.doc

Patrick, I've attached a plain language summary of the WC bill, as you requested. Of the thirty-three itemized changes to the bill, the one's that were of the greatest significance and received the most attention from the WC Council were:

- **4. Temporary Total Disability, Permanent Total Disability & Death Benefits.** The maximum benefit rate for temporary total disability, permanent total disability and death benefits will be 110 percent of the state's average weekly earnings as determined under s. 108.05, Wis. Stats. This amendment makes permanent the use of 110 percent of the state's average weekly earnings to establish these benefit rates. s.102.11(1)(intro.).
- **6. WC Treatment Guidelines.** The Department is authorized to promulgate rules to establish treatment guidelines to be applied in resolving necessity of treatment disputes. ss.102.16(1m)(b),102.16(2m)(c) and. 102.16(2m)(g).
- **15. Professional Employer Organizations.** Professional Employer Organizations (PEOs) are required to provide the Department notice within ten (10) days after entering into an agreement with a client and 30 days notice before the termination date of the client agreement. s.102.31(2m).
- **22. Pharmacy Fee Schedule.** A pharmacy fee schedule is established that limits charges to the average wholesale price, plus a \$3.00 dispensing fee and applicable state and federal taxes. The use of generic drugs is encouraged and pharmacists are prohibited from balance billing employees for charges over the fee schedule amount. s.102.425.
- **23. Restricted Work in the Healing Period.** Under this amendment employees will not be eligible to receive compensation for temporary disability if they refuse an offer of suitable employment without reasonable cause; if the employment was suspended or terminated by the employer because of a commission of a crime substantially related to the employment; or if the employment was suspended or terminated by the employer because of violation of the employer's drug policy in effect and enforced at the time of injury. s.102.43(9).
- **24. Supplemental Benefits.** The maximum supplemental benefit rate is increased in two (2) steps. The initial step will increase the maximum rate from \$233 per week to \$ 321 per week for injuries occurring before January 1, 1985 and payable for weeks of disability beginning on the effective date of the amendment. The second step will increase the maximum benefit rate from \$ 321 per week to \$338 per week for injuries occurring before January 1, 1987 and payable for weeks of disability beginning January 1, 2007. s.102.44(1).

Please call me at 266-0337 if I can be of any help.

Thanks.

AMENDMENTS TO THE WORKER'S COMPENSATION ACT  
PLAIN LANGUAGE SUMMARY SB-474  
EFFECTIVE DATE-TBD  
DRAFT

1. **Employee Wellness.** Current law provides that an employee who is injured while voluntarily participating in a program designed to improve the employee's physical well being is not entitled to worker's compensation benefits. This amendment also excludes from coverage injuries sustained while an employee is engaged in a voluntary and uncompensated event or activity designed to improve the employee's physical well being. s.102.03(1)(c)3
2. **Temporary Help Agency.** This is a technical amendment by the drafter to modernize language in this subsection. s.102.04(2m).
3. **Permanent Partial Disability.** The maximum benefit rates for permanent partial disability are increased for injuries occurring on or after the effective date in 2006 to \$252 and to \$262 for injuries occurring on or after January 1, 2007. s. 102.11(1)(intro.).
4. **Temporary Total Disability, Permanent Total Disability & Death Benefits.** The maximum benefit rate for temporary total disability, permanent total disability and death benefits will be 110 percent of the state's average weekly earnings as determined under s. 108.05, Wis. Stats. This amendment makes permanent the use of 110 percent of the state's average weekly earnings to establish these benefit rates. s.102.11(1)(intro.).
5. **Final Practitioner's Report.** Under this amendment a treating practitioner may charge a reasonable fee for completing a final report, but cannot require pre-payment of the fee, and an insurer or self-insured employer can dispute the reasonableness of a fee charge for completion of a final report through the reasonableness of fee dispute resolution process. s.102.13(2)(c).
6. **WC Treatment Guidelines.** The Department is authorized to promulgate rules to establish treatment guidelines to be applied in resolving necessity of treatment disputes. ss.102.16(1m)(b),102.16(2m)(c) and. 102.16(2m)(g).
7. **Certified Reports from Practitioners & Experts.** This amendment clarifies that medical and vocational evidence in the form of certified reports admitted at hearings may be relied on by the Department in issuing orders without the necessity of the practitioner or expert appearing at the hearing. s.102.17(1)(d) 4.
8. **Certified Reports from Industrial Safety Specialists.** This amendment clarifies that certified reports from industrial safety specialists admitted at hearings may be relied upon by the Department in issuing orders without the necessity of the experts appearing at the hearings. s.102.17(1)(h).

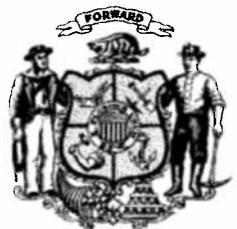
9. **Elimination of the Statute of Limitations for Specified Traumatic Injuries.** There will no longer be a statute of limitations for injuries resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand, or of a foot, or any part of the rest of the leg 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, and the insurer or self-insured employer is responsible for payment. The amendment also adds artificial spinal disc as a traumatic injury covered under this subsection. s.102.17(4).
10. **Necessity of Treatment.** This amendment clarifies that the Department shall apply the treatment guidelines to be promulgated by rule in deciding necessity of treatment disputes in orders following hearings. s.102.18(1)(bg) 2.
11. **Bad Faith.** The maximum penalty for bad faith is increased from \$15,000 to \$30,000 and if a bad faith penalty is imposed increased compensation under s. 102.22(1) or other interest cannot also be awarded for that event or occurrence. s. 102.18(1)(bp).
12. **Payment of Orders on Appeal.** This amendment clarifies that a party ordered by the Department, LIRC or a court to pay compensation must pay that compensation while the case is on appeal when the only issue on appeal is liability between the employer and one or more insurance companies. s.102.23(5).
13. **Self-insured Employers Liability Fund.** The Self-Insured Employers Liability Fund is made nonlapsible and the money in the fund may only be used for statutory purposes and not other state purposes. s.102.28(8).
14. **Third Party Actions.** This is a technical amendment by the drafter to modernize language. s.102.29(1).
15. **Professional Employer Organizations.** Professional Employer Organizations (PEOs) are required to provide the Department notice within ten (10) days after entering into an agreement with a client and 30 days notice before the termination date of the client agreement. s.102.31(2m).
16. **Fees for Wrap-up Insurance.** This amendment requires that the money received by the Department for administering the insurance wrap-up projects be deposited into the worker's compensation operations fund. s.102.31(7).
17. **Prompt Payment of Permanent Partial Disability.** Under this amendment an employee who is still in the healing period and has returned to work is eligible to receive payments for PPD that are based on minimum ratings established by Department rule. s.102.32 (6)(b).

18. **Advancements.** This amendment provides that an employee or dependent can receive no more than three (3) advancements per calendar year. s.102.32 (6m).
19. **Public Inspection & Copying of Department Records.** The restrictions on access to confidential records provided to the Department are extended to LIRC. The Department will be permitted to release confidential information to government agencies, educational institutions and non-profit research organizations with the assurance that information will not be re-released without authorization from the Department. s.102.33(2).
20. **Surcharges & Interest.** With this amendment forfeitures will be changed to surcharges and payments will be redirected from the School Fund to the Work Injury Supplemental Benefit Fund. Interest will be charged at a rate of 1 per cent per month on any unpaid surcharges that remain unpaid after 90 days and the interest will also deposited in the WISBF. s.102.35(1).
21. **Travel Expense (Mileage).** This amendment codifies the Department's policy that injured employees receive mileage reimbursement for travel to obtain treatment at the same rate as state employees. s.102.42(2)(b).
22. **Pharmacy Fee Schedule.** A pharmacy fee schedule is established that limits charges to the average wholesale price, plus a \$3.00 dispensing fee and applicable state and federal taxes. The use of generic drugs is encouraged and pharmacists are prohibited from balance billing employees for charges over the fee schedule amount. s.102.425.
23. **Restricted Work in the Healing Period.** Under this amendment employees will not be eligible to receive compensation for temporary disability if they refuse an offer of suitable employment without reasonable cause; if the employment was suspended or terminated by the employer because of a commission of a crime substantially related to the employment; or if the employment was suspended or terminated by the employer because of violation of the employer's drug policy in effect and enforced at the time of injury. s.102.43(9).
24. **Supplemental Benefits.** The maximum supplemental benefit rate is increased in two (2) steps. The initial step will increase the maximum rate from \$233 per week to \$ 321 per week for injuries occurring before January 1, 1985 and payable for weeks of disability beginning on the effective date of the amendment. The second step will increase the maximum benefit rate from \$ 321 per week to \$338 per week for injuries occurring before January 1, 1987 and payable for weeks of disability beginning January 1, 2007. s.102.44(1).
25. **Payment to State Fund-Death Claims .** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insured employers for injuries resulting in death is increased from \$10,000 to \$20,000. s.102.49(5).

26. **Payment to the State Fund-Dismemberment.** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insurers for injuries resulting in dismemberment is increased from \$10,000 to \$20,000. s.102.59(2).
27. **Illegal Employment of Minors.** This amendment redirects the payments by employers for double and treble compensation penalties for the illegal employment of minors from the minor to the Work Injury Supplemental Benefit Fund. The amendment also provides the employer is no longer required to make any payment if the employer is misled in hiring the minor because of fraudulent written evidence of age presented by the minor. s.102.60.
28. **Travel Expense ( Mileage ).** This amendment codifies the Department's policy that injured employees receive mileage reimbursement for travel to attend vocational rehabilitation training at the same rate as state employees. ss.102.61(1) and (1m)(c).
29. **Primary &Secondary Liability.** This is a technical amendment by the drafter to modernize the language in this section. s.102.62.
30. **Work Injury Supplemental Benefit Fund.** This amendment requires that payments of surcharges, interest on late surcharge payments, double and treble compensation due for the illegal employment of minors and interest on late payments of the operations assessment are to be paid into the Work Injury Supplemental Benefit Fund. s.102.65(1).
31. **Barred Claims.** Under this amendment the specified traumatic barred claims will no longer be paid by the Work Injury Supplemental Benefit Fund and will become the liability of insurers and self-insured employers beginning with the effective date of the amendment. s.102.66(1) and (2).
32. **Administrative Expenses & Interest.** The worker's compensation operations fund is established as a separate nonlapsible fund to be used only for statutory purposes and not for any other state purpose. The amendment also provides for interest at a rate of 1 per cent per month on any unpaid assessments that are not paid within 90 days with the interest payable to the Work Injury Supplemental Benefit Fund. s.102.75(1m),(2) and (4).
33. **Uninsured Employers Fund.** Several sections were amended. One amendment provided that the money in the Uninsured Employers Fund can be expended only for statutory purposes and cannot be used for any other purpose. The other amendments are of a technical nature by the drafter to correctly cite current statutes. ss.102.80(1m), 102.81 (1)(a), 102.81(2) and 102.87(4).



WISCONSIN STATE LEGISLATURE



Department of Workforce Development  
Division of Worker's Compensation  
201 East Washington Avenue  
P.O. Box 7901  
Madison, WI 53707-7901  
Telephone: (608) 266-1340  
Fax: (608) 267-0394  
TTY: (866) 265-3142  
Email: [dwdwc@dwd.state.wi.us](mailto:dwdwc@dwd.state.wi.us)



State of Wisconsin  
Department of Workforce Development  
Jim Doyle, Governor  
Roberta Gassman, Secretary  
Frances Huntley-Cooper, Division Administrator

January 24, 2006

Senator Tom Reynolds, Chair  
Labor & Election Process Reform Committee  
State Capitol  
P O Box 7882  
Madison, WI 53702

Dear Senator Reynolds:

We appreciate the opportunity to provide you with information concerning the amendments to the Worker's Compensation Act as proposed in **SB-474**. Attached is a summary of the thirty-three amendments that received the unanimous support of the statutory Worker's Compensation Advisory Council. As is the tradition of the Worker's Compensation "Agreed Bill" process, these amendments are now before you, the Senate Committee on Labor and Election Process Reform, for review and adoption.

I would like to highlight a few of the bill's notable provisions:

- **Permanent Partial Disability.** The maximum benefit rates for permanent partial disability are increased for injuries occurring on or after the effective date in 2006 to \$252 and to \$262 for injuries occurring on or after January 1, 2007. s. 102.11(1)(intro.).
- **Temporary Total Disability, Permanent Total Disability & Death Benefits.** The maximum benefit rate for temporary total disability, permanent total disability and death benefits will be 110 percent of the state's average weekly earnings as determined under s. 108.05, Wis. Stats. This amendment makes permanent the use of 110 percent of the state's average weekly earnings to establish these benefit rates. s.102.11(1)(intro.).
- **Illegal Employment of Minors.** This amendment redirects the payments by employers for double and treble compensation penalties for the illegal employment of minors from the minor to the Work Injury Supplemental Benefit Fund. The amendment also provides the employer is no longer required to make any payment if the employer is misled in hiring the minor because of fraudulent written evidence of age presented by the minor. s.102.60.
- **WC Treatment Guidelines.** The Department is authorized to promulgate rules to establish treatment guidelines to be applied in resolving necessity of treatment disputes. ss.102.16(1m)(b), 102.16(2m)(c) and. 102.16(2m)(g).

- **Pharmacy Fee Schedule.** A pharmacy fee schedule is established that limits charges to the average wholesale price, plus a \$3.00 dispensing fee and applicable state and federal taxes. The use of generic drugs is encouraged and pharmacists are prohibited from balance billing employees for charges over the fee schedule amount. s.102.425.
- **Restricted Work in the Healing Period.** Under this amendment employees will not be eligible to receive compensation for temporary disability if they refuse an offer of suitable employment without reasonable cause; if the employment was suspended or terminated by the employer because of a commission of a crime substantially related to the employment; or if the employment was suspended or terminated by the employer because of violation of the employer's drug policy in effect and enforced at the time of injury. s.102.43(9).
- **Supplemental Benefits.** The maximum supplemental benefit rate is increased in two (2) steps. The initial step will increase the maximum rate from \$233 per week to \$ 321 per week for injuries occurring before January 1, 1985 and payable for weeks of disability beginning on the effective date of the amendment. The second step will increase the maximum benefit rate from \$ 321 per week to \$338 per week for injuries occurring before January 1, 1987 and payable for weeks of disability beginning January 1, 2007. s.102.44(1).
- **Bad Faith.** The maximum penalty for bad faith is increased from \$15,000 to \$30,000 and if a bad faith penalty is imposed increased compensation under s. 102.22(1) or other interest cannot also be awarded for that event or occurrence. s. 102.18(1)(bp).
- **Payment to State Fund-Death Claims .** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insured employers for injuries resulting in death is increased from \$10,000 to \$20,000. s.102.49(5).
- **Payment to the State Fund-Dismemberment.** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insurers for injuries resulting in dismemberment is increased from \$10,000 to \$20,000. s.102.59(2).

Again, we thank you for the opportunity to confer with you on this bill.

Sincerely,



Frances Huntley-Cooper  
Division Administrator

Cc: Senator Mary Lazich  
Senator Ted Karavas  
Senator David Hansen  
Senator Tim Carpenter

AMENDMENTS TO THE WORKER'S COMPENSATION ACT  
PLAIN LANGUAGE SUMMARY SB-474  
EFFECTIVE DATE-TBD

1. **Employee Wellness**. Current law provides that an employee who is injured while voluntarily participating in a program designed to improve the employee's physical well being is not entitled to worker's compensation benefits. This amendment also excludes from coverage injuries sustained while an employee is engaged in a voluntary and uncompensated event or activity designed to improve the employee's physical well being. s.102.03(1)(c)3
2. **Temporary Help Agency**. This is a technical amendment by the drafter to modernize language in this subsection. s.102.04(2m).
3. **Permanent Partial Disability**. The maximum benefit rates for permanent partial disability are increased for injuries occurring on or after the effective date in 2006 to \$252 and to \$262 for injuries occurring on or after January 1, 2007. s. 102.11(1)(intro.).
4. **Temporary Total Disability, Permanent Total Disability & Death Benefits**. The maximum benefit rate for temporary total disability, permanent total disability and death benefits will be 110 percent of the state's average weekly earnings as determined under s. 108.05, Wis. Stats. This amendment makes permanent the use of 110 percent of the state's average weekly earnings to establish these benefit rates. s.102.11(1)(intro.).
5. **Final Practitioner's Report**. Under this amendment a treating practitioner may charge a reasonable fee for completing a final report, but cannot require pre-payment of the fee, and an insurer or self-insured employer can dispute the reasonableness of a fee charge for completion of a final report through the reasonableness of fee dispute resolution process. s.102.13(2)(c).
6. **WC Treatment Guidelines**. The Department is authorized to promulgate rules to establish treatment guidelines to be applied in resolving necessity of treatment disputes. ss.102.16(1m)(b),102.16(2m)(c) and. 102.16(2m)(g).
7. **Certified Reports from Practitioners & Experts**. This amendment clarifies that medical and vocational evidence in the form of certified reports admitted at hearings may be relied on by the Department in issuing orders without the necessity of the practitioner or expert appearing at the hearing. s.102.17(1)(d) 4.
8. **Certified Reports from Industrial Safety Specialists**. This amendment clarifies that certified reports from industrial safety specialists admitted at hearings may be relied upon by the Department in issuing orders without the necessity of the experts appearing at the hearings. s.102.17(1)(h).

9. **Elimination of the Statute of Limitations for Specified Traumatic Injuries.** There will no longer be a statute of limitations for injuries resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to 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, and the insurer or self-insured employer is responsible for payment. The amendment also adds artificial spinal disc as a traumatic injury covered under this subsection. s.102.17(4).
10. **Necessity of Treatment.** This amendment clarifies that the Department shall apply the treatment guidelines to be promulgated by rule in deciding necessity of treatment disputes in orders following hearings. s.102.18(1)(bg) 2.
11. **Bad Faith.** The maximum penalty for bad faith is increased from \$15,000 to \$30,000 and if a bad faith penalty is imposed increased compensation under s. 102.22(1) or other interest cannot also be awarded for that event or occurrence. s. 102.18(1)(bp).
12. **Payment of Orders on Appeal.** This amendment clarifies that a party ordered by the Department, LIRC or a court to pay compensation must pay that compensation while the case is on appeal when the only issue on appeal is liability between the employer and one or more insurance companies. s.102.23(5).
13. **Self-insured Employers Liability Fund.** The Self-Insured Employers Liability Fund is made nonlapsible and the money in the fund may only be used for statutory purposes and not other state purposes. s.102.28(8).
14. **Third Party Actions.** This is a technical amendment by the drafter to modernize language. s.102.29(1).
15. **Professional Employer Organizations.** Professional Employer Organizations (PEOs) are required to provide the Department notice within ten (10) days after entering into an agreement with a client and 30 days notice before the termination date of the client agreement. s.102.31(2m).
16. **Fees for Wrap-up Insurance.** This amendment requires that the money received by the Department for administering the insurance wrap-up projects be deposited into the worker's compensation operations fund. s.102.31(7).
17. **Prompt Payment of Permanent Partial Disability.** Under this amendment an employee who is still in the healing period and has returned to work is eligible to receive payments for PPD that are based on minimum ratings established by Department rule. s.102.32 (6)(b).
18. **Advancements.** This amendment provides that an employee or dependent can receive no more than three (3) advancements per calendar year. s.102.32 (6m).

19. **Public Inspection & Copying of Department Records.** The restrictions on access to confidential records provided to the Department are extended to LIRC. The Department will be permitted to release confidential information to government agencies, educational institutions and non-profit research organizations with the assurance that information will not be re-released without authorization from the Department. s.102.33(2).
20. **Surcharges & Interest.** With this amendment forfeitures will be changed to surcharges and payments will be redirected from the School Fund to the Work Injury Supplemental Benefit Fund. Interest will be charged at a rate of 1 per cent per month on any unpaid surcharges that remain unpaid after 90 days and the interest will also be deposited in the WISBF. s.102.35(1).
21. **Travel Expense (Mileage).** This amendment codifies the Department's policy that injured employees receive mileage reimbursement for travel to obtain treatment at the same rate as state employees. s.102.42(2)(b).
22. **Pharmacy Fee Schedule.** A pharmacy fee schedule is established that limits charges to the average wholesale price, plus a \$3.00 dispensing fee and applicable state and federal taxes. The use of generic drugs is encouraged and pharmacists are prohibited from balance billing employees for charges over the fee schedule amount. s.102.425.
23. **Restricted Work in the Healing Period.** Under this amendment employees will not be eligible to receive compensation for temporary disability if they refuse an offer of suitable employment without reasonable cause; if the employment was suspended or terminated by the employer because of a commission of a crime substantially related to the employment; or if the employment was suspended or terminated by the employer because of violation of the employer's drug policy in effect and enforced at the time of injury. s.102.43(9).
24. **Supplemental Benefits.** The maximum supplemental benefit rate is increased in two (2) steps. The initial step will increase the maximum rate from \$233 per week to \$ 321 per week for injuries occurring before January 1, 1985 and payable for weeks of disability beginning on the effective date of the amendment. The second step will increase the maximum benefit rate from \$ 321 per week to \$338 per week for injuries occurring before January 1, 1987 and payable for weeks of disability beginning January 1, 2007. s.102.44(1).
25. **Payment to State Fund-Death Claims.** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insured employers for injuries resulting in death is increased from \$10,000 to \$20,000. s.102.49(5).

26. **Payment to the State Fund-Dismemberment.** The payment (assessment) to the Work Injury Supplemental Benefit Fund by insurers and self-insurers for injuries resulting in dismemberment is increased from \$10,000 to \$20,000. s.102.59(2).
27. **Illegal Employment of Minors.** This amendment redirects the payments by employers for double and treble compensation penalties for the illegal employment of minors from the minor to the Work Injury Supplemental Benefit Fund. The amendment also provides the employer is no longer required to make any payment if the employer is misled in hiring the minor because of fraudulent written evidence of age presented by the minor. s.102.60.
28. **Travel Expense ( Mileage ).** This amendment codifies the Department's policy that injured employees receive mileage reimbursement for travel to attend vocational rehabilitation training at the same rate as state employees. ss.102.61(1) and (1m)(c).
29. **Primary &Secondary Liability.** This is a technical amendment by the drafter to modernize the language in this section. s.102.62.
30. **Work Injury Supplemental Benefit Fund.** This amendment requires that payments of surcharges, interest on late surcharge payments, double and treble compensation due for the illegal employment of minors and interest on late payments of the operations assessment are to be paid into the Work Injury Supplemental Benefit Fund. s.102.65(1).
31. **Barred Claims.** Under this amendment the specified traumatic barred claims will no longer be paid by the Work Injury Supplemental Benefit Fund and will become the liability of insurers and self-insured employers beginning with the effective date of the amendment. s.102.66(1) and (2).
32. **Administrative Expenses & Interest.** The worker's compensation operations fund is established as a separate nonlapsible fund to be used only for statutory purposes and not for any other state purpose. The amendment also provides for interest at a rate of 1 per cent per month on any unpaid assessments that are not paid within 90 days with the interest payable to the Work Injury Supplemental Benefit Fund. s.102.75(1m),(2) and (4).
33. **Uninsured Employers Fund.** Several sections were amended. One amendment provided that the money in the Uninsured Employers Fund can be expended only for statutory purposes and cannot be used for any other purpose. The other amendments are of a technical nature by the drafter to correctly cite current statutes. ss.102.80(1m), 102.81 (1)(a), 102.81(2) and 102.87(4).



I appreciate the opportunity to speak during this public hearing. I would like to first introduce myself; then I want to tell you why I felt compelled to speak at this public hearing, and the objections I have to the proposed bill on Workers Compensation treatment guidelines. Finally, I have a specific request to make regarding the proposed bill.

Please bear with me as I briefly introduce myself. My name is David Goodman, and I am a Occupational Medicine physician. My medical specialty is Occupational Medicine, and I will tell you a little more about the specialty of Occupational Medicine in a moment.

My medical background is diverse: I have been chief of emergency medicine in Fond Du Lac; I have owned and operated two emergency care or urgent care or walk-in clinics in Madison; in the mid-1980s I was medical director of Oscar Mayer Food Corporation; in the 1990s I was medical director for Concentra Medical Centers of Madison; and since 1999 I have been providing expert medical consultative services to the legal profession and the insurance industry. Throughout my medical career, I have worked closely with injured workers in Wisconsin, and have gained a great appreciation for the Wisconsin Workers Compensation system.

I have also been a member of the Wisconsin Medical Society for many years. I have served on several committees and task forces, and I'm currently the vice chairman of the Wisconsin Medical Society Section on Occupational Medicine, and chairman of the Occupational Medicine

section's continuing education committee. This section was only recently formed during the past year by physicians who, like myself, realized that as good as the Workers Compensation System was in Wisconsin, we could always do better.

Some of you may not know or understand what the medical specialty of Occupational Medicine is. Most of you know what a heart specialist is, or a neurosurgeon, or orthopedic but what is this specialty we call Occupational Medicine. I believe it is extremely important that you gain a good understand of this specialty, as it set the foundation for the reason I am speaking at this hearing as well as the specific request I wish to make.

I am a card holding, dues paying member of the The American College of Occupational and Environmental Medicine (ACOEM). This is a professional organization that represents more than 6,000 physicians and other health care professionals specializing in the field of occupational and environmental medicine (OEM).

Founded in 1916, ACOEM is the nation's largest medical society dedicated to promoting the health of workers through preventive medicine, clinical care, research, and education. A dynamic group of physicians encompassing specialists in a variety of medical practices is united via the College to develop positions and policies on vital issues relevant to the practice of preventive medicine both within and outside of the workplace.

The College periodically issues position papers and committee reports that set practice guidelines for a variety of workplace/environmental settings. These position papers/committee reports cover topics such as spirometry, mold, environmental tobacco smoke, noise-induced hearing loss, multiple chemical sensitivities, workplace drug screening, confidentiality of medical information, depression screening, and reproductive hazards. Additionally, the College has published Occupational Medicine Practice Guidelines, focused on the Evaluation and Management of Common Health Problems, Injuries and Functional Recovery in Workers.

"The ACOEM Guidelines are intended to provide physicians who treat injured workers with a common knowledge base and recommendations regarding the diagnosis and treatments that are most likely to return workers to health and function as safely and as efficiently as possible. The Guidelines were not expressly developed to meet the needs of payer or regulators."

ACOEM members are knowledgeable and capable of treating job-related diseases, recognizing and resolving workplace hazards, instituting rehabilitation methods, and providing well-managed care. The continual emergence of new chemicals, complex tools, manufacturing methodologies, pollution and environmental impacting activities, and health care reform have focused and mandated the need for trained occupational and environmental medical specialists.

Caring for the injured worker is a major role played by Occupational Medicine Specialist physicians. By virtue of our broad training and experience the Occupational Medicine Specialist physician gains special understanding of the medical needs of the injured worker. When an Occupational Medicine Specialist physician cares for an injured worker, not only are they listening to and addressing the concerns of that worker, but they also are trained to have an awareness of the work environment far beyond that of the non-occupational physician. This is necessary in order to fully meet the needs of that injured worker, who will eventually return to the work environment in which they sustained their injury. The Occupational Medicine Specialist physician is interested in not only caring for the injured worker, but also preventing further injury to other workers. Maintaining and promoting the health and well-being of the entire workforce, including both labor and management, is the goal of the Occupational Medicine Specialist physician.

So, that is who I am, that is who I represent. Occupational Medicine physicians in Wisconsin represent a tremendous untapped resource. We can provide knowledge and expertise in all matters affecting the health and well being of anyone involved in any kind of work activity. This includes workers compensation matters. And nationwide, Occupational Medicine physicians make a difference.

I'm telling you this because I suspect that you, as members of the Wisconsin Senate, are unaware of or misunderstand this medical specialty. By speaking here I am also ensuring that the Wisconsin

Workers Compensation Advisory Council becomes aware of the medical specialty of Occupation Medicine, as well as the great resource that is the Section on Occupational Medicine of the Wisconsin Medical Society.

You've all heard the expression "better late than never." Well, I think that this expression is applicable here. I am now getting to the reason WHY I have chosen to speak at this Public Hearing.

The Wisconsin Workers Compensation Advisory Council is introducing, through your committee, legislation pertaining to Workers Compensation Treatment Guidelines. Presumably, this is being done to improve or at least maintain the health and well being of the injured Wisconsin Worker while providing a means to control costs. One of the main reasons I am here, is to inform you that these proposed Guidelines, taken from our neighboring state of Minnesota and painstakingly adapted to Wisconsin language, have been proposed and developed without any input from Wisconsin Occupational Medicine physicians, or any Wisconsin physicians, for that matter! This is something that I think the Senate needs to know, understand, and appreciate. Does it really make sense to develop medical treatment guidelines without the input of the medical doctors who will be using them?? I don't think so.

Essentially, Wisconsin's greatest resource specific to these Guidelines, that is, Wisconsin Occupational Medicine Specialist physicians, have been, up until today, not included in the process. Up until today, there

has been an absence of guidance from the very physicians who have the most expertise in developing and implementing workers compensation treatment guidelines. That's kind of like deciding you need heart surgery, and then going to the high school health teacher to get it done, because she knows something about the anatomy and function of the heart.

The Wisconsin Workers Compensation Advisory Counsel has come to you with a proposal that they have reviewed, negotiated (I'm sure quite vigorously), and politicked. Although I am not privy to their inner workings and process, I know that in order for a consensus to be reached, extensive efforts have been made. And I applaud their efforts. Usually, once the Council has done their job and made their proposal, their recommendations are "rubber stamped" by the legislature that has come to trust them in their decision making process. A new law affecting the workers compensation system is born.

However, I am here today to intervene in that usual and normal rubber stamp process. For this is the reason why we as a people have wisely chosen to have Public Hearings. Why bother having a Public Hearing at all if it was a foregone conclusion that this bill would pass as is.

OK, what is the problem with the proposed bill? Please understand that I do not object to the concept of treatment guidelines. They are commonly utilized in a variety of medical practice settings. The American College of Occupational and Environmental Medicine itself

recommends the use of treatment guidelines with respect to the evaluation and management of common health problems, work injuries and functional recovery in workers.

Rather, I have a very specific set of objections. Many of these objections are not personal to me, but come from extensive email correspondence with Occupational Medicine physicians practicing throughout Wisconsin. I have made copies of this correspondence for your review. Here are the specific objections:

1. there is no data to indicate that the proposed MN guidelines have any positive impact either on cost or patient care.
2. there is data to indicate that our current treatment methods are working well. Specifically, data from the WC Research Institute, a non profit research organization indicates that Wisconsin worker outcomes ranked among the best in all categories—workers reported better recoveries, highest percent with return to work, high level of satisfaction, fewer problems accessing care.
3. There are other treatment guidelines produced in other states, as well as National guidelines, that may better serve the purpose.
4. More input is needed from stakeholders whose medical practices would be affected by treatment guidelines, including Wisconsin physicians.
5. Wisconsin Occupational Medicine Specialist physicians have had no say in the matter of these guidelines. We are your workers

compensation medical experts, yet our input has not been solicited. We are the major resource for up-to-date, state of the art, evidence based medical practice. We are committed to the health and well being of the work-force. We should be included in the process of developing medical treatment guidelines for workers compensation injury. It just makes sense.

Let me read to you some of the comments from Wisconsin physicians who are not here today but would still like their voices heard:

So, having said all this, it is my considered opinion that it is unlikely that instituting these treatment guidelines will accomplish either cost containment or maintain or improve medical care for the injured worker.

However, that is not to say that I am not in favor of developing treatment guidelines. My specific request (which I alluded to above when I first began speaking) is that the Council be directed back to the drawing board, and to work with Wisconsin Occupational Specialist physicians, a local, home grown and valuable resource, as well as other interested healthcare professionals, in developing state of the art treatment guidelines based as much as possible upon evidence based medicine practices. Guidelines for which we have hard evidence—good data that says that if we do this, then we will have a more favorable outcome. This will not be an easy task, nor should it be. However, given the opportunity, I believe that Wisconsin Occupational Medicine Specialist physicians and other interested healthcare professionals will be up to the task.

Fortunately for Wisconsin , Occupational Medicine physicians have found their voice. During the past year, my colleagues and I have formed the Occupational Medicine Section of the Wisconsin Medical Society. We are active, eager to serve, and seek opportunity for our voice to be heard.

Thank You.

**David Goodman**

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**From:** Maja\_Jurisc@concentra.com  
**Sent:** 1/24/2006 10:22 PM  
**To:** David A. Goodman, M.D.  
**Cc:** Lischak, Michael  
**Subject:** Re: Public hearing on WC TX Guides

Dave,

I wish I could be there tomorrow as well, but I'm glad that you're at least able to go. Since I won't be able to fax you the info from the WC Research Institute before you leave for the hearing, here's a summary. Also, at the conference I attended today, they mentioned their website was "data rich" and might have some useful information as well. It's <http://www.wcrinet.org>

WC Research Institute is an independent, not-for-profit research organization that produces peer-reviewed studies and is a resource for public officials and stakeholders. In fact, at the conference today, I saw Michelle Bean from the WC Advisory Council, as well as the representative from Briggs and Stratton (I don't remember his name).

The major findings from their benchmark studies that analyzed WC claims in 13 states (WI, Indiana, AR, PA, MD, NC, TN, IL, LA, FL, TX and CA) are:

**Wisconsin had the lowest total cost per claim among the 13 states (under \$4,000)**

Higher medical prices were offset by lower utilization

Workers returned to work sooner

There was less litigation (only 8% of cases had involvement of defense attorneys vs. 30% in CA and over 30% in Florida)

WI had lower medical cost containment expenses

WI expenses of delivering benefits was among the lowest of the 13 states

Fewer workers received PPD lump sum payments (38%), and the payment per case was lower

**WI worker outcomes ranked among the best in all categories**—workers reported better recoveries, highest percent with substantial RTW, high levels of satisfaction, fewer problems accessing care. More workers in WI were "very satisfied" with care than any other state (over 60%)

**The database used was powerful with a robust sample of 20 million claims.**

**They looked at data from accident years 1995-2003, as of 2004**

**The database was representative with data from voluntary and residual markets, self-insured employers, and state funds**

Good luck, Dave. I hope you can call in to our WC Committee Phone Conference on Thursday at Noon, and give us the scoop on your experience at the hearing. (Call in number is 877-915-4944 with passcode of 144564).

Maja Jurisc, MD  
 Regional Medical Director  
 phone: 262-814-2547  
 fax: 262-814-0603

"David A. Goodman, M.D."

1/24/2006