

0586 / 1

LRB-~~1228~~
GMM:kj/peg

In 10/29

2007 ASSEMBLY BILL 288

April 24, 2007 Introduced by Representatives SHERMAN, TOWNSEND, ALBERS, BERCEAU, HAHN, MOLEPSKE and TURNER, cosponsored by Senator JAUCHE. Referred to Committee on Labor and Industry

reimbursement of a governmental unit that ~~pays medical~~ provides public assistance ~~costs or living expenses~~ related to a claim for worker's compensation and ~~compensation~~ Representative ✓

- 1 AN ACT to amend 102.27 (2) (b); and to create 102.27 (2) (c) of the statutes;
- 2 relating to an award to an injured employee's attorney who takes any action
- 3 to collect public assistance reimbursement in a worker's compensation
- 4 proceeding. ✓

Analysis by the Legislative Reference Bureau

Under current law, if a governmental unit provides public assistance to pay medical costs or living expenses related to a claim for worker's compensation and if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the amount of the assistance provided, the employer or insurance carrier owing the worker's compensation is required to reimburse the governmental unit for the amount of the assistance provided or for two-thirds of the amount of the worker's compensation award remaining after deduction of attorney fees and other fees and costs payable under the worker's compensation law, whichever is less. ✓

(Costs and attorney fees) ✓

Insert A ✓

This bill requires the Department of Workforce Development (DWD) to award to the attorney or other representative of an injured employee ~~not less than 15 percent nor more than 25 percent~~ of the amount of reimbursement collected for a governmental unit that has provided public assistance ~~depending on the extent to which the attorney or representative substantially contributed to the collection of the reimbursement~~ if the attorney or other representative takes any action to collect the reimbursement and if the governmental unit takes any action to collect the reimbursement ~~in addition to providing notice that it provided the assistance and the~~

, plus an amount for reasonable expenses necessarily incurred in collecting the reimbursement ✓

ASSEMBLY BILL 288

~~amount of the assistance. If the attorney or other representative takes any action to collect the reimbursement and if the governmental unit providing the public assistance takes no action to collect the reimbursement other than providing the notice, the bill requires DWD to award to the attorney or representative an amount that DWD determines is reasonable for collecting the reimbursement, but not less than 25 percent nor more than 30 percent of the amount of reimbursement collected. Finally, in addition to these percentage amounts awarded, the bill requires DWD to award to the attorney or representative an amount for reasonable expenses necessarily incurred in collecting the reimbursement.~~

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

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

SECTION 1. 102.27 (2) (b) of the statutes is amended to read:

~~102.27 (2) (b) If Subject to par. (c), if a governmental unit that provides public assistance under ch. 49 to pay medical costs or living expenses related to a claim under this chapter provides the parties to the claim with written notice stating that the governmental unit has provided the assistance and the cost of the assistance provided, the employer or insurance carrier owing compensation or the department owing payments under s. 102.81 shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the cost of the assistance provided. Reimbursement shall equal the lesser of either for the amount of assistance the governmental unit provided or for two-thirds of the amount of the award or payment remaining after deduction of attorney fees and any other fees or costs chargeable under ch. 102. The department shall comply with this paragraph when making payments under s. 102.81 this chapter, whichever is less.~~

SECTION 2. 102.27 (2) (c) of the statutes is created to read:

Insert
2-14

ASSEMBLY BILL 288

20 ✓

1 102.27 (2) (c) 1. If the attorney or other representative of an injured employee
 2 takes any action to collect the reimbursement owed under par. (b) and if the
 3 governmental unit providing the public assistance under ch. 49 takes any action to
 4 collect that reimbursement in addition to providing the notice under par. (b) the
 5 department shall award to the attorney or representative not less than 15 percent
 6 nor more than 25 percent of the amount of reimbursement collected depending on
 7 the extent to which the attorney or representative substantially contributed to the
 8 collection of the reimbursement. Any amount awarded under this subdivision shall
 9 be paid out of the amount of reimbursement collected.

10 2. If the attorney or other representative of an injured employee takes any
 11 action to collect the reimbursement owed under par. (b) and if the governmental unit
 12 providing the public assistance under ch. 49 takes no action to collect that
 13 reimbursement other than providing the notice under par. (b), the department shall
 14 award to the attorney or representative an amount that the department determines
 15 is reasonable for collecting the reimbursement, but not less than 25 percent nor more
 16 than 30 percent of the amount of reimbursement collected. Any amount awarded
 17 under this subdivision shall be paid out of the amount of reimbursement collected.

18 2. In addition to the amount awarded under subd. 1. the department shall
 19 award the attorney or representative an amount for reasonable expenses necessarily
 20 incurred in collecting the reimbursement, which expenses shall be awarded against
 21 the employer, insurance carrier, or department.

(END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0586/1ins
GMM.....

(INSERT 2-14)

1 **SECTION 1.** 102.27 (2) (b)^X of the statutes is renumbered 102.27 (2) (b) (intro.)
2 and amended to read:

3 102.27 (2) (b) (intro.)[✓] If Subject to par. (c),[✓] if a governmental unit provides
4 public assistance under ch. 49 to pay medical costs or living expenses related to a
5 claim under this chapter and[✓] provides the parties to the claim with written notice
6 stating that the governmental unit[✓] has provided the assistance and the cost of the
7 assistance provided,[✓] the employer or insurance carrier owing compensation or the
8 department[✓] owing payments under s. 102.81[✓] shall reimburse that governmental
9 unit ~~any compensation awarded or paid if the governmental unit has given the~~
10 ~~parties to the claim written notice stating that it provided the assistance and the cost~~
11 ~~of the assistance provided. Reimbursement shall equal the lesser of either~~[✓] as follows:

12 [✓] 2. For the amount of assistance the governmental unit provided ~~or~~,[✓] for
13 two-thirds of the amount of the award or payment remaining after deduction of
14 attorney fees and any other fees or costs chargeable under ~~ch. 102. The department~~
15 ~~shall comply with this paragraph when making payments under s. 102.81~~[✓] this
16 chapter,[✓] or for an amount agreed to by the governmental unit,[✓] whichever is less, if
17 the award or payment[✓] results from a[✓] compromise, stipulation, agreement, or default,
18 without a hearing of the claim.[✓]

19 **History:** 1981 c. 20, 391; 1983 a. 27, 192; 1985 a. 83; 1989 a. 64; 1993 a. 481; 1997 a. 191, 237; 1999 a. 9; 2005 a. 443 s. 265; 2007 a. 20.

19 **SECTION 2.** 102.27 (2) (b) 1. of the statutes is created to read:

20 102.27 (2) (b) 1. For the amount of assistance the governmental unit provided
21 or for the amount of the[✓] award or payment remaining after deduction of[✓] attorney fees

↓

1 and any other fees or costs chargeable under this chapter, ✓
2 award or payment results from a hearing on the claim. ✓

(END OF INSERT)

(INSERT A)

This bill requires an employer or insurance carrier ✓ owing worker's compensation ✓ to reimburse a governmental unit ✓ that provides public assistance related to a claim for worker's compensation as follows:

* 1. For the amount of public assistance the governmental unit provided or for the amount of the worker's compensation award ✓ (less costs and attorney's ✓ fees), whichever is less, if the award or payment ✓ results from a hearing on the claim. ✓

* 2. For the amount of public assistance the governmental unit provided, for two-thirds ✓ of the amount of the worker's compensation award ✓ (less costs and attorney's ✓ fees), or for an amount ✓ agreed to by the governmental unit, whichever is less, if the award or payment ✓ results from a compromise, stipulation, agreement, or default, without a hearing of the claim. ✓

The bill also NO
H

(END OF INSERT)

Barman, Mike

From: Barman, Mike
Sent: Monday, November 10, 2008 2:47 PM
To: Kelly, Judy
Cc: Rep.Sherman
Subject: LRB 09-0586/1 (attached - requested by Judy)

Attachments: 09-0586/1



09-05861.pdf (14
KB)

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Kelly, Judy
Sent: Monday, November 10, 2008 1:40 PM
To: Barman, Mike
Subject: LRB 0586

Hi Mike,
May I get an electronic copy of LRB 0586? Thanks.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman

Malaise, Gordon

From: Malaise, Gordon
Sent: Tuesday, December 09, 2008 5:04 PM
To: Kelly, Judy
Cc: 'john edmondson'; Sherman, Gary
Subject: RE: LRB 09-0586/1

Judy:

I think I see the problem. Current law provides that the amount of reimbursement is the lesser of the amount of assistance provided or 2/3 of the amount of the award *remaining after deduction of attorney fees . . .*". Attorney Edmondson, however, does *not* want to deduct attorney fees from the amount of reimbursement, so the remedy is to strike from current law and from the new language on page 3 of the draft the language "remaining after deduction of attorney fees and any other fees or costs chargeable under this chapter". So then the amount of reimbursement would be based on the entire award with no deductions.

Gordon

From: Kelly, Judy
Sent: Tuesday, December 09, 2008 4:30 PM
To: Malaise, Gordon
Cc: 'john edmondson'; Sherman, Gary
Subject: FW: LRB 09-0586/1

Gordon,

I forwarded our draft to Attorney John Edmondson who has been instrumental in helping us craft this legislation. His comments are below. I would appreciate your reviewing them and responding. Thank you.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman

From: john edmondson [mailto:je@ntd.net]
Sent: Wednesday, November 26, 2008 1:42 PM
To: 'john edmondson'; Kelly, Judy
Subject: RE: LRB 09-0586/1

11/26/2008

Judy:

I have not gotten a response from either Ray or John, so please go ahead and forward to Kevin Bailey...but note my concern as described below. I would have much rather seen the drafting folks work on perfecting the version Ray and I came up with because it was *specifically* designed to meet DHS's need to be able to stick the feds with half of the liability for the fees.

12/09/2008

Again, here it is:

b) If a governmental unit provides public assistance under ch 49 to pay medical costs occasioned by an injury claimed under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given a party to the claim written notice stating that it provided the assistance and an itemization of the assistance provided. Reimbursement shall equal:

1. Upon a Hearing and award, the amount paid by the unit, to the extent of the respondents' liability under this chapter, or
2. Upon a settlement, the lesser of either the amount of assistance the governmental unit provided or two-thirds of the settlement amount, unless the unit consents to a different sum.

In either case, the governmental unit shall pay the attorney who obtained the award or settlement, a fee of 20% of the amount recovered for it, notwithstanding any other provision.

Thanks!

john

John Edmondson
Edmondson Law Office
1415 W. Kamps Ave., Ste. #2
Appleton, WI 54914
(920) 993-9050
je@ntd.net

-----Original Message-----

From: john edmondson [mailto:je@ntd.net]
Sent: Thursday, November 13, 2008 5:41 PM
To: 'Kelly, Judy'
Subject: RE: LRB 09-0586/1

11/13/2008

Thanks Judy....

I have sent a copy to Ray Clausen and John Neal for their review and response.

I have glanced at it and will have to study it more, but I am concerned that this language may not be getting DHS what it needs...the right to pay us attorney fees as an "expense" AFTER they get ALL their money (so they can make the feds pay half of the fee). I'll get back to you and Gary as soon as I hear back from Ray and John.

Thanks again.

P.S. I saw that Gary did REALLY well in his election, and was very happy! Gary is a unique guy and we need to find a way to clone him (and you next)!

John Edmondson
Edmondson Law Office
1415 W. Kamps Ave., Ste. #2
Appleton, WI 54914
(920) 993-9050
je@ntd.net

-----Original Message-----

From: Kelly, Judy [mailto:Judy.Kelly@legis.wisconsin.gov]
Sent: Thursday, November 13, 2008 11:27 AM
To: john edmondson
Subject: FW: LRB 09-0586/1

Hi John,

Our draft is attached. Please look it over. I'll send it to Kevin Bailey when I get the okay from you.

Judy

<<09-0586/1>>



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0586/1 (2)
GMM:jld:ph (D/M/C)

SN 12/16

2009 BILL

500

X

Gen

1 AN ACT *to renumber and amend* 102.27 (2) (b); and *to create* 102.27 (2) (b) 1.
 2 and 102.27 (2) (c) of the statutes; **relating to:** reimbursement of a
 3 governmental unit that provides public assistance related to a claim for
 4 worker's compensation and an award to an injured employee's attorney who
 5 takes any action to collect public assistance reimbursement in a worker's
 6 compensation proceeding. ✓

Analysis by the Legislative Reference Bureau

Under current law, if a governmental unit provides public assistance to pay medical costs or living expenses related to a claim for worker's compensation and if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the amount of the assistance provided, the employer or insurance carrier owing the worker's compensation is required to reimburse the governmental unit for the amount of the assistance provided or for two-thirds of the amount of the worker's compensation award remaining after deduction of attorney fees and other fees and costs payable under the worker's compensation law (costs and attorney fees), whichever is less.

This bill requires an employer or insurance carrier owing worker's compensation to reimburse a governmental unit that provides public assistance related to a claim for worker's compensation as follows:

BILL

✓ - 2 - (LPS- use 10/12)

without deducting

1. For the amount of public assistance the governmental unit provided or for the amount of the worker's compensation award (~~less~~ costs and attorney fees), whichever is less, if the award or payment results from a hearing on the claim.

2. For the amount of public assistance the governmental unit provided, for two-thirds of the amount of the worker's compensation award (~~less~~ costs and attorney fees), or for an amount agreed to by the governmental unit, whichever is less, if the award or payment results from a compromise, stipulation, agreement, or default, without a hearing of the claim.

The bill also requires the Department of Workforce Development to award to the attorney or other representative of an injured employee 20 percent of the amount of reimbursement collected for a governmental unit that has provided public assistance, plus an amount for reasonable expenses necessarily incurred in collecting the reimbursement, if the attorney or other representative takes any action to collect the reimbursement.

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

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

1 **SECTION 1.** 102.27 (2) (b) of the statutes is renumbered 102.27 (2) (b) (intro.)
2 and amended to read:

3 102.27 (2) (b) (intro.) If Subject to par. (c), if a governmental unit provides
4 public assistance under ch. 49 to pay medical costs or living expenses related to a
5 claim under this chapter and provides the parties to the claim with written notice
6 stating that the governmental unit has provided the assistance and the cost of the
7 assistance provided, the employer or insurance carrier owing compensation or the
8 department owing payments under s. 102.81 shall reimburse that governmental
9 unit any compensation awarded or paid if the governmental unit has given the
10 parties to the claim written notice stating that it provided the assistance and the cost
11 of the assistance provided. Reimbursement shall equal the lesser of either as follows:

12 2. For the amount of assistance the governmental unit provided or, for
13 two-thirds of the amount of the award or payment ~~remaining after deduction of~~ Strike

BILL

Strike

1 ~~attorney fees and any other fees or costs chargeable under~~ ch. 102. The department
 2 shall comply with this paragraph when making payments under s. 102.81 ~~(1)(A)~~
 3 ~~chapter~~, or for an amount agreed to by the governmental unit, whichever is less, if
 4 the award or payment results from a compromise, stipulation, agreement, or default,
 5 without a hearing of the claim.

SECTION 2. 102.27 (2) (b) 1. of the statutes is created to read:

7 102.27 (2) (b) 1. For the amount of assistance the governmental unit provided
 8 or for the amount of the award or payment remaining after deduction of attorney fees
 9 and any other fees or costs chargeable under this chapter, whichever is less, if the
 10 award or payment results from a hearing on the claim. *Notwithstanding s. 102.26 (2) if*

SECTION 3. 102.27 (2) (c) of the statutes is created to read:

12 102.27 (2) (c) 1. ~~If~~ the attorney or other representative of an injured employee
 13 takes any action to collect the reimbursement owed under par. (b), the department
 14 shall award to the attorney or representative 20 percent of the amount of
 15 reimbursement collected. Any amount awarded under this subdivision shall be paid
 16 out of the amount of reimbursement collected.

17 3. In addition to the amount awarded under subd. 1., the department shall
 18 award the attorney or representative an amount for reasonable expenses necessarily
 19 incurred in collecting the reimbursement, which expenses shall be awarded against
 20 the employer, insurance carrier, or department.

(END)

Malaise, Gordon

From: Kelly, Judy
Sent: Thursday, December 11, 2008 9:47 AM
To: Malaise, Gordon
Cc: 'john edmondson'
Subject: RE: LRB 09-0586/1

Thanks, Gordon. Can you make the changes and let us see how it would look? Thanks again.

Judy

From: Malaise, Gordon
Sent: Wednesday, December 10, 2008 4:27 PM
To: Kelly, Judy
Cc: Sherman, Gary; 'john edmondson'
Subject: RE: LRB 09-0586/1

Judy:

No problem. At page 2, line 5, delete "all parties" and substitute "a party", and at page 2, line 6, after "and" insert "an itemized statement of" and otherwise conform current s. 102.27 (2) (b) to the proposed language.

Gordon

From: Kelly, Judy
Sent: Wednesday, December 10, 2008 3:49 PM
To: Malaise, Gordon
Cc: Sherman, Gary; 'john edmondson'
Subject: FW: LRB 09-0586/1

Gordon,
We are willing to go along with the Edmonson version as expressed below. Can you make it work that way?

Judy

From: john edmondson [mailto:je@ntd.net]
Sent: Wednesday, December 10, 2008 3:37 PM
To: Kelly, Judy
Subject: RE: LRB 09-0586/1

12/10/2008

Hi Judy:

It may fix that particular problem that Gordon noticed. The version we provided

12/11/2008

to you, however, also has additional subtleties not picked up in LRB 09-0586/1...such as our version only requires notice to one party (DHS should like that) but also requires an itemization of the monies paid, instead of just providing a total of the amount expended.

I'd really prefer that the drafters look at tidying up the language we proposed rather than the old statute, but I understand that is Gary's call and am happy to leave it to his good judgment.

john

John Edmondson
Edmondson Law Office
1415 W. Kamps Ave., Ste. #2
Appleton, WI 54914
(920) 993-9050
je@ntd.net

-----Original Message-----

From: Kelly, Judy [mailto:Judy.Kelly@legis.wisconsin.gov]
Sent: Wednesday, December 10, 2008 12:56 PM
To: john edmondson
Subject: FW: LRB 09-0586/1

John, would this fix the problem as far as you're concerned?

Judy

From: Malaise, Gordon
Sent: Tuesday, December 09, 2008 5:04 PM
To: Kelly, Judy
Cc: 'john edmondson'; Sherman, Gary
Subject: RE: LRB 09-0586/1

Judy:

I think I see the problem. Current law provides that the amount of reimbursement is the lesser of the amount of assistance provided or 2/3 of the amount of the award *remaining after deduction of attorney fees . . .*. Attorney Edmondson, however, does *not* want to deduct attorney fees from the amount of reimbursement, so the remedy is to strike from current law and from the new language on page 3 of the draft the language "remaining after deduction of attorney fees and any other fees or costs chargeable under this chapter". So then the amount of reimbursement would be based on the entire award with no deductions.

Gordon

From: Kelly, Judy
Sent: Tuesday, December 09, 2008 4:30 PM
To: Malaise, Gordon
Cc: 'john edmondson'; Sherman, Gary
Subject: FW: LRB 09-0586/1

Gordon,

I forwarded our draft to Attorney John Edmondson who has been instrumental in helping us craft this legislation. His comments are below. I would appreciate your reviewing them and responding. Thank you.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman

From: john edmondson [mailto:je@ntd.net]
Sent: Wednesday, November 26, 2008 1:42 PM
To: 'john edmondson'; Kelly, Judy
Subject: RE: LRB 09-0586/1

11/26/2008

Judy:

I have not gotten a response from either Ray or John, so please go ahead and forward to Kevin Bailey...but note my concern as described below. I would have much rather seen the drafting folks work on perfecting the version Ray and I came up with because it was *specifically* designed to meet DHS's need to be able to stick the feds with half of the liability for the fees.

Again, here it is:

b) If a governmental unit provides public assistance under ch 49 to pay medical costs occasioned by an injury claimed under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given a party to the claim written notice stating that it provided the assistance and an itemization of the assistance provided. Reimbursement shall equal:

1. Upon a Hearing and award, the amount paid by the unit, to the extent of the respondents' liability under this chapter, or
2. Upon a settlement, the lesser of either the amount of assistance the governmental unit provided or two-thirds of the settlement amount, unless the unit consents to a different sum.

In either case, the governmental unit shall pay the attorney who obtained the award or settlement, a fee of 20% of the amount recovered for it, notwithstanding any

other provision.

Thanks!

john

John Edmondson
Edmondson Law Office
1415 W. Kamps Ave., Ste. #2
Appleton, WI 54914
(920) 993-9050
je@ntd.net

-----Original Message-----

From: john edmondson [mailto:je@ntd.net]
Sent: Thursday, November 13, 2008 5:41 PM
To: 'Kelly, Judy'
Subject: RE: LRB 09-0586/1

11/13/2008

Thanks Judy....

I have sent a copy to Ray Clausen and John Neal for their review and response.

I have glanced at it and will have to study it more, but I am concerned that this language may not be getting DHS what it needs...the right to pay us attorney fees as an "expense" AFTER they get ALL their money (so they can make the feds pay half of the fee). I'll get back to you and Gary as soon as I hear back from Ray and John.

Thanks again.

P.S. I saw that Gary did REALLY well in his election, and was very happy! Gary is a unique guy and we need to find a way to clone him (and you next)!

John Edmondson
Edmondson Law Office
1415 W. Kamps Ave., Ste. #2
Appleton, WI 54914
(920) 993-9050
je@ntd.net

-----Original Message-----

From: Kelly, Judy [mailto:Judy.Kelly@legis.wisconsin.gov]
Sent: Thursday, November 13, 2008 11:27 AM
To: john edmondson
Subject: FW: LRB 09-0586/1

Hi John,

Our draft is attached. Please look it over. I'll send it to Kevin Bailey when I get the okay from you.

Judy

<<09-0586/1>>

Barman, Mike

From: Kelly, Judy
Sent: Thursday, December 11, 2008 1:15 PM
To: Barman, Mike
Subject: RE: LRB 0586/2

No, I'll need the /3. I'll contact you again when it comes. Thanks, Mike.
Judy

From: Barman, Mike
Sent: Thursday, December 11, 2008 11:35 AM
To: Kelly, Judy
Subject: RE: LRB 0586/2

Judy, this draft is in the process of being re-drafted to a "/3" ... do you still need the "/2"?

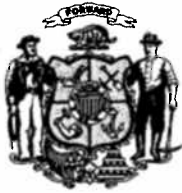
Mike

From: Kelly, Judy
Sent: Thursday, December 11, 2008 10:25 AM
To: Barman, Mike
Subject: LRB 0586/2

Hi Mike,

May I have an electronic copy of LRB 0586/2? Thanks.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman



EM 12/15

2009 BILL

To pay medical costs occasioned by an injury for which

(use twice)

is claimed, and that provides a party to the claim written notice stating that it provided the assistance and an itemized statement of the amount of assistance provided,

Gen

1 **AN ACT to renumber and amend** 102.27 (2) (b); and **to create** 102.27 (2) (b) 1.
 2 and 102.27 (2) (c) of the statutes; **relating to:** reimbursement of a
 3 governmental unit that provides public assistance ~~related to a claim for~~
 4 worker's compensation *is claimed* and an award to an injured employee's attorney who
 5 ~~takes any action to collect~~ *obtains* public assistance reimbursement in a worker's
 6 compensation proceeding.

Analysis by the Legislative Reference Bureau

Under current law, if a governmental unit provides public assistance to pay medical costs or living expenses related to a claim for worker's compensation and if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the amount of the assistance provided, the employer or insurance carrier owing the worker's compensation is required to reimburse the governmental unit for the amount of the assistance provided or for two-thirds of the amount of the worker's compensation award remaining after deduction of attorney fees and other fees and costs payable under the worker's compensation law (costs and attorney fees), whichever is less. *to provide*

This bill requires an employer or insurance carrier owing worker's compensation to reimburse a governmental unit that provides public assistance ~~related to a claim for~~ worker's compensation as follows:

1. For the amount of public assistance the governmental unit provided or for the amount of the worker's compensation award (without deducting costs and

BILL *for medical costs, if the reimbursement is obtained by*

attorney fees), whichever is less, if the award or payment results from a hearing on the claim.

2. For the amount of public assistance the governmental unit provided, for two-thirds of the amount of the worker's compensation award (without deducting costs and attorney fees), or for an amount agreed to by the governmental unit, whichever is less, if the award or payment results from a compromise, stipulation, agreement, or default, without a hearing of the claim.

The bill also requires the Department of Workforce Development to award to the attorney or other representative of an injured employee 20 percent of the amount of reimbursement collected for a governmental unit that has provided public assistance ~~plus an amount for reasonable expenses necessarily incurred in collecting the reimbursement, if the attorney or other representative takes any action to collect the reimbursement.~~

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

occasional ~~was~~ result by an injury for which compensation is claimed

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

an itemized statement of

1 SECTION 1. 102.27 (2) (b) of the statutes is renumbered 102.27 (2) (b) (intro.)

2 and amended to read:

(Plan) ✓

(a party) ✓

3 102.27 (2) (b) (intro.) ~~If subject to par. (c), if~~ a governmental unit provides

4 public assistance under ch. 49 to pay medical costs ~~or living expenses related to a~~

5 ~~claim~~ under this chapter and provides ~~the parties~~ to the claim with written notice

6 stating that the governmental unit has provided the assistance and the cost of the

7 assistance provided, the employer or insurance carrier owing compensation or the

8 department owing payments under s. 102.81 shall reimburse that governmental

9 unit any compensation awarded or paid *(plan)* if the governmental unit has given the

10 parties to the claim written notice stating that it provided the assistance and the cost

11 of the assistance provided. Reimbursement shall equal the lesser of either as follows:

12 2. For the amount of assistance the governmental unit provided ~~or, for~~

13 two-thirds of the amount of the award or payment ~~remaining after deduction of~~

14 attorney fees and any other fees or costs chargeable under ch. 102. The department

BILL

1 ~~shall comply with this paragraph when making payments under s. 102.81, or for an~~
2 ~~amount agreed to by the governmental unit, whichever is less, if the award or~~
3 ~~payment results from a compromise, stipulation, agreement, or default, without a~~
4 ~~hearing of the claim.~~

5 **SECTION 2.** 102.27 (2) (b) 1. of the statutes is created to read:

6 102.27 (2) (b) 1. For the amount of assistance the governmental unit provided
7 or for the amount of the award or payment, whichever is less, if the award or payment
8 results from a hearing on the claim.

the reimbursement owed under par. (b) is obtained by

9 **SECTION 3.** 102.27 (2) (c) of the statutes is created to read:

10 102.27 (2) (c) ^W Notwithstanding s. 102.26 (2), if the attorney or other
11 representative of an injured employee ~~takes any action to collect the reimbursement~~
12 ~~owed under par. (b)~~, the department shall award to the attorney or representative
13 20 percent of the amount of reimbursement collected. Any amount awarded under
14 this ^{Paragraph} ~~subdivision~~ shall be paid out of the amount of reimbursement collected.

15 ~~3. In addition to the amount awarded under subd. 1., the department shall~~
16 ~~award the attorney or representative an amount for reasonable expenses necessarily~~
17 ~~incurred in collecting the reimbursement, which expenses shall be awarded against~~
18 ~~the employer, insurance carrier, or department.~~

19 (END)

Barman, Mike

From: Barman, Mike
Sent: Thursday, December 18, 2008 9:10 AM
To: Kelly, Judy
Cc: Rep.Sherman
Subject: LRB 09-0586/3 (un-introduced) (attached)

Attachments: 09-0586/3



09-05863.pdf (16
KB)

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Kelly, Judy
Sent: Wednesday, December 17, 2008 3:10 PM
To: Barman, Mike
Subject: LRB 0586/3

Hi Mike,

May I have an electronic copy of LRB 0586/3? Thank you.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman

Malaise, Gordon

From: Kelly, Judy
Sent: Friday, December 19, 2008 9:26 AM
To: Malaise, Gordon
Cc: 'john edmondson'; Sherman, Gary; Tribys, Eleanora
Subject: FW: LRB 09-0586/3 (un-introduced) (attached)

Gordon,

Could you please take another look at this draft and see if you can incorporate the suggestions of Attorney Edmondson as per my phone call? Thank you.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman

From: john edmondson [mailto:je@ntd.net]
Sent: Thursday, December 18, 2008 5:58 PM
To: Kelly, Judy
Subject: RE: LRB 09-0586/3 (un-introduced) (attached)

12/18/2008

Judy:

✓ It still has problems. Sec. 3 says "Notwithstanding s. 102.26(2)..." That subsection doesn't (I believe...but I see how some could think otherwise), really impact the fee provision of this proposal. However, Admin Code DWD 80.43(2), much more arguably does.

Sec. 3 also does not describe who is to pay fee...under our plan coming out of the Fees committee meeting, I thought we had agreed that DHS would receive all the money reimbursed, and then they would send the fee to the attorney...the reason for that procedure is that DHS could then make the Feds responsible for half the fee...any other way, and DHS would get stuck footing the entire bill for the fees. I also understood that Kevin Bailey from DHS thought that some Code provision(s) governing them might need to be changed to get this to work smoothly (fyi for LRB).

Trying not to beat a dead (or dying??) horse, but I believe that the sample language we previously sent deals with the above noted problems (see bolded portions, below), and I would urge that LRB look at doing what maybe necessary to clean THAT version up rather than trying to keep reworking the old section.

Again, here it is:

b) If a governmental unit provides public assistance under ch 49 to pay medical costs occasioned by an injury claimed under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given a party to the claim written notice stating that it provided the assistance and an itemization of the assistance provided. Reimbursement shall equal:

1. Upon a Hearing and award, the amount paid by the unit, to the extent of the respondents' liability under this chapter, or
2. Upon a settlement, the lesser of either the amount of assistance the governmental unit provided or two-thirds of the settlement amount, unless the unit consents to a different sum.

In either case, **the governmental unit shall pay** the attorney who obtained the award or settlement, a fee of 20% of the amount recovered for it, notwithstanding **any other provision**.

Whatever the decision, I remain at your assistance for whatever help I can offer.

Thanks.

john

John Edmondson
Edmondson Law Office
1415 W. Kamps Ave., Ste. #2
Appleton, WI 54914
(920) 993-9050
je@ntd.net

-----Original Message-----

From: Kelly, Judy [mailto:Judy.Kelly@legis.wisconsin.gov]

Sent: Thursday, December 18, 2008 9:11 AM

To: john edmondson

Subject: FW: LRB 09-0586/3 (un-introduced) (attached)

Hi John,

Here it is. I'll look forward to hearing what you think.

Judy

PS It's too bad about Florida.

<<09-0586/3>>

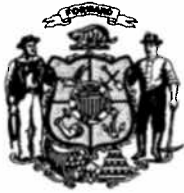
Mike Barman (Senior Program Assistant)

State of Wisconsin - Legislative Reference Bureau

Legal Section - Front Office

1 East Main Street, Suite 200, Madison, WI 53703

(608) 266-3561 / mike.barman@legis.wisconsin.gov



IN 317

Handwritten initials and a signature.

2009 BILL

NOTE

Soon

x

Regen

1 AN ACT *to renumber and amend* 102.27 (2) (b); and *to create* 102.27 (2) (b) 1.
 2 and 102.27 (2) (c) of the statutes; **relating to:** reimbursement of a
 3 governmental unit that provides public assistance to pay medical costs
 4 occasioned by an injury for which worker's compensation is claimed and an
 5 award to an injured employee's attorney who obtains public assistance
 6 reimbursement in a worker's compensation proceeding.

Analysis by the Legislative Reference Bureau

Under current law, if a governmental unit provides public assistance to pay medical costs or living expenses related to a claim for worker's compensation and if the governmental unit has given the parties to the claim written notice stating that it provided the assistance and the amount of the assistance provided, the employer or insurance carrier owing the worker's compensation is required to reimburse the governmental unit for the amount of the assistance provided or for two-thirds of the amount of the worker's compensation award remaining after deduction of attorney fees and other fees and costs payable under the worker's compensation law (costs and attorney fees), whichever is less.

This bill requires an employer or insurance carrier owing worker's compensation to reimburse a governmental unit that provides public assistance to pay medical costs occasioned by an injury for which worker's compensation is claimed, and that provides *a party* to the claim written notice stating that it provided

BILL

the assistance and *an itemized statement* of the amount of assistance provided, as follows:

1. For the amount of public assistance the governmental unit provided or for the amount of the worker's compensation award (without deducting costs and attorney fees), whichever is less, if the award or payment results from a hearing on the claim.

2. For the amount of public assistance the governmental unit provided, for two-thirds of the amount of the worker's compensation award (without deducting costs and attorney fees), or for an amount agreed to by the governmental unit, whichever is less, if the award or payment results from a compromise, stipulation, agreement, or default, without a hearing of the claim.

The bill also requires the Department of Workforce Development to award to the attorney or other representative of an injured employee 20 percent of the amount of reimbursement collected for a governmental unit that has provided public assistance for medical costs, if the reimbursement is obtained by the attorney or other representative.

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

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

1 **SECTION 1.** 102.27 (2) (b) of the statutes is renumbered 102.27 (2) (b) (intro.)
2 and amended to read:
3 102.27 (2) (b) (intro.) If a governmental unit provides public assistance under
4 ch. 49 to pay medical costs ~~or living expenses related to a claim~~ occasioned by an
5 injury for which compensation is claimed under this chapter and provides a party to
6 the claim with written notice stating that the governmental unit has provided the
7 assistance and an itemized statement of the cost of the assistance provided, the
8 employer or insurance carrier owing compensation or the department owing
9 payments under s. 102.81 shall reimburse that governmental unit any compensation
10 awarded or paid if the governmental unit has given the parties to the claim written
11 notice stating that it provided the assistance and the cost of the assistance provided.
12 Reimbursement shall equal the lesser of either as follows:

BILL

1 2. For the amount of assistance the governmental unit provided or, for
 2 two-thirds of the amount of the award or payment remaining after deduction of
 3 attorney fees and any other fees or costs chargeable under ch. 102. The department
 4 shall comply with this paragraph when making payments under s. 102.81, or for an
 5 amount agreed to by the governmental unit, whichever is less, if the award or
 6 payment results from a compromise, stipulation, agreement, or default, without a
 7 hearing of the claim.

8 **SECTION 2.** 102.27 (2) (b) 1. of the statutes is created to read:

9 102.27 (2) (b) 1. For the amount of assistance the governmental unit provided
 10 or for the amount of the award or payment, whichever is less, if the award or payment
 11 results from a hearing on the claim.

12 **SECTION 3.** 102.27 (2) (c) of the statutes is created to read:

13 102.27 (2) (c) ~~Notwithstanding s. 102.26 (2), if the reimbursement owed under~~
 14 ~~par. (b) is obtained by the attorney or other representative of an injured employee,~~
 15 the department shall award to the attorney or representative 20 percent of the
 16 amount of reimbursement collected. Any amount awarded under this paragraph
 17 shall be paid out of the amount of reimbursement collected.

18 (END)

to a governmental unit ✓

Notwithstanding s. 102.26 (2), if ✓

order the governmental unit to pay ✓

d-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB09-0586/4dn

GMM:mas:...

d-note

Jld

Attorney Edmondson:

*

This redraft notwithstanding s. 102.26 (2) rather than DWD 80.43 (2) or "any other provision to the contrary" because:

1. Section 102.26 (2) caps the fee for an undisputed claim at 10 percent of the amount awarded while this draft requires 20 percent of the amount of reimbursement to a governmental unit to be awarded to the attorney who collected the reimbursement. Therefore, there could be a conflict if that 20 percent were deemed to be part of the attorney's fee for an undisputed claim.

2. The statutes override the administrative code, so if there is a conflict between this draft and DWD 80.43 (2), DWD would have to amend DWD 80.43 (2) through the administrative rule-making process to conform the code to the statutes.

*
*
*

3. Joint Rule 52 (6), which provides that "all parts of the statutes and of other laws that are intended to be superseded or repealed should be specifically referred to, so far as practicable, and expressly superseded or repealed," prohibits us from drafting vague references such as "notwithstanding any provision to the contrary."

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0586/4dn
GMM:jld:rs

March 9, 2009

Attorney Edmondson:

This redraft notwithstanding s. 102.26 (2) rather than DWD 80.43 (2) or “any other provision to the contrary” because:

1. Section 102.26 (2) caps the fee for an undisputed claim at *10 percent* of the amount awarded while this draft requires *20 percent* of the amount of reimbursement to a governmental unit to be awarded to the attorney who collected the reimbursement. Therefore, there could be a conflict if that 20 percent were deemed to be part of the attorney’s fee for an undisputed claim.
2. The statutes override the administrative code, so if there is a conflict between this draft and DWD 80.43 (2), DWD would have to amend DWD 80.43 (2) through the administrative rule-making process to conform the code to the statutes.
3. Joint Rule 52 (6), which provides that “all parts of the statutes and of other laws that are intended to be superseded or repealed should be specifically referred to, so far as practicable, and expressly superseded or repealed,” prohibits us from drafting vague references such as “notwithstanding any provision to the contrary.”

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

Basford, Sarah

From: Gary [gsherman@cheqnet.net]
Sent: Saturday, April 11, 2009 9:18 PM
To: LRB.Legal
Cc: Hoey, Joseph; Tribys, Eleanora
Subject: Draft Review: LRB 09-0586/4 Topic: Award for worker's compensation attorney who collects public assistance reimbursement

Please Jacket LRB 09-0586/4 for the ASSEMBLY.

No virus found in this outgoing message
Checked by PC Tools AntiVirus (5.0.1.1 - 10.100.117).
<http://www.pctools.com/free-antivirus/>

04/13/2009

Malaise, Gordon

From: Kelly, Judy
Sent: Friday, May 08, 2009 2:18 PM
To: Malaise, Gordon
Cc: 'john edmondson'
Subject: LRB0586/4

Gordon,

You will recall that we were working with Attorney John Edmonson on LRB0586/4 to refine this bill. Attorney Edmonson still has some concerns with the latest draft. One of our main goals is to protect DHS so that if DHS paid the fee, they can receive reimbursement for half the amount of the fee from the federal government. I am copying John's latest memos below. Please look them over and make changes accordingly. If you still have questions about this, maybe it would help if you talked directly to John. I would be happy to facilitate that phone call or you can call him directly. His information is included.

Thank you for your patience on this.

Judy Kelly
Legislative Aide to
Rep. Gary Sherman

Here is Gordon's memo.

102.26(2) is not really implicated because we are not really looking for any fee (the 10% amount he referenced...but also forgetting to note the \$250 cap on that 10%) when there is NO Dispute (and hence, typically NO FEE or a potential fee capped at \$250.00 that almost no one ever seeks anyway due to its small size). We want a fee only when we have to fight for it/litigate the issue based on a denial by the insurance carrier that anything is owed.

Gordon does not account for who is going to pay. The money, per our discussions with DHS, was to go to them first, then WHEN THEY (DHS) paid the fee, they could "bill" the feds for 1/2 of the amount of the fee....that was very important to DHS!

Our version is much more correctable than Gordon's...he doesn't like our "not with standing " provision....then we just take it out or insert not withstanding DWD 80.43(2).....BECAUSE, DESPITE Gordon's assertion that a statue always trumps a code section, at least one ALJ used that code section to "interpret" what 102.27(2) must mean, and that resulted in a denial of over \$9,000 in fees!

John Edmondson

Edmondson Law Office

1415 W. Kamps Ave., Ste. #2

Appleton, WI 54914

(920) 993-9050

je@ntd.net

Judy:

Again, here it is our version: (with the "not withstanding any other provision." portion removed)

b) If a governmental unit provides public assistance under ch 49 to pay medical costs occasioned by an injury claimed under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit any compensation awarded or paid if the governmental unit has given a party to the claim written notice stating that it provided the assistance and an itemization of the assistance provided. Reimbursement shall equal:

1. Upon a Hearing and award, the amount paid by the unit, to the extent of the respondents' liability under this chapter, or
2. Upon a settlement, the lesser of either the amount of assistance the governmental unit provided or two-thirds of the settlement amount, unless the unit consents to a different sum.

In either case, the governmental unit shall pay the attorney who obtained the award or settlement, a fee of 20% of the amount recovered for it.

John Edmondson

Edmondson Law Office

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