



2011 SENATE BILL 409

1 **AN ACT** *to renumber and amend* 102.29 (1); *to amend* 16.865 (4), 20.445 (1)
2 (t), 102.03 (4), 102.11 (1) (intro.), 102.13 (2) (c), 102.16 (2) (d), 102.17 (4), 102.35
3 (1), 102.43 (5), 102.43 (7) (b), 102.44 (1) (am), 102.44 (1) (b), 102.44 (1) (c), 102.49
4 (1), 102.56 (1), 102.56 (2), 102.59 (1), 102.61 (1), 102.61 (1g) (b), 102.61 (1m) (c),
5 102.61 (1m) (d), 102.61 (1r) (c), 102.64 (2), 102.66 (1) and 102.66 (2); and *to*
6 **create** 102.43 (5) (c), 102.65 (3) and 102.65 (4) of the statutes; **relating to:**
7 various changes to the worker's compensation law, granting rule-making
8 authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

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

9 **SECTION 1.** 16.865 (4) of the statutes is amended to read:
10 16.865 (4) Manage the state employees' worker's compensation program and
11 the statewide self-funded programs to protect the state from losses of and damage

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1 to state property and liability and, if retained by the department of workforce
2 development under s. 102.65 (3), process, investigate, and pay claims under ss.
3 102.44 (1), 102.49, 102.59, and 102.66 as provided in s. 102.65 (3).

4 **SECTION 2.** 20.445 (1) (t) of the statutes is amended to read:

5 20.445 (1) (t) *Work injury supplemental benefit fund.* All moneys paid into the
6 work injury supplemental benefit fund under ss. 102.35 (1), 102.47, 102.49, 102.59,
7 102.60, and 102.75 (2), to be used for the discharge of liabilities payable under ss.
8 102.44 (1), 102.49, 102.59, 102.63, 102.64 (2), and 102.66 and for the retention of
9 services under s. 102.65 (3).

10 **SECTION 3.** 102.03 (4) of the statutes is amended to read:

11 102.03 (4) The right to compensation and the amount of the compensation shall
12 in all cases be determined in accordance with the provisions of law in effect as of the
13 date of the injury except as to employees whose rate of compensation is changed as
14 provided in ss. 102.43 (7) and or 102.44 (1) and or (5) or, before the first day of the
15 25th month beginning after the effective date of this subsection ... [LRB inserts
16 date], as provided in s. 102.43 (5) (c) and employees who are eligible to receive private
17 rehabilitative counseling and rehabilitative training under s. 102.61 (1m) and except
18 as provided in s. 102.555 (12) (b).

19 **SECTION 4.** 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
22 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that
23 results in a maximum compensation rate of 110 percent of the state's average weekly
24 earnings as determined under s. 108.05 as of June 30 of the previous year. The
25 average weekly earnings for permanent partial disability shall be not less than \$30

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1 and, for permanent partial disability for injuries occurring on or after May 6, 2010,
2 and before January 1, 2011, not more than \$438, resulting in a maximum
3 compensation rate of \$292, and, for permanent partial disability for injuries
4 occurring on or after January 1, 2011, not more than \$453, resulting in a maximum
5 compensation rate of \$302 the effective date of this subsection [LRB inserts date],
6 and before January 1, 2013, not more than \$468, resulting in a maximum
7 compensation rate of \$312, and, for permanent partial disability for injuries
8 occurring on or after January 1, 2013, not more than \$483, resulting in a maximum
9 compensation rate of \$322, except as provided in 2011 Wisconsin Act (this act),
10 section 30 (2) (a). Between such limits the average weekly earnings shall be
11 determined as follows:

12 **SECTION 5.** 102.13 (2) (c) of the statutes is amended to read:

13 102.13 (2) (c) If Except as provided in this paragraph, if an injured employee
14 has a period of temporary disability that exceeds 3 weeks or a permanent disability
15 or, if the injured employee has undergone surgery to treat his or her injury, other than
16 surgery to correct a hernia, or if the injured employee sustained an eye injury
17 requiring medical treatment on 3 or more occasions off the employer's premises, the
18 department may by rule require the insurer or self-insured employer to submit to
19 the department a final report of the employee's treating practitioner. The
20 department may not require an insurer or self-insured employer to submit to the
21 department a final report of an employee's treating practitioner when the insurer or
22 self-insured employer denies the employee's claim for compensation and the
23 employee does not contest that denial. A treating practitioner may charge a
24 reasonable fee for the completion of the final report, but may not require prepayment
25 of that fee. An insurer or self-insured employer that disputes the reasonableness of

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1 a fee charged for the completion of a treatment practitioner's final report may submit
2 that dispute to the department for resolution under s. 102.16 (2).

3 **SECTION 6.** 102.16 (2) (d) of the statutes is amended to read:

4 102.16 (2) (d) The department shall analyze the information provided to the
5 department under par. (c) according to the criteria provided in this paragraph to
6 determine the reasonableness of the disputed fee. The Except as provided in 2011
7 Wisconsin Act ... (this act), section 30 (2) (b), the department shall determine that
8 a disputed fee is reasonable and order that the disputed fee be paid if that fee is at
9 or below the mean fee for the health service procedure for which the disputed fee was
10 charged, plus 1.4 1.2 standard deviations from that mean, as shown by data from a
11 database that is certified by the department under par. (h). The Except as provided
12 in 2011 Wisconsin Act ... (this act), section 30 (2) (b), the department shall determine
13 that a disputed fee is unreasonable and order that a reasonable fee be paid if the
14 disputed fee is above the mean fee for the health service procedure for which the
15 disputed fee was charged, plus 1.4 1.2 standard deviations from that mean, as shown
16 by data from a database that is certified by the department under par. (h), unless the
17 health service provider proves to the satisfaction of the department that a higher fee
18 is justified because the service provided in the disputed case was more difficult or
19 more complicated to provide than in the usual case.

20 **SECTION 7.** 102.17 (4) of the statutes is amended to read:

21 102.17 (4) Except as provided in this subsection and s. 102.555 (12) (b), the
22 right of an employee, the employee's legal representative, or a dependent to proceed
23 under this section shall not extend beyond 12 years after the date of the injury or
24 death or after the date that compensation, other than for treatment or burial
25 expenses, was last paid, or would have been last payable if no advancement were

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1 made, whichever date is latest. In the case of occupational disease; a traumatic
2 injury resulting in the loss or total impairment of a hand or any part of the rest of
3 the arm proximal to the hand or of a foot or any part of the rest of the leg proximal
4 to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury
5 causing the need for an artificial spinal disc or a total or partial knee or hip
6 replacement, there shall be no statute of limitations, except that benefits or
7 treatment expense for an occupational disease becoming due 12 years after the date
8 of injury or death or last payment of compensation, other than for treatment or burial
9 expenses, shall be paid from the work injury supplemental benefit fund under s.
10 102.65 and in the manner provided in s. 102.66 and benefits or treatment expense
11 for such a traumatic injury becoming due 12 years after that date shall be paid by
12 ~~the employer or insurer~~ from that fund and in that manner if the date of injury or
13 death or last payment of compensation, other than for treatment or burial expenses,
14 is before April 1, 2006. Payment of wages by the employer during disability or
15 absence from work to obtain treatment shall be considered payment of compensation
16 for the purpose of this section if the employer knew of the employee's condition and
17 its alleged relation to the employment.

18 **SECTION 8.** 102.29 (1) of the statutes is renumbered 102.29 (1) (a) (intro.) and
19 amended to read:

20 102.29 (1) (a) (intro.) The making of a claim for compensation against an
21 employer or compensation insurer for the injury or death of an employee shall not
22 affect the right of the employee, the employee's personal representative, or other
23 person entitled to bring action, to make claim or maintain an action in tort against
24 any other party for such injury or death, hereinafter referred to as a 3rd party; nor
25 shall the making of a claim by any such person against a 3rd party for damages by

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1 reason of an injury to which ss. 102.03 to ~~102.64~~ 102.66 are applicable, or the
2 adjustment of any such claim, affect the right of the injured employee or the
3 employee's dependents to recover compensation. The An employer or compensation
4 insurer ~~who shall have~~ that has paid or is obligated to pay a lawful claim under this
5 chapter shall have the same right to make claim or maintain an action in tort against
6 any other party for such injury or death. If the department pays or is obligated to
7 pay a claim under s. 102.66 (1) or 102.81 (1), the department shall also have the right
8 to maintain an action in tort against any other party for the employee's injury or
9 death. However, each shall give to the other reasonable notice and opportunity to
10 join in the making of such claim or the instituting of an action and to be represented
11 by counsel.

12 (b) If a party entitled to notice cannot be found, the department shall become
13 the agent of such that party for the giving of a notice as required in ~~this subsection~~
14 par. (a) and the notice, when given to the department, shall include an affidavit
15 setting forth the facts, including the steps taken to locate such that party. Each shall
16 have an equal voice in the prosecution of ~~said~~ the claim, and any disputes arising
17 shall be passed upon by the court before whom the case is pending, and if no action
18 is pending, then by a court of record or by the department. If notice is given as
19 provided in ~~this subsection~~ par. (a), the liability of the tort-feasor shall be
20 determined as to all parties having a right to make claim, and, irrespective of
21 whether or not all parties join in prosecuting such the claim, the proceeds of such the
22 claim shall be divided as follows:

23 1. After deducting the reasonable cost of collection, one-third of the remainder
24 shall in any event be paid to the injured employee or the employee's personal
25 representative or other person entitled to bring action.

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1 2. Out of the balance remaining after the deduction and payment specified in
2 subd. 1., the employer, the insurance carrier, or, if applicable, the uninsured
3 employers fund or the work injury supplemental benefit fund shall be reimbursed
4 for all payments made by ~~it~~ the employer, insurance carrier, or department, or which
5 ~~it~~ the employer, insurance carrier, or department may be obligated to make in the
6 future, under this chapter, except that ~~it~~ the employer, insurance carrier, or
7 department shall not be reimbursed for any payments made or to be made under s.
8 102.18 (1) (bp), 102.22, 102.35 (3), 102.57, or 102.60.

9 3. Any balance remaining after the reimbursement described in subd. 2. shall
10 be paid to the employee or the employee's personal representative or other person
11 entitled to bring action.

12 (c) If both the employee or the employee's personal representative or other
13 person entitled to bring action, and the employer, compensation insurer, or
14 department, join in the pressing of said claim and are represented by counsel, the
15 attorney fees allowed as a part of the costs of collection shall be, unless otherwise
16 agreed upon, divided between ~~such~~ the attorneys for those parties as directed by the
17 court or by the department.

18 (d) A settlement of any a 3rd-party claim shall be void unless said the
19 settlement and the distribution of the proceeds ~~thereof is~~ of the settlement are
20 approved by the court before whom the action is pending ~~and~~ or, if no action is
21 pending, then by a court of record or by the department.

22 **SECTION 9.** 102.35 (1) of the statutes is amended to read:

23 **102.35 (1)** Every employer and every insurance company that fails to keep the
24 records or to make the reports required by this chapter or that knowingly falsifies
25 such records or makes false reports shall pay a work injury supplemental benefit

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1 surcharge to the state of not less than \$10 nor more than \$100 for each offense. The
2 department may waive or reduce a surcharge imposed under this subsection if the
3 employer or insurance company that violated this subsection requests a waiver or
4 reduction of the surcharge within 45 days after the date on which notice of the
5 surcharge is mailed to the employer or insurance company and shows that the
6 violation was due to mistake or an absence of information. A surcharge imposed
7 under this subsection is due within ~~90~~ 30 days after the date on which notice of the
8 surcharge is mailed to the employer or insurance company. Interest shall accrue on
9 amounts that are not paid when due at the rate of 1 percent per month. All
10 surcharges and interest payments received under this subsection shall be deposited
11 in the fund established under s. 102.65.

12 **SECTION 10.** 102.43 (5) of the statutes is amended to read:

13 102.43 (5) (a) Temporary disability, during which compensation shall be
14 payable for loss of earnings, shall include such period as may be reasonably required
15 for training in the use of artificial members and appliances.

16 (b) Except as provided in s. 102.61 (1g), temporary disability shall also include
17 such period as the employee may be receiving instruction pursuant to under s. 102.61
18 (1) or (1m). Temporary disability on account of receiving instruction ~~of the latter~~
19 ~~nature~~ under s. 102.61 (1) or (1m), and not otherwise resulting from the injury, shall
20 not be in excess of 80 weeks. Such 80-week limitation does not apply to temporary
21 disability benefits under this section, the cost of tuition, fees, books, travel, or
22 maintenance ~~expense~~ under s. 102.61 (1), or the cost of private rehabilitation
23 counseling or rehabilitative training ~~costs~~ under s. 102.61 (1m) if the department
24 determines that additional training is warranted. The necessity for additional

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1 training as authorized by the department for any employee shall be subject to
2 periodic review and reevaluation.

3 **SECTION 11.** 102.43 (5) (c) of the statutes is created to read:

4 102.43 (5) (c) Compensation for temporary disability on account of receiving
5 instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account
6 of any wages earned for the first 24 hours worked by an employee during a week in
7 which the employee is receiving that instruction. If an employee performs more than
8 24 hours of work during a week in which the employee is receiving that instruction,
9 all wages earned for hours worked in excess of 24 during that week shall be offset
10 against the employee's average weekly wage in calculating compensation for
11 temporary disability under sub. (2). An employee who is receiving compensation for
12 temporary disability on account of receiving instruction under s. 102.61 (1) or (1m)
13 shall report any wages earned during the period in which the employee is receiving
14 that instruction to the insurance carrier or self-insured employer paying that
15 compensation. This paragraph does not apply after the last day of the 24th month
16 beginning after the effective date of this paragraph [LRB inserts date].

17 **SECTION 12.** 102.43 (7) (b) of the statutes is amended to read:

18 102.43 (7) (b) An employee need not return to work at least 10 days preceding
19 a renewed period of temporary disability to obtain benefits under sub. (5) (b) for
20 rehabilitative training commenced more than 2 years after the date of injury.
21 Benefits for rehabilitative training shall be made as provided in par. (c).

22 **SECTION 13.** 102.44 (1) (am) of the statutes is amended to read:

23 102.44 (1) (am) If the employee is receiving the maximum weekly benefits in
24 effect at the time of the injury, the supplemental benefit for a week of disability

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1 occurring after May 6 1, 2010, shall be an amount that, when added to the regular
2 benefit established for the case, shall equal \$582.

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

4 102.44 (1) (b) If the employee is receiving a weekly benefit that is less than the
5 maximum benefit that was in effect on the date of the injury, the supplemental
6 benefit for a week of disability occurring after May 6 1, 2010, shall be an amount
7 sufficient to bring the total weekly benefits to the same proportion of \$582 as the
8 employee's weekly benefit bears to the maximum in effect on the date of injury.

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

10 102.44 (1) (c) The Subject to any certificate filed under s. 102.65 (4), an
11 employer or insurance carrier paying the supplemental benefits required under this
12 subsection shall be entitled to reimbursement for each such case from the fund
13 established by s. 102.65, commencing one year ~~from~~ after the date of the first such
14 payment ~~of those benefits~~ and annually thereafter while such ~~those~~ payments
15 continue. ~~Claims To receive reimbursement under this paragraph, an employer or~~
16 insurance carrier must file a claim for such ~~that~~ reimbursement shall ~~with the~~
17 department by no later than 12 months after the end of the year in which the
18 supplemental benefits were paid and the claim must be approved by the department.

19 **SECTION 16.** 102.49 (1) of the statutes is amended to read:

20 102.49 (1) ~~When~~ Subject to any certificate filed under s. 102.65 (4), when the
21 beneficiary under s. 102.46 or 102.47 (1) is the spouse or domestic partner under ch.
22 770 of the deceased employee and is wholly dependent on the deceased employee for
23 support, an additional death benefit shall be paid from the funds provided by sub.
24 (5) for each child by their marriage or domestic partnership under ch. 770 who is
25 living at the time of the death of the employee, and who is likewise wholly dependent

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1 ~~upon the~~ on the deceased employee for support. That payment shall commence at
2 ~~the time that~~ when primary death benefit payments are completed or, if
3 advancement of compensation has been paid, ~~at the time~~ when payments would
4 normally have been completed. Payments shall continue at the rate of 10% 10
5 percent of the surviving parent's weekly indemnity until the child's 18th birthday.
6 If the child is physically or mentally incapacitated, payments may be continued
7 beyond the child's 18th birthday but the payments may not continue for more than
8 a total of 15 years.

9 **SECTION 17.** 102.56 (1) of the statutes is amended to read:

10 102.56 (1) ~~If~~ Subject to sub. (2), if an employee is so permanently disfigured as
11 to occasion potential wage loss due to the disfigurement, the department may allow
12 such sum as it deems the department considers just as compensation therefor for the
13 disfigurement, not exceeding the employee's average annual earnings ~~as defined in~~
14 ~~s. 102.11~~. In determining the potential for wage loss due to the disfigurement and
15 the sum awarded, the department shall take into account the age, education,
16 training, and previous experience and earnings of the employee, the employee's
17 present occupation and earnings, and likelihood of future suitable occupational
18 change. Consideration for disfigurement allowance is confined to those areas of the
19 body that are exposed in the normal course of employment. The department shall
20 also take into account the appearance of the disfigurement, its location, and the
21 likelihood of its exposure in occupations for which the employee is suited.

22 **SECTION 18.** 102.56 (2) of the statutes is amended to read:

23 102.56 (2) ~~Notwithstanding sub. (1), if~~ If an employee who claims
24 compensation under ~~this section~~ sub. (1) returns to work for the employer who
25 employed the employee at the time of the injury, or is offered employment with that

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1 ~~employer, at the same or a higher wage, the employee may not be compensated unless~~
2 ~~the employee shows that he or she probably has lost or will lose wages~~ department
3 may not allow that compensation unless the employee suffers an actual wage loss
4 due to the disfigurement.

5 **SECTION 19.** 102.59 (1) of the statutes is amended to read:

6 102.59 (1) ~~If an employee has~~ Subject to any certificate filed under s. 102.65
7 (4), if at the time of injury an employee has permanent disability which that if it had
8 resulted from ~~such that~~ injury would have entitled ~~him or her~~ the employee to
9 indemnity for 200 weeks and, ~~if as a result of such that~~ injury, the employee incurs
10 further permanent disability ~~which that~~ entitles ~~him or her~~ the employee to
11 indemnity for 200 weeks, the employee shall be paid from the funds provided in this
12 section additional compensation equivalent to the amount ~~which that~~ would be
13 payable for ~~said that~~ previous disability if it ~~that previous disability~~ had resulted
14 from ~~such that~~ injury or the amount ~~which that~~ is payable for ~~said that~~ further
15 disability, whichever is the lesser ~~less, except that an employee may not be paid that~~
16 additional compensation if the employee has already received compensation under
17 this subsection. If ~~said the previous and further~~ disabilities result in permanent
18 total disability, the additional compensation shall be in such amount as will complete
19 the payments ~~which that~~ would have been due had ~~said the~~ permanent total
20 disability resulted from ~~such that~~ injury. This additional compensation accrues
21 from, and may not be paid to any person before, the end of the period for which
22 compensation for permanent disability resulting from ~~such the~~ injury is payable by
23 the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No compromise
24 agreement of liability for this additional compensation may provide for any lump
25 sum payment.

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1 **SECTION 20.** 102.61 (1) of the statutes is amended to read:

2 102.61 **(1)** Subject to subs. (1g) and (1m), an employee who is entitled to receive
3 and has received compensation under this chapter, and who is entitled to and is
4 receiving ~~instructions~~ instruction under 29 USC 701 to 797b, as administered by the
5 state in which the employee resides or in which the employee resided at the time of
6 becoming physically disabled, shall, in addition to other indemnity, be paid the
7 actual and necessary ~~expenses of~~ costs of tuition, fees, books, and travel at the same
8 ~~rate as is provided for state officers and employees under s. 20.916 (8)~~ required for
9 the employee's rehabilitation training program and, if the employee receives
10 ~~instructions~~ that instruction elsewhere than at the place of residence, the actual and
11 necessary costs of maintenance, during rehabilitation, subject to the conditions and
12 limitations specified in sub. (1r). The costs of travel under this subsection shall be
13 paid at the same rate as is provided for state officers and employees under s. 20.916
14 (8).

15 **SECTION 21.** 102.61 (1g) (b) of the statutes is amended to read:

16 102.61 **(1g)** (b) If an employer offers an employee suitable employment as
17 provided in par. (c), the employer or the employer's insurance carrier is not liable for
18 temporary disability benefits under s. 102.43 (5) ~~(b)~~ or for the cost of tuition, fees,
19 books, travel, and maintenance ~~expenses~~ under sub. (1). Ineligibility for
20 compensation under this paragraph does not preclude an employee from receiving
21 vocational rehabilitation services under 29 USC 701 to 797b if the department
22 determines that the employee is eligible to receive those services.

23 **SECTION 22.** 102.61 (1m) (c) of the statutes is amended to read:

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

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1 par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c)
2 and by rule, if the private rehabilitation counselor determines that rehabilitative
3 training is necessary, the reasonable cost of the rehabilitative training program
4 recommended by that counselor, including the cost of tuition, fees, books,
5 maintenance, and travel at the same rate as is provided for state officers and
6 employees under s. 20.916 (8). Notwithstanding that the department may authorize
7 under s. 102.43 (5) (b) a rehabilitative training program that lasts longer than 80
8 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to
9 be reasonable.

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

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

19 **SECTION 24.** 102.61 (1r) (c) of the statutes is amended to read:

20 102.61 **(1r)** (c) The employee may not have ~~expenses of travel and~~ the costs of
21 tuition, fees, books, travel, and maintenance paid under sub. (1) or the costs of
22 private rehabilitation counseling and rehabilitative training paid under sub. (1m) on
23 account of training for a period in excess of 80 weeks in all, except as provided in s.
24 102.43 (5) (b).

25 **SECTION 25.** 102.64 (2) of the statutes is amended to read:

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1 102.64 (2) Upon request of the department of administration, the attorney
2 general shall appear on behalf of the state in proceedings upon claims for
3 compensation against the state. The Except as provided in s. 102.65 (3), the
4 department of justice shall represent the interests of the state in proceedings under
5 s. 102.44 (1), 102.49, 102.59, 102.60, or 102.66. The department of justice may
6 compromise claims in those proceedings, but the compromises are subject to review
7 by the department of workforce development. Costs incurred by the department of
8 justice in prosecuting or defending any claim for payment into or out of the work
9 injury supplemental benefit fund under s. 102.65, including expert witness and
10 witness fees but not including attorney fees or attorney travel expenses for services
11 performed under this subsection, shall be paid from the work injury supplemental
12 benefit fund.

13 **SECTION 26.** 102.65 (3) of the statutes is created to read:

14 102.65 (3) The department of workforce development may retain the
15 department of administration to process, investigate, and pay claims under ss.
16 102.44 (1), 102.49, 102.59, and 102.66. If retained by the department of workforce
17 development, the department of administration may compromise a claim processed
18 by that department, but a compromise made by that department is subject to review
19 by the department of workforce development. The department of workforce
20 development shall pay for the services retained under this subsection from the
21 appropriation account under s. 20.445 (1) (t).

22 **SECTION 27.** 102.65 (4) of the statutes is created to read:

23 102.65 (4) The secretary shall monitor the cash balance in, and incurred losses
24 to, the work injury supplemental benefit fund using generally accepted actuarial
25 principles. If the secretary determines that the expected ultimate losses to the work

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1 injury supplemental benefit fund on known claims exceed 85 percent of the cash
2 balance in that fund, the secretary shall consult with the council on worker's
3 compensation. If the secretary, after consulting with the council on worker's
4 compensation, determines that there is a reasonable likelihood that the cash balance
5 in the work injury supplemental benefit fund may become inadequate to fund all
6 claims under ss. 102.44 (1) (c), 102.49, 102.59, and 102.66, the secretary shall file
7 with the secretary of administration a certificate attesting that the cash balance in
8 that fund is likely to become inadequate to fund all claims under ss. 102.44 (1) (c),
9 102.49, 102.59, and 102.66 and specifying one of the following:

10 (a) That payment of those claims will be made as provided in a schedule that
11 the department shall promulgate by rule.

12 (b) A date after which payment of those claims will be reduced.

13 (c) A date after which no new claims under those provisions will be paid.

14 **SECTION 28.** 102.66 (1) of the statutes is amended to read:

15 102.66 (1) In the event that Subject to any certificate filed under s. 102.65 (4),
16 if there is an otherwise meritorious claim for occupational disease, or for a traumatic
17 injury described in s. 102.17 (4) in which the date of injury or death or last payment
18 of compensation, other than for treatment or burial expenses, is before April 1, 2006,
19 and if the claim is barred solely by the statute of limitations under s. 102.17 (4), the
20 department may, in lieu of worker's compensation benefits, direct payment from the
21 work injury supplemental benefit fund under s. 102.65 of such compensation and
22 such medical expenses as would otherwise be due, based on the date of injury, to or
23 on behalf of the injured employee. The benefits shall be supplemental, to the extent
24 of compensation liability, to any disability or medical benefits payable from any
25 group insurance policy whose premium is paid in whole or in part by any employer,

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

4 **SECTION 29.** 102.66 (2) of the statutes is amended to read:

5 102.66 (2) In the case of occupational disease, or of a traumatic injury described
6 in s. 102.17 (4) in which the date of injury or death or last payment of compensation,
7 other than for treatment for burial expenses, is before April 1, 2006, appropriate
8 benefits may be awarded from the work injury supplemental benefit fund when the
9 status or existence of the employer or its insurance carrier cannot be determined or
10 when there is otherwise no adequate remedy, subject to the limitations contained in
11 sub. (1).

12 **SECTION 30. Nonstatutory provisions.**

13 (1) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS PAID BEFORE 2011.
14 Notwithstanding section 102.44 (1) (c) of the statutes, as affected by this act, to
15 receive reimbursement under that provision for supplemental benefits paid before
16 2011, an employer or insurance carrier must file a claim for that reimbursement with
17 the department of workforce development by no later than December 31, 2012.

18 (2) AUDIT OF HEALTH SERVICE FEE DISPUTE DATABASES. The department of
19 workforce development shall conduct an audit of the health service fee databases
20 certified by that department under section 102.16 (2) (h) of the statutes. The
21 secretary of workforce development shall create a committee under section 15.04 (1)
22 (c) of the statutes to determine the scope of that audit. The committee shall consist
23 of one representative of employers, one representative of employees, one
24 representative of the department of workforce development, and one representative
25 who is a liaison from the health care community to the council on worker's

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1 compensation. Upon determining the scope of the audit, the committee shall report
2 its findings, conclusions, and recommendations to the department of workforce
3 development and the council on worker's compensation, after which the committee
4 shall terminate its activities and cease to exist. If the audit is not commenced by the
5 first day of the 7th month beginning after the effective date of this subsection, all of
6 the following apply:

7 (a) *Permanent partial disability compensation amount.* Notwithstanding
8 section 102.11 (1) (intro.) of the statutes, as affected by this act, the average weekly
9 earnings for permanent partial disability for injuries occurring on or after January
10 1, 2013, shall be not more than \$475, resulting in a maximum compensation rate of
11 \$317.

12 (b) *Reasonableness of disputed health service fees.* Notwithstanding section
13 102.16 (2) (d) of the statutes, as affected by this act, beginning on January 1, 2013,
14 the department of workforce development shall determine that a disputed health
15 service fee is reasonable and order that the disputed fee be paid if that fee is at or
16 below the mean fee for the health service procedure for which the disputed fee was
17 charged, plus 1.3 standard deviations from that mean, as shown by data from a
18 database that is certified by that department under section 102.16 (2) (h) of the
19 statutes, and shall determine that a disputed health service fee is unreasonable and
20 order that a reasonable fee be paid if the disputed fee is above the mean fee for the
21 health service procedure for which the disputed fee was charged, plus 1.3 standard
22 deviations from that mean, as shown by data from such a database, unless the health
23 service provider proves to the satisfaction of that department that a higher fee is
24 justified because the service provided in the disputed case was more difficult or more
25 complicated to provide than in the usual case.

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1 (3) STUDY OF FUNDING OF PERMANENT TOTAL DISABILITY INCREASES. The secretary
2 of workforce development shall create a committee under section 15.04 (1) (c) of the
3 statutes to study methods of funding the cost of providing regular, periodic increases
4 in the weekly indemnity for permanent total disability, if legislation providing for
5 those increases were to be enacted. The study shall include methods of funding the
6 cost of providing those increases for injured employees receiving that indemnity on
7 the day before the effective date of that legislation. The committee shall include
8 representatives of employers, employees, worker's compensation insurers
9 authorized to do business in this state, and the department of workforce
10 development. Upon completion of the study, the committee shall report its findings,
11 conclusions, and recommendations to the department of workforce development and
12 the council on worker's compensation, after which the committee shall terminate its
13 activities and cease to exist.

SECTION 31. Initial applicability.

14 (1) THIRD-PARTY ACTIONS BY WORK INJURY SUPPLEMENTAL BENEFIT FUND. The
15 treatment of section 102.29 (1) of the statutes first applies to an injury or death
16 occurring on the effective date of this subsection.
17

18 (2) WORK INJURY SUPPLEMENTAL BENEFIT FUND SURCHARGES. The treatment of
19 section 102.35 (1) of the statutes first applies to surcharges imposed on the effective
20 date of this subsection.

21 (3) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS. Except as provided in SECTION
22 30 (1) of this act, the treatment of 102.44 (1) (c) of the statutes first applies to
23 supplemental benefits paid by an employer or insurance carrier in 2011.

24 (4) VOCATIONAL REHABILITATION.

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1 (a) *Temporary disability compensation during vocational rehabilitation.* The
2 treatment of sections 102.03 (4) and 102.43 (5) (c) of the statutes first applies to a
3 week of disability beginning after the effective date of this paragraph.

4 (b) *Vocational rehabilitation costs.* The treatment of section 102.61 (1), (1g) (b),
5 (1m) (c) and (d), and (1r) (c) of the statutes and the amendment of section 102.43 (5)
6 (with respect to the cost of tuition, fees, and books) of the statutes first apply to
7 tuition, fee, and book costs incurred on the effective date of this paragraph.

8 (5) **FEE DISPUTES.** The treatment of section 102.16 (2) (d) of the statutes first
9 applies to a fee dispute submitted to the department of workforce development on the
10 effective date of this subsection.

11 (END)