2009 DRAFTING REQUEST

Bill

Received: **02/01/2010**

Received By: **gmalaise**

Wanted: **Today**

Identical to LRB:

For: **Workforce Development 7-6704**

By/Representing: **Jim O'Malley**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - worker's comp**

Extra Copies:

Submit via email: **YES**

Requester's email: **jim.omalley@dwd.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Worker's compensation changes

Instructions:

Draft companion to -3173/2

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 02/01/2010	jdyer 02/01/2010		_____ _____			S&L
/1			mduchek 02/01/2010	_____ _____	sbasford 02/01/2010	sbasford 02/02/2010	

FE Sent For: at intro

<END>

for Senate + sent to Sen. Coggs per Jim @ DWD

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/?	gmalaise	2/1 jld	MD 2/1				

FE Sent For:

<END>

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

☞ **DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**

(Request Made By: GMM) (Date: 1 / 29 / 10)

Note:

Both drafts must have the same "requestor"

(exception: companion bills).

○ ☞ Please transfer the drafting file for

2007 LRB _____ (For: Rep. / Sen. _____)

to the drafting file for

2009 LRB _____ (For: Rep. / Sen. _____)

OR

⊗ ☞ Please copy the drafting file for

2009 LRB -3173 / 2 (include the version) (For: Rep. / Sen. DWD)

and place it in the drafting file for

2009 LRB -4241 (For: Rep. / Sen. DWD)

☞ Are These "Companion Bills" ?? ... (Yes) No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: Jim O'Malley

Updated: 08/26/2009

State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -
PLEASE DO NOT REMOVE FROM DRAFTING FILE

"Appendix" to the drafting file
for 2009 SB 522 (LRB–4241)

Note: This is a "Companion Bill" to
2009 AB 706 (LRB–3173)

☞ *Please see AB 706's drafting file for additional legislative history on this bill.*

State of Wisconsin
2009 – 2010 LEGISLATURE

IN 2/1
TODAY

-4241/1
LRB–3~~173/2~~
GMM:jld:rs
stays

2009 BILL

(Companion-No change)

Gen

AN ACT ***to repeal*** 102.60 (6) and 103.78 (4); ***to renumber and amend*** 102.17 (1) (a), 102.44 (1) (intro.) and 102.44 (1) (a); ***to amend*** 102.03 (1) (c) 2., 102.04 (1) (b) 1., 102.11 (1) (intro.), 102.11 (3), 102.16 (2) (b), 102.16 (2m) (b), 102.31 (2) (a), 102.425 (4m) (b), 102.44 (1) (b), 102.50, 102.555 (12) (b), 102.60 (1m) (intro.), 102.75 (2), 102.81 (1) (a), 102.82 (1) and 102.82 (2) (ar); and ***to create*** 102.17 (1) (a) 3., 102.43 (9) (d) and 102.44 (5) (g) of the statutes; **relating to:** various changes to the worker's compensation law.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes relating to worker's compensation, as administered by the Department of Workforce Development (DWD).

GENERAL COVERAGE

Employers subject to worker's compensation law. Under current law, an employer that usually employs three or more employees is subject to the worker's compensation law. Current law does not require those three employees to be employed to perform services in this state in order for the employer to be subject to the worker's compensation law. *Estate of Torres v. Morales,* 313 Wis. 2d 371 (Ct. App. 2008). This bill specifies that an employer must usually employ three or more

employees for services performed in this state to be subject to the worker's compensation law.

Emergency responders. Under current law, an employer is liable for worker's compensation when an employee sustains an injury while performing services growing out of and incidental to employment. Current law specified that an employee is considered to be performing services growing out of and incidental to employment when performing certain activities, including: 1) going to and from his or her employment in the ordinary and usual way, while on or in the immediate vicinity of the premises of the employer, if the injury results from an occurrence on the premises; 2) going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way; and 3) if a fire fighter or municipal utility employee, responding to a call for assistance outside of his or her city or village, unless that response is in violation of law.

This bill specifies that any volunteer fire fighter, first responder, emergency medical technician, rescue squad member, or diving team member while responding to a call for assistance, from the time of the call for assistance to the time of his or her return from responding to that call, including traveling to and from any place to respond to and return from that call, but excluding any deviations for private or personal purposes, is performing service growing out of and incidental to employment.

COMPENSATION AMOUNTS

Maximum weekly compensation for permanent partial disability. Under current law, permanent partial disability benefits are subject to maximum weekly compensation rates specified by statute. Currently, the maximum weekly compensation rate for permanent partial disability is $282. This bill increases that maximum weekly compensation rate to $292 for injuries occurring before January 1, 2011, and to $302 for injuries occurring on or after that date.

Supplemental benefits. Under current law, an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 1993, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals $450. This bill makes an employee who is injured prior to January 1, 2001, eligible for those supplemental benefits beginning on the effective date of the bill. The bill also increases the maximum supplemental benefit amount for a week of disability occurring after the effective date of the bill to an amount that, when added to the employee's regular benefits, equals $582.

Vocational rehabilitation benefits. Under current law, a period of temporary disability during which temporary disability benefits under the worker's compensation law are payable includes a period during which an injured employee is receiving vocational rehabilitation services. Current law provides, however, that in the case of an injured employee who is receiving disability benefits under the federal Social Security Act as well as disability benefits under the worker's compensation law, if those combined payments exceed 80 percent of the injured

employee's average current earnings, the injured employee's disability benefits under the worker's compensation law must be reduced so that those combined payments do not exceed 80 percent of the injured employee's average current earnings (social security offset). Recently, the court of appeals, in *Michels Pipeline Constr. v. LIRC*, 309 Wis. 2d 470 (Ct. App. 2008), held that an employer may apply the social security offset to temporary disability benefits under the worker's compensation law payable during a period when an injured employee is receiving vocational rehabilitation services.

This bill provides that no social security offset may be made on temporary disability benefits payable under the worker's compensation law during a period in which an injured employee is receiving vocational rehabilitation services.

Burial expenses. Under current law, when the death of an employee results from an injury that is covered under the worker's compensation law, the employer or insurer must pay the reasonable cost of burial, not exceeding $6,000. This bill requires the employer or insurer to pay the *actual* cost of burial, not exceeding $10,000.

Illegally employed minor. Under current law, if an injury is sustained by a minor who is permitted to work without a work permit or who is injured while working at employment that is prohibited to the minor (illegally employed minor), the employer is liable not only for disability benefits at the applicable weekly compensation rate but also for the actual loss of wages sustained by the illegally employed minor. This bill eliminates an employer's liability for the actual loss of wages sustained by an illegally employed minor.

PAYMENT OF BENEFITS

Incarcerated employees. Under current law, temporary disability benefits are payable during an employee's healing period, even though the employee could return to a restricted type of work, unless: 1) suitable employment within the limitations of the employee is furnished by the employer or by some other employer; 2) the employee is suspended or terminated from employment due to the employee's alleged commission of a crime, the circumstances of which substantially relate to the employment, and the employee is charged with the commission of that crime; or 3) the employee is suspended or terminated from employment due to the employee's violation of the employer's drug policy, if prior to the date of injury that policy was established in writing and regularly enforced by the employer.

This bill provides that an employer is not liable for temporary disability benefits during an employee's healing period when the employee has been convicted of a crime, is incarcerated, and is not available to return to a restricted type of work during that period.

Occupational deafness. Under current law, worker's compensation for permanent partial disability benefits or benefits from the work injury supplemental benefit fund (WISB fund), which is a fund that is used to pay benefits in lieu of worker's compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy, is payable for "occupational deafness," which is defined as permanent partial or permanent total

loss of hearing of one or both ears due to prolonged exposure to noise in employment. Under current DWD rules, an employee must have a hearing loss of more than 30 decibels to receive worker's compensation permanent partial disability due to occupational deafness and, under current law, an employee must have a hearing loss of more than 20 percent in both ears to receive benefits from the WISB fund due to occupational deafness.

Currently, an employer or DWD, from the WISB fund, is not liable for the expense of any examination or test for hearing loss, any evaluation of such an examination or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effects of hearing loss unless it is determined that permanent partial disability benefits or benefits from the WISB fund are payable. This provision applies beginning on April 1, 2008, for a case of occupational deafness in which the date of injury is on or after that date and beginning on April 1, 2014, for a case of occupational deafness in which the date of injury is before April 1, 2008.

This bill provides that for a case of occupational deafness in which the date of injury is before April 1, 2008, an employer is not liable for those expenses beginning on January 1, 2012, unless it is determined that permanent partial disability benefits or benefits from the WISB fund are payable.

PROGRAM ADMINISTRATION

Assessments and surcharges. Under current law, each insurer and self–insured employer is required to pay to DWD an annual assessment that is used to cover the costs and expense incurred in the administration of the worker's compensation law (annual assessment). Current law requires those annual assessments to be paid on such dates as DWD prescribes and provides that interest shall accrue at the rate of 1 percent per month on annual assessments that are not paid within 90 days after the date prescribed by DWD for payment. This bill provides that interest shall accrue on annual assessments that are not paid within *30* days after the date prescribed for payment.

Bad faith claims; notice required. Under current law, upon the filing with DWD by any interested party of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, DWD must mail a copy of the application to all other interested parties. Upon receiving from those interested parties answers to the application, DWD must schedule a hearing on the application and cause notice of the hearing to be given to each interested party at least ten days before the hearing.

This bill requires a party that claims that the employer or insurer has suspended, terminated, or failed to make payments, including payments for future treatment ordered under an interlocutory award, or has failed to report an injury, as a result of malice or bad faith, to provide written notice stating with reasonable specificity the basis for the claim to the employer, the insurer, and DWD before DWD may schedule a hearing on the claim of malice or bad faith.

Notice of dispute. Under current law, DWD has jurisdiction to resolve a dispute between a health service provider and an insurer or self–insured employer over the reasonableness of a fee charged by the health service provider for health services provided to an injured employee and over the necessity of treatment

provided to an injured employee. DWD also has jurisdiction to resolve a dispute between a pharmacist or other person licensed to prescribe and administer drugs (practitioner) and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed to treat an injured employee. Currently, an insurer or self–insured employer that disputes the reasonableness of a fee charged, or the necessity of treatment provided, by a health service provider must provide reasonable notice to the health service provider that the reasonableness of the fee or the necessity of the treatment is being disputed and an employer or insurer that disputes the reasonableness of a prescription drug charge must provide notice to the pharmacist or practitioner that the charge is being disputed. This bill requires those notice to be in writing.

Notice of policy cancellation or termination. Under current law, if an insurer cancels or terminates a worker's compensation insurance policy, the insurer must provide notice of the cancellation or termination to DWD or, if DWD so provides by rule, to the Wisconsin Compensation Rating Bureau (WCRB), which is a rate service organization licensed by the commissioner of insurance to establish worker's compensation premium rates. Currently, notice of cancellation or termination of a worker's compensation insurance policy may be served personally on DWD at its office in Madison, may be sent to DWD or the WCRB by certified mail, or may be transmitted to DWD or the WCRB by facsimile machine transmission, electronic mail, or any electronic, magnetic, or other medium approved by DWD. This bill eliminates references to those specific methods of sending or transmitting that notice, thereby permitting that notice to be sent to DWD or the WCRB in a medium approved by DWD.

Uninsured employers. Under current law, if an employer is not insured or self–insured as required by the worker's compensation law, the employer is liable to DWD for certain payments which are deposited in the uninsured employers fund and used by DWD to pay benefits to or on behalf of the injured employees of uninsured employers and to pay expenses incurred by DWD in administering the claims of those injured employees. Also, under current law, if DWD pays benefits to or on behalf of an injured employee of an uninsured employer and incurs expenses in administering the claim, the uninsured employer must reimburse DWD for amount of benefits paid and administrative expenses incurred, less any amounts that the employee pays to DWD from any compensation recovered by the employee from the employer or a third party.

Current law, however, permits DWD to waive the payments required of an uninsured employer, but not the reimbursement required of an uninsured employer, if the sole reason for the employer being uninsured is that the uninsured employer was the victim of fraud, misrepresentation, or gross negligence by an insurance agent or insurance broker or a person whom a reasonable person would believe to be an insurance agent or insurance broker. This bill permits DWD to waive the reimbursement required of an uninsured employer if those circumstances apply.

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.** 102.03 (1) (c) 2. of the statutes is amended to read:

2 102.03 **(1)** (c) 2. Any employee going to and from his or her employment in the
3 ordinary and usual way, while on the premises of the employer, or while in the
4 immediate vicinity ~~thereof~~ of those premises if the injury results from an occurrence
5 on the premises~~,~~; any employee going between an employer's designated parking lot
6 and the employer's work premises while on a direct route and in the ordinary and
7 usual way; any volunteer fire fighter, first responder, emergency medical technician,
8 rescue squad member, or diving team member while responding to a call for
9 assistance, from the time of the call for assistance to the time of his or her return from
10 responding to that call, including traveling to and from any place to respond to and
11 return from that call, but excluding any deviations for private or personal purposes;
12 or any fire fighter or municipal utility employee responding to a call for assistance
13 outside the limits of his or her city or village, unless that response is in violation of
14 law, is performing service growing out of and incidental to employment.

15 **SECTION 2.** 102.04 (1) (b) 1. of the statutes is amended to read:

16 102.04 **(1)** (b) 1. Every person who usually employs 3 or more employees for
17 services performed in this state, whether in one or more trades, businesses,
18 professions, or occupations, and whether in one or more locations.

19 **SECTION 3.** 102.11 (1) (intro.) of the statutes is amended to read:

20 102.11 **(1)** (intro.) The average weekly earnings for temporary disability,
21 permanent total disability, or death benefits for injury in each calendar year on or

after January 1, 1982, shall be not less than $30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than $30 and, for permanent partial disability for injuries occurring on or after ~~April 1, 2008, and before January 1, 2009, not more than $408, resulting in a maximum compensation rate of $272, and, for permanent partial disability for injuries occurring on or after January 1, 2009, not more than $423, resulting in a maximum compensation rate of $282~~ the effective date of this subsection .... [LRB inserts date], and before January 1, 2011, not more than $438, resulting in a maximum compensation rate of $292, and, for permanent partial disability for injuries occurring on or after January 1, 2011, not more than $453, resulting in a maximum compensation rate of $302. Between such limits the average weekly earnings shall be determined as follows:

SECTION 4. 102.11 (3) of the statutes is amended to read:

102.11 **(3)** The weekly wage loss referred to in this chapter~~, except under s. 102.60 (6),~~ shall be ~~such~~ the percentage of the average weekly earnings of the injured employee computed ~~according to the provisions of~~ under this section~~, as shall~~ that fairly ~~represent~~ represents the proportionate extent of the impairment of the employee's earning capacity in the employment in which the employee was working at the time of the injury, and other suitable employments~~, the same to~~. Weekly wage loss shall be fixed as of the time of the injury, but ~~to~~ shall be determined in view of the nature and extent of the injury.

SECTION 5. 102.16 (2) (b) of the statutes is amended to read:

102.16 **(2)** (b) An insurer or self–insured employer that disputes the reasonableness of a fee charged by a health service provider or the department under sub. (1m) (a) or s. 102.18 (1) (bg) 1. shall provide reasonable written notice to the health service provider that the fee is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (a) or s. 102.18 (1) (bg) 1. that a health service fee is being disputed, a health service provider may not collect the disputed fee from, or bring an action for collection of the disputed fee against, the employee who received the services for which the fee was charged.

SECTION 6. 102.16 (2m) (b) of the statutes is amended to read:

102.16 **(2m)** (b) An insurer or self–insured employer that disputes the necessity of treatment provided by a health service provider or the department under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable written notice to the health service provider that the necessity of that treatment is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (b) or s. 102.18 (1) (bg) 2. that the necessity of treatment is being disputed, a health service provider may not collect a fee for that disputed treatment from, or bring an action for collection of the fee for that disputed treatment against, the employee who received the treatment.

SECTION 7. 102.17 (1) (a) of the statutes is renumbered 102.17 (1) (a) 1. and amended to read:

102.17 **(1)** (a) 1. Upon the filing with the department by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, ~~it~~ the department shall mail a copy of ~~such~~ the application to all other parties in interest, and the insurance carrier shall be

1 ~~deemed~~ considered a party in interest. The department may bring in additional
2 parties by service of a copy of the application. ~~The~~
3 2. Subject to subd. 3., the department shall cause notice of hearing on the
4 application to be given to each interested party ~~interested~~, by service of ~~such~~ that
5 notice on the interested party personally or by mailing a copy of that notice to the
6 interested party's last–known address at least 10 days before ~~such~~ the hearing. ~~In~~
7 ~~case~~ If a party in interest is located without ~~the~~ this state, and has no post–office
8 address within this state, the copy of the application and copies of all notices shall
9 be filed with the department of financial institutions and shall also be sent by
10 registered or certified mail to the last–known post–office address of ~~such~~ the party.
11 Such filing and mailing shall constitute sufficient service, with the same effect as if
12 served upon a party located within this state.
13 4. The hearing may be adjourned in the discretion of the department, and
14 hearings may be held at such places as the department designates, within or without
15 the state. The department may also arrange to have ~~hearing~~ hearings held by the
16 commission, officer, or tribunal having authority to hear cases arising under the
17 worker's compensation law of any other state, of the District of Columbia, or of any
18 territory of the United States, the testimony and proceedings at any such hearing to
19 be reported to the department and to be part of the record in the case. Any evidence
20 so taken shall be subject to rebuttal upon final hearing before the department.
21 **SECTION 8.** 102.17 (1) (a) 3. of the statutes is created to read:
22 102.17 **(1)** (a) 3. If a party in interest claims that the employer or insurer has
23 acted with malice or bad faith as described in s. 102.18 (1) (b) or (bp), that party shall
24 provide written notice stating with reasonable specificity the basis for the claim to

the employer, the insurer, and the department before the department schedules a hearing on the claim of malice or bad faith.

SECTION 9. 102.31 (2) (a) of the statutes is amended to read:

102.31 **(2)** (a) No party to a contract of insurance may cancel the contract within the contract period or terminate or not renew the contract upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party intends to terminate or does not intend to renew the policy upon expiration. Except as provided in par. (b), when an insurance company does not renew a policy upon expiration, the nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insured employer and the department. Cancellation or termination of a policy by an insurance company for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice of the cancellation or termination to the insured employer and the department. Notice to the department may be given by personal service of the notice upon the department at its office in Madison~~,~~ or by sending the notice ~~by certified mail addressed~~ to the department ~~at its office in Madison, or by transmitting the notice to the department at its office in Madison by facsimile machine transmission, electronic mail, or any electronic, magnetic, or other~~ in a medium approved by the department. The department may provide by rule that the notice of cancellation or termination be given to the Wisconsin compensation rating bureau rather than to the department ~~and that the notice of cancellation or termination be given to the Wisconsin compensation rating bureau by certified mail, facsimile machine transmission, electronic mail, or other~~ in a medium approved by the department after consultation with the Wisconsin compensation rating bureau. Whenever the Wisconsin compensation rating bureau

receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.

SECTION 10. 102.425 (4m) (b) of the statutes is amended to read:

102.425 **(4m)** (b) An employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed under sub. (2) for outpatient use by an injured employee or the department under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a completed bill for the prescription drug, reasonable written notice to the pharmacist or practitioner that the charge is being disputed. After receiving reasonable written notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1) (bg) 1. that a prescription drug charge is being disputed, a pharmacist or practitioner may not collect the disputed charge from, or bring an action for collection of the disputed charge against, the employee who received the prescription drug.

SECTION 11. 102.43 (9) (d) of the statutes is created to read:

102.43 **(9)** (d) The employee has been convicted of a crime, is incarcerated, and is not available to return to a restricted type of work during the healing period.

SECTION 12. 102.44 (1) (intro.) of the statutes is renumbered 102.44 (1) (ag) and amended to read:

102.44 **(1)** (ag) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury ~~which~~ that occurred prior to January 1, ~~1993~~ 2001, shall receive supplemental benefits ~~which~~ that shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out

of the fund created under s. 102.65. ~~These~~ Those supplemental benefits shall be paid only for weeks of disability occurring after January 1, ~~1995~~ 2003, and shall continue during the period of such total disability subsequent to that date.

SECTION 13. 102.44 (1) (a) of the statutes is renumbered 102.44 (1) (am) and amended to read:

102.44 **(1)** (am) If ~~such~~ the employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after ~~April 1, 2008~~ the effective date of this paragraph .... [LRB inserts date], shall be an amount ~~which~~ that, when added to the regular benefit established for the case, shall equal ~~$450~~ $582.

SECTION 14. 102.44 (1) (b) of the statutes is amended to read:

102.44 **(1)** (b) If ~~such~~ the employee is receiving a weekly benefit ~~which~~ that is less than the maximum benefit ~~which~~ that was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after ~~April 1, 2008~~ the effective date of this paragraph .... [LRB inserts date], shall be an amount sufficient to bring the total weekly benefits to the same proportion of ~~$450~~ $582 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 15. 102.44 (5) (g) of the statutes is created to read:

102.44 **(5)** (g) No reduction under this subsection shall be made on temporary disability benefits payable during a period in which an injured employee is receiving vocational rehabilitation services under s. 102.61 (1) or (1m).

SECTION 16. 102.50 of the statutes is amended to read:

102.50 Burial expenses. In all cases ~~where~~ in which the death of an employee proximately results from the injury, the employer or insurer shall pay the ~~reasonable~~ actual expense for burial, not exceeding ~~$6,000~~ $10,000.

1 **SECTION 17.** 102.555 (12) (b) of the statutes is amended to read:

2 102.555 **(12)** (b) For a case of occupational deafness in which the date of injury
3 is on or after April 1, 2008, this subsection applies beginning on that date.
4 Notwithstanding ss. 102.03 (4) and 102.17 (4), for a case of occupational deafness in
5 which the date of injury is before April 1, 2008, this subsection applies beginning on
6 ~~the date that is 6 years after April 1, 2008~~ January 1, 2012.

7 **SECTION 18.** 102.60 (1m) (intro.) of the statutes is amended to read:

8 102.60 **(1m)** (intro.) When the injury is sustained by a minor who is illegally
9 employed, the employer, in addition to paying compensation ~~or wage loss under sub.~~
10 ~~(6)~~ to the minor and death benefits to the dependents of the minor, shall pay the
11 following amounts into the state treasury, for deposit in the fund established under
12 s. 102.65:

13 **SECTION 19.** 102.60 (6) of the statutes is repealed.

14 **SECTION 20.** 102.75 (2) of the statutes is amended to read:

15 102.75 **(2)** The department shall require that payments for costs and expenses
16 for each fiscal year shall be made on such dates as the department prescribes by each
17 licensed worker's compensation insurance carrier and employer exempted under s.
18 102.28 (2). Each such payment shall be a sum equal to a proportionate share of the
19 annual costs and expenses assessed upon each carrier and employer as estimated by
20 the department. Interest shall accrue on amounts not paid within ~~90~~ 30 days after
21 the date prescribed by the department under this subsection at the rate of 1 percent
22 per month. All interest payments received under this subsection shall be deposited
23 in the fund established under s. 102.65.

24 **SECTION 21.** 102.81 (1) (a) of the statutes is amended to read:

1 102.81 **(1)** (a) If an employee of an uninsured employer, other than an employee
2 who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for
3 which the uninsured employer is liable under s. 102.03, the department or the
4 department's reinsurer shall pay to or on behalf of the injured employee or to the
5 employee's dependents an amount equal to the compensation owed them by the
6 uninsured employer under this chapter except penalties and interest due under ss.
7 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60 ~~(6)~~.
8 **SECTION 22.** 102.82 (1) of the statutes is amended to read:
9 102.82 **(1)** ~~An~~ Except as provided in sub. (2) (ar), an uninsured employer shall
10 reimburse the department for any payment made under s. 102.81 (1) to or on behalf
11 of an employee of the uninsured employer or to an employee's dependents and for any
12 expenses paid by the department in administering the claim of the employee or
13 dependents, less amounts repaid by the employee or dependents under s. 102.81 (4)
14 (b). The reimbursement owed under this subsection is due within 30 days after the
15 date on which the department notifies the uninsured employer that the
16 reimbursement is owed. Interest shall accrue on amounts not paid when due at the
17 rate of 1% per month.
18 **SECTION 23.** 102.82 (2) (ar) of the statutes is amended to read:
19 102.82 **(2)** (ar) The department may waive any payment owed under par. (a)
20 or (ag) or sub. (1) if the department determines that the sole reason for the uninsured
21 employer's failure to comply with s. 102.28 (2) is that the uninsured employer was
22 a victim of fraud, misrepresentation or gross negligence by an insurance agent or
23 insurance broker or by a person whom a reasonable person would believe is an
24 insurance agent or insurance broker.
25 **SECTION 24.** 103.78 (4) of the statutes is repealed.

1 **SECTION 25. Initial applicability.**

2 (1) ASSESSMENTS. The treatment of section 102.75 (2) of the statutes first
3 applies to an assessment imposed in the effective date of this subsection.

4 **(END)**

Basford, Sarah

From: O'Malley, Jim T - DWD [Jim.OMalley@dwd.wisconsin.gov]
Sent: Tuesday, February 02, 2010 1:57 PM
To: Basford, Sarah
Cc: Malaise, Gordon
Subject: FW: Draft review: LRB 09-4241/1 Topic: Worker's compensation changes
Attachments: LRB-4241_1.pdf

The language in the draft is good. We have no suggested changes.
We would like to have the bill introduced as a companion bill in both houses. Please have LRB 3173/2 jacketed for introduction in the Assembly and LRB 4241/1 jacketed for introduction in the Senate.
Let me know if you have any questions.
Thank you for your assistance.

From: Basford, Sarah [mailto:Sarah.Basford@legis.wisconsin.gov]
Sent: Monday, February 01, 2010 1:31 PM
To: O'Malley, Jim T - DWD
Subject: Draft review: LRB 09-4241/1 Topic: Worker's compensation changes

State of Wisconsin - Legislative Reference Bureau

One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Gordon M. Malaise, Senior Attorney, at (608) 266-9738, at gordon.malaise@legis.wisconsin.gov, or at One East Main Street, Suite 200.

If you would like to jacket the draft for introduction, please click on the appropriate button below. Please select only one button. If you wish to introduce this draft in both houses please contact the drafting attorney to have a companion bill drafted.

Jacket for the ASSEMBLY

Jacket for the SENATE

Please allow one day for jacketing. If this is a "rush" please make a note in your response e-mail so we are aware that we need to give this request a high priority.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a

Basford, Sarah

From: O'Malley, Jim T - DWD [Jim.OMalley@dwd.wisconsin.gov]
Sent: Tuesday, February 02, 2010 3:08 PM
To: Basford, Sarah
Subject: RE: Draft review: LRB 09-4241/1 Topic: Worker's compensation changes

Both jacketed bills should be delivered to Sen.Coggs. We discussed introduction with Adam Plotkin from his staff.

In the past I picked up the jacketed bills from the LRB office and delivered them to the legislators offices. If you can send or deliver the jacketed bills, we would appreciate your assistance.

Thank you for your help.

From: Basford, Sarah [mailto:Sarah.Basford@legis.wisconsin.gov]
Sent: Tuesday, February 02, 2010 2:01 PM
To: O'Malley, Jim T - DWD
Subject: RE: Draft review: LRB 09-4241/1 Topic: Worker's compensation changes

Jim: Is there an office you want the jackets sent to?

Sarah Basford
Senior Program Assistant
Legislative Reference Bureau
1 East Main, Suite 200
(608) 266-3561
sarah.basford@legis.wisconsin.gov

From: O'Malley, Jim T - DWD [mailto:Jim.OMalley@dwd.wisconsin.gov]
Sent: Tuesday, February 02, 2010 1:57 PM
To: Basford, Sarah
Cc: Malaise, Gordon
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Let me know if you have any questions.

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Sent: Monday, February 01, 2010 1:31 PM
To: O'Malley, Jim T - DWD
Subject: Draft review: LRB 09-4241/1 Topic: Worker's compensation changes

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