



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3724/P2  
GMM&AJM:kjf

P3

IN 12/9  
Wanted 12/11

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Regent

1     **AN ACT** *to renumber* 46.2897; *to renumber and amend* 102.125, 102.18 (1) (b),  
2           102.23 (1) (a), 102.28 (2) (c) and 102.28 (7) (b); *to amend* 20.445 (1) (ra), 46.27  
3           (5) (i), 46.2897 (title), 101.654 (2) (b), 102.01 (2) (d), 102.03 (4), 102.04 (1) (a),  
4           102.04 (2m), 102.07 (1) (a), 102.07 (1) (b), 102.07 (3), 102.07 (7) (a), 102.07 (10),  
5           102.11 (1) (intro.), 102.125 (title), 102.13 (2) (b), 102.13 (2) (c), 102.17 (1) (a) 3.,  
6           102.17 (4), 102.18 (3), 102.18 (4) (b), 102.21, 102.23 (1) (c), 102.23 (1) (cm),  
7           102.28 (2) (a), 102.28 (2) (b) (title), 102.28 (2) (c) (title), 102.28 (2) (d), 102.28 (7)  
8           (a), 102.29 (1) (b) 2., 102.31 (2) (b) 2., 102.315 (2), 102.425 (3) (a) (intro.), 102.425  
9           (3) (a) 1., 102.425 (4m) (b), 102.43 (5) (c), 102.44 (1) (ag), 102.44 (1) (am), 102.44  
10          (1) (b), 102.58, 102.75 (1), 102.75 (2), 102.75 (4), 102.81 (1) (a), 108.10 (4) and  
11          165.60; and *to create* 46.27 (5m), 46.275 (4m), 46.277 (3r), 46.281 (1k), 46.2897  
12          (1), 46.2897 (2) (title), 46.2897 (3), 46.995 (3), 102.07 (20), 102.125 (2), 102.175  
13          (3), 102.28 (2) (bm), 102.28 (2) (c) 2., 102.28 (2) (e), 102.28 (7) (bm), 102.28 (7)  
14          (d), 102.29 (12), 102.425 (1) (cm), 102.43 (9) (e) and 102.44 (4m) of the statutes;

1 **relating to:** various changes to the worker’s compensation law, granting  
2 rule-making authority, and making an appropriation.

### ***Analysis by the Legislative Reference Bureau***

This bill makes various changes to the worker’s compensation law, as administered by the Department of Workforce Development (DWD) and the Division of Hearings and Appeals (DHA) in the Department of Administration.

#### **GENERAL COVERAGE**

##### ***Local governmental units***

This bill changes the term “municipality” to “local governmental unit” for purposes of the worker’s compensation law and redefines that term to mean a political subdivision of this state; a special purpose district or taxing jurisdiction in this state; an instrumentality, corporation, combination, or subunit of any of the foregoing; or any other public or quasi-public corporation. Under current law, cities, villages, towns, and counties are political subdivisions of this state; special purpose districts include school districts, sewer districts, drainage districts, and other districts created for special purposes; and taxing jurisdictions are entities, not including the state, that are authorized by law to levy property taxes.

##### ***Long-term care providers***

This bill provides that an individual who is performing services for a person receiving long-term care benefits under certain long-term care programs administered by the Department of Health Services, including the Community Options Program, the Community Integration Program, Family Care, the Family Care Partnership Program, a self-directed program commonly referred to as IRIS, or the Children’s Long-Term Support Home and Community-Based Medicaid Waiver Program, on a self-directed basis and who does not otherwise have worker’s compensation coverage for those services is considered to be an employee of the entity that is providing financial management services for the person who is receiving the benefits. As such, the financial management services entity is liable for any injury sustained by the individual while performing those services and is required to insure payment of that liability either by purchasing insurance from an insurer authorized to do business in this state or, if permitted by DWD, by self-insuring for that liability.

The bill also prohibits an individual providing long-term care services who is considered an employee of a financial management services entity for purposes of worker’s compensation coverage and who files a claim for worker’s compensation from bringing an action in tort against the person who received the long-term care services from which the claim arose.

#### **PAYMENT OF BENEFITS**

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##### ***Violations of employer drug or alcohol policies***

This bill provides that if an employee violates an employer policy against drug or alcohol use and such violation is a cause of the employee’s injury, then neither the employee nor the employee’s dependents may receive, under the worker’s

compensation law, any compensation, including the death benefit, relating to that injury. The bill specifies, however, that this provision does not reduce or eliminate an employer's liability for the cost of treating the employee's injury. Under current law, if an employee is injured as a result of intoxication by alcohol, controlled substances, or controlled substance analogs, the compensation, including the death benefit, is reduced by 15 percent.

***Employees suspended or terminated for misconduct or substantial fault***

This bill provides that an employer is not liable for temporary disability benefits during an employee's healing period if the employee is suspended or terminated from employment due to misconduct, as defined in the unemployment insurance law, or substantial fault, as defined in the unemployment insurance law, by the employee connected with the employee's work.

The unemployment insurance law defines "misconduct" as action or conduct evincing such willful or wanton disregard of an employer's interests as is found in 1) deliberate violation or disregard of standards of behavior that an employer has a right to expect of his or her employees; or 2) carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design in disregard of the employer's interests or to show an intentional and substantial disregard of an employer's interests or of an employee's duties and obligations to his or her employer.

The unemployment insurance law defines "substantial fault" as acts or omissions of an employee over which the employee exercised reasonable control that violate reasonable requirements of the employee's employer, but not including minor infractions, inadvertent errors, or failure to perform work due to insufficient skill, ability, or equipment.

***Apportionment of permanent disability***

X This bill provides that if an injured employee has incurred permanent disability, but a percentage of that disability was caused by an accidental injury or occupational disease sustained in the course of employment and a percentage of that disability was caused by other factors, whether occurring before or after the time of injury, the employer is liable only for the percentage of permanent disability that was caused by the accidental injury or occupational disease, except that if the injured employee incurred previous permanent disability caused by an occupational disease sustained in the course of employment with the employer, the employer is also liable for that previous permanent disability.

***Maximum weekly compensation for permanent partial disability***

This bill increases the maximum weekly compensation rate for permanent partial disability from \$322 to \$342 for injuries occurring before January 1, 2017, and to \$362 for injuries occurring on or after that date.

***Supplemental benefits***

X This bill provides that 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, 2003, is entitled to receive supplemental benefits for a week of disability beginning after the effective date of the bill in an amount that, when added to the

employee's regular benefits, equals \$669. Under current law, supplemental benefits are payable only for an injury occurring prior to January 1, 2001, and the maximum supplemental benefit amount for a week of disability is an amount that, when added to the employee's regular benefits, equals \$582.

### ***Traumatic injuries***

This bill provides that an application for worker's compensation for a traumatic injury filed more than six years after the date of injury or date that worker's compensation was last paid is barred by the statute of limitations and that, for traumatic injuries for which there is no statute of limitations, benefits or treatment expenses for traumatic injury becoming due six years after the date of injury or the date that compensation was last paid are paid by DWD from the Work Injury Supplemental Benefit (WISB) fund, if that date is before April 1, 2006.

Under current law, an application for worker's compensation that is not filed within 12 years from the date of the injury or from the date that worker's compensation was last paid is barred by the statute of limitations and, in cases in which there is no statute of limitations, benefits or treatment expenses for traumatic injury becoming due 12 years after the date of injury or the date that compensation was last paid are paid by DWD from the WISB fund if that date is before April 1, 2006.

### ***Vocational rehabilitation***

This bill eliminates an April 30, 2014, sunset date for a provision under which compensation for temporary disability on account of receiving vocational rehabilitation services is not reduced on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving those services and only hours worked in excess of 24 during that week are offset against the employee's average weekly wage in calculating compensation for temporary disability. Generally under current law, all hours worked by an employee who has incurred partial disability are offset against the employee's average weekly wage in calculating compensation for temporary disability.

### ***Prescription drug treatment***

This bill specifies that the current law that limits the liability of an employer or insurer for the cost of a prescription drug to the average wholesale price of the prescription drug, as quoted in the Drug Topics Red Book (average wholesale price), applies to a prescription drug dispensed outside of a licensed pharmacy.

The bill also provides that DWD may use an alternative nationally recognized prescription drug pricing source for determining average wholesale prices of prescription drugs if the Drug Topics Red Book is discontinued and becomes unavailable.

### ***Minimum permanent partial disability ratings***

This bill requires DWD, at least once every eight years, to review and revise the minimum permanent partial disability ratings that DWD has promulgated by rule for certain amputation levels, losses of motion, sensory losses, and surgical procedures resulting from injuries for which permanent partial disability is claimed. Before revising those ratings, DWD must appoint a medical advisory committee, composed of physicians practicing on one or more areas of specialization or treating

disciplines within the medical profession, to review those ratings and recommend revisions of those ratings, based on typical loss of function, to DWD and the Council on Worker's Compensation.

#### HEARINGS AND PROCEDURES

##### ***Health care records in electronic format***

This bill permits a physician, chiropractor, psychologist, podiatrist, dentist, physician assistant, advance practice nurse prescriber, hospital, or health service provider, upon request by an injured employee, employer, insurer, or DWD, to provide that person with any written material that is reasonably related to an injury for which the employee claims worker's compensation in electronic format upon payment of ~~\$10~~ per request. Current law requires those practitioners to provide that material to those requesters upon payment of the actual cost of providing those materials, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage, but does not address providing those materials in electronic format.

##### ***Final practitioner's report***

This bill prohibits DWD from requiring a treating practitioner to submit a final report to DWD if 1) an injured employee has a period of temporary disability of more than three weeks or a permanent disability, has undergone surgery to treat an injury, other than surgery to correct a hernia, or sustains an eye injury requiring medical treatment on three or more occasions off the employer's premises; 2) the employer or insurer denies the employee's claim for worker's compensation in its entirety; and 3) the employee does not contest that denial. Current law prohibits DWD from requiring submission of a final report under those circumstances, but does not specify that the employee's claim for compensation must be denied *in its entirety*.

The bill also requires a treating practitioner to complete a final report on a timely basis and permits a treating practitioner to charge no more than \$100 for completing a final report.

##### ***Prospective vocational rehabilitation training orders***

This bill permits DHA to include in an interlocutory or final award or order an order directing the employer or insurer to pay for a future course of instruction or other rehabilitation training services provided under a rehabilitation training program. Current law specifically permits DHA to include in an interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve an injured employee from the effects of the employee's injury, but does not specifically permit DHA to include in such an order or award an order directing payment for a future course of instruction or other services provided under a rehabilitation training program.

##### ***Administrative review of a worker's compensation decision***

This bill requires the Labor and Industry Review Commission (LIRC) to dismiss a petition for review that is not filed within 21 days after DWD or DHA mailed a copy of the examiner's findings and order to the petitioner's last-known address unless the petitioner shows that the petition was filed late for a reason that was beyond the petitioner's control. Currently, LIRC must dismiss a petition for

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review that is not “timely” filed unless the petitioner shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner’s control.

The bill also allows LIRC to set aside a decision for further consideration within 28 days after the date of the decision, not within 28 days after the date of its mailing as under current law.

### ***Judicial review of a worker’s compensation decision***

This bill requires LIRC to identify in an order or award made by LIRC the persons that must be made parties to an action for judicial review of the order or award. The bill also requires the summons and complaint in the action to name those persons as defendants. In addition, the bill permits the circuit court to join as a party to the action any other person determined necessary for the proper resolution of the action, unless joinder of the person would unduly delay the resolution of the action.

## **PROGRAM ADMINISTRATION**

### ***Investigation and prosecution of fraudulent activity***

This bill permits DWD to request the Department of Justice (DOJ) to assist DWD in an investigation of a false or fraudulent worker’s compensation claim or any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker’s compensation. If, based on the investigation, DWD has a reasonable basis to believe that theft, forgery, fraud, or any other criminal violation has occurred, DWD must refer the matter to the district attorney or DOJ for prosecution.

### ***Self-insured employers***

***Election by governmental employer to self-insure.*** This bill codifies into statute certain DWD rules that permit the state or a local governmental unit to self-insure its worker’s compensation liability without further order of DWD. Specifically, the bill permits the state or a local governmental unit that has independent taxing authority (governmental employer) to elect to self-insure its worker’s compensation liability without further order of DWD if the governmental employer agrees to report all compensable injuries and to comply with the worker’s compensation law and the rules of DWD. Under the bill, a local governmental unit that elects to self-insure its liability for the payment of worker’s compensation must notify DWD of that election in writing before commencing to self-insure that liability, must notify DWD of its intent to continue to self-insure that liability every three years after that initial notice, and must notify DWD of its intent to withdraw that election not less than 30 days before the effective date of that withdrawal.

***Revocation of governmental employer election to self-insure.*** This bill permits DWD to revoke an election by a governmental employer to self-insure its liability for worker’s compensation, without seeking the advice of the Self-Insurer’s Council, if DWD finds that the governmental employer’s financial condition is inadequate to pay its employees’ claims for compensation, that the governmental employer has received an excessive number of claims for compensation, or that the governmental employer has failed to discharge faithfully its obligations under the worker’s compensation law and the rules of DWD. Under the bill, once such an election is revoked, the governmental employer whose election is revoked may not

elect to self-insure its liability for the payment of worker's compensation unless at least three calendar years have elapsed since the revocation and DWD finds that the governmental employer's financial condition is adequate to pay its employees' claims for compensation, that the governmental employer has not received an excessive number of claims for compensation, and that the governmental employer has faithfully discharged its obligations under the worker's compensation law and the rules of DWD.

***Self-insured employer assessments.*** This bill requires an initial assessment for the self-insurer's fund, which is a fund that is used to pay the worker's compensation liability of self-insured employers that cannot pay that liability, to be prorated on the basis of the gross payroll for this state of the self-insured employer, as reported to DWD for the previous calendar year for purposes of unemployment insurance. Current law requires subsequent assessments for the self-insurer's fund to be so prorated and requires an initial assessment for that fund to be equal to the amount assessed upon each other self-insured employer.

The bill also clarifies that governmental employers are not covered under the self-insurer's fund. Specifically, the bill prohibits DWD from 1) requiring a governmental employer that elects to self-insure its liability for the payment of worker's compensation to pay into the self-insurer's fund; and 2) making payments from that fund for the liability under the worker's compensation law of such an employer, whether currently or formerly exempt from the duty to insure.

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

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

1           **SECTION 1.** 20.445 (1) (ra) of the statutes, as affected by 2015 Wisconsin Act 55,  
2 is amended to read:

3           20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
4 the worker's compensation operations fund, the amounts in the schedule for the  
5 administration of the worker's compensation program by the department, for  
6 assistance to the department of justice in investigating and prosecuting fraudulent  
7 activity related to worker's compensation, for transfer to the uninsured employers  
8 fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par.  
9 (rp) and s. 20.427 (1) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75

## SECTION 1

1 shall be credited to this appropriation account. From this appropriation, an amount  
2 not to exceed \$5,000 may be expended each fiscal year for payment of expenses for  
3 travel and research by the council on worker's compensation, an amount not to  
4 exceed \$500,000 may be transferred in each fiscal year to the uninsured employers  
5 fund under s. 102.81 (1) (c), the amount in the schedule under par. (rp) shall be  
6 transferred to the appropriation account under par. (rp), and the amount in the  
7 schedule under s. 20.427 (1) (ra) shall be transferred to the appropriation account  
8 under s. 20.427 (1) (ra).

9 **SECTION 2.** 46.27 (5) (i) of the statutes is amended to read:

10 46.27 (5) (i) In the instances in which an individual who is provided receives  
11 direct funding for long-term community support services under par. (b) for which the  
12 ~~individual receives direct funding~~, serve directly as a fiscal agent or contract with a  
13 fiscal intermediary to serve as a fiscal agent for that individual for the purposes of  
14 performing the responsibilities and protecting the interests of the individual under  
15 the unemployment insurance law. The county department or aging unit may elect  
16 to act as a fiscal agent or contract with a fiscal intermediary to serve as a fiscal agent  
17 for an individual who is provided long-term support services under s. 46.275, 46.277,  
18 46.278, 46.2785, 46.495, 51.42, or 51.437. The fiscal agent under this paragraph is  
19 responsible for remitting any federal unemployment compensation taxes or state  
20 unemployment insurance contributions owed by the individual, including any  
21 interest and penalties which are owed by the individual; for serving as the  
22 representative of the individual in any investigation, meeting, hearing, or appeal  
23 involving ch. 108 or the federal ~~unemployment tax act~~ (26 Unemployment Tax Act,  
24 26 USC 3301 to 3311) ~~3311~~, in which the individual is a party; and for receiving,  
25 reviewing, completing, and returning all forms, reports, and other documents



1 required under ch. 108 or the federal ~~unemployment tax act~~ Unemployment Tax Act  
2 on behalf of the individual. An individual may make an informed, knowing, and  
3 voluntary election to waive the right to a fiscal agent under this paragraph. The  
4 waiver may be as to all or any portion of the fiscal agent's responsibilities. The waiver  
5 may be rescinded in whole or in part at any time.

6 **SECTION 3.** 46.27 (5m) of the statutes is created to read:

7 **46.27 (5m) WORKER'S COMPENSATION COVERAGE.** An individual who is  
8 performing services for a person receiving long-term care benefits under this section  
9 on a self-directed basis and who does not otherwise have worker's compensation  
10 coverage for those services is considered to be an employee of the entity that is  
11 providing financial management services for that person.

12 **SECTION 4.** 46.275 (4m) of the statutes is created to read:

13 **46.275 (4m) WORKER'S COMPENSATION COVERAGE.** An individual who is  
14 performing services for a person receiving long-term care benefits under this section  
15 on a self-directed basis and who does not otherwise have worker's compensation  
16 coverage for those services is considered to be an employee of the entity that is  
17 providing financial management services for that person.

18 **SECTION 5.** 46.277 (3r) of the statutes is created to read:

19 **46.277 (3r) WORKER'S COMPENSATION COVERAGE.** An individual who is  
20 performing services for a person receiving long-term care benefits under this section  
21 on a self-directed basis and who does not otherwise have worker's compensation  
22 coverage for those services is considered to be an employee of the entity that is  
23 providing financial management services for that person.

24 **SECTION 6.** 46.281 (1k) of the statutes is created to read:

1           46.281 (1k) WORKER'S COMPENSATION COVERAGE. An individual who is  
2 performing services for a person receiving the Family Care benefit, or benefits under  
3 Family Care Partnership, on a self-directed basis and who does not otherwise have  
4 worker's compensation coverage for those services is considered to be an employee  
5 of the entity that is providing financial management services for that person.

6           SECTION 7. 46.2897 (title) of the statutes is amended to read:

7           **46.2897 (title) Self-directed services option; advocacy services.**

8           SECTION 8. 46.2897 of the statutes is renumbered 46.2897 (2).

9           SECTION 9. 46.2897 (1) of the statutes is created to read:

10          46.2897 (1) DEFINITION. In this section, "self-directed services option" means  
11 the program that is operated under a waiver from the secretary of the federal  
12 department of health and human services under 42 USC 1396n (c) in which an  
13 enrolled individual selects his or her own services and service providers.

14          SECTION 10. 46.2897 (2) (title) of the statutes is created to read:

15          46.2897 (2) (title) ADVOCACY SERVICES.

16          SECTION 11. 46.2897 (3) of the statutes is created to read:

17          46.2897 (3) WORKER'S COMPENSATION COVERAGE. An individual who is  
18 performing services for a person participating in the self-directed services option  
19 and who does not otherwise have worker's compensation coverage for those services  
20 is considered to be an employee of the entity that is providing financial management  
21 services for that person.

22          SECTION 12. 46.995 (3) of the statutes is created to read:

23          46.995 (3) An individual who is performing services for a person receiving  
24 long-term care benefits under any children's long-term support waiver program on  
25 a self-directed basis and who does not otherwise have worker's compensation

1 coverage for those services is considered to be an employee of the entity that is  
2 providing financial management services for that person.

3 **SECTION 13.** 101.654 (2) (b) of the statutes is amended to read:

4 101.654 (2) (b) If the applicant is required under s. 102.28 (2) (a) to have in force  
5 a policy of worker's compensation insurance or if the applicant is self-insured in  
6 accordance with s. 102.28 (2) (b) or (bm), that the applicant has in force a policy of  
7 worker's compensation insurance issued by an insurer authorized to do business in  
8 this state or is self-insured in accordance with s. 102.28 (2) (b) or (bm).

9 **SECTION 14.** 102.01 (2) (d) of the statutes, as affected by 2015 Wisconsin Act 55,  
10 is amended to read:

11 102.01 (2) (d) ~~“Municipality” includes a county, city, town, village, school~~  
12 ~~district, sewer district, drainage district and long-term care district and~~ “Local  
13 governmental unit” means a political subdivision of this state; a special purpose  
14 district or taxing jurisdiction, as defined in s. 70.114 (1) (f), in this state; an  
15 instrumentality, corporation, combination, or subunit of any of the foregoing; or any  
16 other public or quasi-public corporations corporation.

17 **SECTION 15.** 102.03 (4) of the statutes is amended to read:

18 102.03 (4) The right to compensation and the amount of the compensation shall  
19 in all cases be determined in accordance with the provisions of law in effect as of the  
20 date of the injury except as to employees whose rate of compensation is changed as  
21 provided in ~~ss. s. 102.43 (5) (c) or (7) or 102.44 (1) or (5) or, before May 1, 2014, as~~  
22 ~~provided in s. 102.43 (5) (e)~~ and employees who are eligible to receive private  
23 rehabilitative counseling and rehabilitative training under s. 102.61 (1m) and except  
24 as provided in s. 102.555 (12) (b).

1           **SECTION 16.** 102.04 (1) (a) of the statutes, as affected by 2015 Wisconsin Act 55,  
2 is amended to read:

3           102.04 (1) (a) The state, and ~~each county, city, town, village, school district,~~  
4 ~~sewer district, drainage district, long-term care district and other public or~~  
5 ~~quasi-public corporations therein~~ local governmental unit in this state.

6           **SECTION 17.** 102.04 (2m) of the statutes is amended to read:

7           102.04 (2m) A temporary help agency is the employer of an employee whom  
8 the temporary help agency has placed with or leased to another employer that  
9 compensates the temporary help agency for the employee's services. A temporary  
10 help agency is liable under s. 102.03 for all compensation and other payments  
11 payable under this chapter to or with respect to that employee, including any  
12 payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3),  
13 102.57, or 102.60. Except as permitted under s. 102.29, a temporary help agency may  
14 not seek or receive reimbursement from another employer for any payments made  
15 as a result of that liability.

16           **SECTION 18.** 102.07 (1) (a) of the statutes is amended to read:

17           102.07 (1) (a) Every person, including all officials, in the service of the state,  
18 or of any ~~municipality therein~~ local governmental unit in this state, whether elected  
19 or under any appointment, or contract of hire, express or implied, and whether a  
20 resident of the state or employed or injured within or without the state. The state  
21 and any ~~municipality~~ local governmental unit may require a bond from a contractor  
22 to protect the state or ~~municipality~~ local governmental unit against compensation to  
23 employees of such the contractor or to employees of a subcontractor under the  
24 contractor. This paragraph does not apply beginning on the first day of the first July  
25 beginning after the day that the secretary files the certificate under s. 102.80 (3) (a),

1       except that if the secretary files the certificate under s. 102.80 (3) (ag) this paragraph  
2       does apply to claims for compensation filed on or after the date specified in that  
3       certificate.

4               **SECTION 19.** 102.07 (1) (b) of the statutes is amended to read:

5               102.07 (1) (b) Every person, including all officials, in the service of the state,  
6       or of any ~~municipality therein~~ local governmental unit in this state, whether elected  
7       or under any appointment, or contract of hire, express or implied, and whether a  
8       resident of the state or employed or injured within or without the state. This  
9       paragraph first applies on the first day of the first July beginning after the day that  
10      the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary  
11      files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for  
12      compensation filed on or after the date specified in that certificate.

13              **SECTION 20.** 102.07 (3) of the statutes is amended to read:

14              102.07 (3) Nothing ~~herein contained shall prevent municipalities in this~~  
15      ~~chapter prevents a local governmental unit from paying teachers, police officers, fire~~  
16      ~~fighters and other employees~~ a teacher, police officer, fire fighter, or any other  
17      ~~employee his or her full salaries~~ salary during a period of disability, nor interfere  
18      ~~interferes with any pension funds fund, nor prevent prevents payment to teachers,~~  
19      ~~police officers or fire fighters therefrom~~ a teacher, police officer, fire fighter, or any  
20      ~~other employee from a pension fund.~~

21              **SECTION 21.** 102.07 (7) (a) of the statutes is amended to read:

22              102.07 (7) (a) Every member of a volunteer fire company or fire department  
23      organized under ch. 213, a legally organized rescue squad, or a legally organized  
24      diving team is considered to be an employee of that company, department, squad, or  
25      team. Every member of a company, department, squad, or team described in this

1 paragraph, while serving as an auxiliary police officer at an emergency, is also  
2 considered to be an employee of that company, department, squad, or team. If a  
3 company, department, squad, or team described in this paragraph has not insured  
4 its liability for compensation to its employees, the ~~municipality or county~~ political  
5 subdivision within which that company, department, squad, or team was organized  
6 shall be liable for that compensation.

7 **SECTION 22.** 102.07 (10) of the statutes is amended to read:

8 102.07 (10) Further to effectuate the policy of the state that the benefits of this  
9 chapter shall extend and be granted to employees in the service of the state, or of any  
10 ~~municipality therein~~ local governmental unit in this state, on the same basis, in the  
11 same manner, under the same conditions, and with like right of recovery as in the  
12 case of employees of persons, firms, or private corporations, any question whether  
13 any person is an employee under this chapter shall be governed by and determined  
14 under the same standards, considerations, and rules of decision in all cases under  
15 subs. (1) to (9). Any ~~statutes, ordinances, or administrative regulations which~~  
16 statute, ordinance, or rule that may be otherwise applicable to the classes of  
17 employees enumerated in sub. (1) shall not be controlling in deciding whether any  
18 person is an employee for the purposes of this chapter.

19 **SECTION 23.** 102.07 (20) of the statutes is created to read:

20 102.07 (20) An individual who is performing services for a person participating  
21 in the self-directed services option, as defined in s. 46.2897 (1), for a person receiving  
22 long-term care benefits under s. 46.27, 46.275, or 46.277 or under any children's  
23 long-term support waiver program on a self-directed basis, or for a person receiving  
24 the Family Care benefit, as defined in s. 46.2805 (4), or benefits under the Family  
25 Care Partnership program, as described in s. 49.496 (1) (bk) 3., on a self-directed

1 basis and who does not otherwise have worker's compensation coverage for those  
2 services is considered to be an employee of the entity that is providing financial  
3 management services for that person.

4 **SECTION 24.** 102.11 (1) (intro.) of the statutes is amended to read:

5 102.11 (1) (intro.) The average weekly earnings for temporary disability,  
6 permanent total disability, or death benefits for injury in each calendar year on or  
7 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that  
8 results in a maximum compensation rate of 110 percent of the state's average weekly  
9 earnings as determined under s. 108.05 as of June 30 of the previous year. The  
10 average weekly earnings for permanent partial disability shall be not less than \$30  
11 and, for permanent partial disability for injuries occurring on or after April 17, 2012,  
12 ~~and before January 1, 2013, not more than \$468, resulting in a maximum~~  
13 ~~compensation rate of \$312, and, for permanent partial disability for injuries~~  
14 ~~occurring on or after January 1, 2013, not more than \$483, resulting in a maximum~~  
15 ~~compensation rate of \$322, except as provided in 2011 Wisconsin Act 183, section 30~~  
16 ~~(2)(a) the effective date of this subsection .... [LRB inserts date], and before January~~  
17 ~~1, 2017, not more than \$513, resulting in a maximum compensation rate of \$342, and,~~  
18 ~~for permanent partial disability for injuries occurring on or after January 1, 2017,~~  
19 ~~not more than \$543, resulting in a maximum compensation rate of \$362.~~ Between  
20 such limits the average weekly earnings shall be determined as follows:

21 **SECTION 25.** 102.125 (title) of the statutes is amended to read:

22 **102.125 (title) ~~Fraudulent claims~~ Fraud reporting and, investigation,**  
23 **and prosecution.**

24 **SECTION 26.** 102.125 of the statutes is renumbered 102.125 (1) and amended  
25 to read:

1           102.125 (1) FRAUDULENT CLAIMS REPORTING AND INVESTIGATION. If an insurer or  
2 self-insured employer has evidence that a claim is false or fraudulent in violation of  
3 s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the  
4 claim to the department will not impede its ability to defend the claim, the insurer  
5 or self-insured employer shall report the claim to the department. The department  
6 may require an insurer or self-insured employer to investigate an allegedly false or  
7 fraudulent claim and may provide the insurer or self-insured employer with any  
8 records of the department relating to that claim. An insurer or self-insured  
9 employer that investigates a claim under this ~~section~~ subsection shall report on the  
10 results of that investigation to the department.

11           **(3) PROSECUTION.** If based on the an investigation under sub. (1) or (2) the  
12 department has a reasonable basis to believe that a violation of s. 943.20, 943.38,  
13 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the  
14 department shall refer the results of the investigation to the department of justice  
15 or to the district attorney of the county in which the alleged violation occurred for  
16 prosecution.

17           **SECTION 27.** 102.125 (2) of the statutes is created to read:

18           102.125 (2) ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce  
19 development may request the department of justice to assist the department of  
20 workforce development in an investigation under sub. (1) or in the investigation of  
21 any other suspected fraudulent activity on the part of an employer, employee,  
22 insurer, health care provider, or other person related to worker's compensation.

23           **SECTION 28.** 102.13 (2) (b) of the statutes is amended to read:

24           102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist,  
25 physician assistant, advanced practice nurse prescriber, hospital, or health service



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1 provider shall furnish a legible, certified duplicate of the written material requested  
2 under par. (a) in paper format upon payment of the actual costs of preparing the  
3 certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request,  
4 plus the actual costs of postage, or shall furnish a legible, certified duplicate of that  
5 material in electronic format upon payment of \$10 per request. Any person who  
6 refuses to provide certified duplicates of written material in the person's custody that  
7 is requested under par. (a) shall be liable for reasonable and necessary costs and,  
8 notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the  
9 requester's right to the duplicates under par. (a).

10 SECTION 29. 102.13 (2) (c) of the statutes is amended to read:

11 102.13 (2) (c) Except as provided in this paragraph, if an injured employee has  
12 a period of temporary disability that exceeds 3 weeks or a permanent disability, if the  
13 injured employee has undergone surgery to treat his or her injury, other than surgery  
14 to correct a hernia, or if the injured employee sustained an eye injury requiring  
15 medical treatment on 3 or more occasions off the employer's premises, the  
16 department may by rule require the insurer or self-insured employer to submit to  
17 the department a final report of the employee's treating practitioner. The  
18 department may not require an insurer or self-insured employer to submit to the  
19 department a final report of an employee's treating practitioner when the insurer or  
20 self-insured employer denies the employee's claim for compensation in its entirety  
21 and the employee does not contest that denial. A treating practitioner shall complete  
22 a final report on a timely basis and may charge a reasonable fee for the completion  
23 of the final report, not to exceed \$100, but may not require prepayment of that fee.  
24 An insurer or self-insured employer that disputes the reasonableness of a fee

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

3 **SECTION 30.** 102.17 (1) (a) 3. of the statutes, as affected by 2015 Wisconsin Act  
4 55, is amended to read:

5 102.17 (1) (a) 3. If a party in interest claims that the employer or insurer has  
6 acted with malice or bad faith as described in s. 102.18 (1) (b) 3. or (bp), that party  
7 shall provide written notice stating with reasonable specificity the basis for the claim  
8 to the employer, the insurer, the department, and the division before the division  
9 schedules a hearing on the claim of malice or bad faith.

10 **SECTION 31.** 102.17 (4) of the statutes is amended to read:

11 102.17 (4) Except as provided in this subsection and s. 102.555 (12) (b), in the  
12 case of occupational disease, the right of an employee, the employee's legal  
13 representative, or a dependent to proceed under this section shall not extend beyond  
14 12 years after the date of the injury or death or after the date that compensation,  
15 other than for treatment or burial expenses, was last paid, or would have been last  
16 payable if no advancement were made, whichever date is latest, and in the case of  
17 traumatic injury, that right shall not extend beyond 6 years after that date. In the  
18 case of occupational disease; a traumatic injury resulting in the loss or total  
19 impairment of a hand or any part of the rest of the arm proximal to the hand or of  
20 a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any  
21 permanent brain injury; or a traumatic injury causing the need for an artificial  
22 spinal disc or a total or partial knee or hip replacement, there shall be no statute of  
23 limitations, except that benefits or treatment expense for an occupational disease  
24 becoming due 12 years after the date of injury or death or last payment of  
25 compensation, other than for treatment or burial expenses, shall be paid from the

1 work injury supplemental benefit fund under s. 102.65 and in the manner provided  
2 in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming  
3 due ~~12~~ 6 years after that date shall be paid from that fund and in that manner if the  
4 date of injury or death or last payment of compensation, other than for treatment or  
5 burial expenses, is before April 1, 2006. Payment of wages by the employer during  
6 disability or absence from work to obtain treatment shall be considered payment of  
7 compensation for the purpose of this section if the employer knew of the employee's  
8 condition and its alleged relation to the employment.

9 SECTION 32. 102.175 (3) of the statutes is created to read:

10 102.175 (3) (a) If it is established by the certified report of a physician,  
11 podiatrist, surgeon, psychologist, or chiropractor under s. 102.17 (1) (d) 1., a record  
12 of a hospital or sanitorium under s. 102.17 (1) (d) 2., or other competent evidence that  
13 an injured employee has incurred permanent disability, but that a percentage of that  
14 disability was caused by an accidental injury ~~or occupational disease~~ sustained in the  
15 course of employment with the employer against whom compensation is claimed and  
16 a percentage of that disability was caused by other factors, whether occurring before  
17 or after the time of injury, the employer shall be liable only for the percentage of  
18 permanent disability that was caused by the accidental injury ~~or occupational~~  
19 <sup>stet</sup> ~~disease, except that if~~ it is established that the injured employee incurred previous  
20 permanent disability ~~caused by an occupational disease~~ sustained in the course of  
21 employment with that employer, the employer is also liable for that previous  
22 permanent disability so established.

23 (b) A physician, podiatrist, surgeon, psychologist, or chiropractor who prepares  
24 a certified report under s. 102.17 (1) (d) 1. relating to a claim for compensation for  
25 an accidental injury ~~or occupational disease~~ causing permanent disability that was

~~including previous permanent disability caused by an occupational disease~~ sustained in the course of employment with that employer,

1 sustained in the course of employment with the employer against whom  
2 compensation is claimed shall address in the report the issue of causation of the  
3 disability and shall include in the report an opinion as to the percentage of  
4 permanent disability that was caused by the accidental injury or occupational  
5 ~~disease, including previous permanent disability caused by an occupational disease~~  
6 ~~sustained in the course of employment with that employer,~~ and the percentage of  
7 permanent disability that was caused by other factors, whether occurring before or  
8 after the time of injury.

9 (c) Upon request of the department, the division, the employer, or the  
10 employer's worker's compensation insurer, an injured employee who claims  
11 compensation for an injury causing permanent disability shall disclose all previous  
12 findings of permanent disability or other impairments that are relevant to that  
13 injury.

14 **SECTION 33.** 102.18 (1) (b) of the statutes, as affected by 2015 Wisconsin Act 55,  
15 is renumbered 102.18 (1) (b) 1. and amended to read:

16 102.18 (1) (b) 1. Within 90 days after the final hearing and close of the record,  
17 the division shall make and file its findings upon the ultimate facts involved in the  
18 controversy, and its order, which shall state the division's determination as to the  
19 rights of the parties. Pending the final determination of any controversy before it,  
20 the division, after any hearing, may, in its discretion, make interlocutory findings,  
21 orders, and awards, which may be enforced in the same manner as final awards.

22 2. The division may include in any interlocutory or final award or order an order  
23 directing the employer or insurer to pay for any future treatment that may be  
24 necessary to cure and relieve the employee from the effects of the injury or to pay for

1 a future course of instruction or other rehabilitation training services provided  
2 under a rehabilitation training program developed under s. 102.61 (1) or (1m).

3 3. If the division finds that the employer or insurer has not paid any amount  
4 that the employer or insurer was directed to pay in any interlocutory order or award  
5 and that the nonpayment was not in good faith, the division may include in its final  
6 award a penalty not exceeding 25 percent of each amount that was not paid as  
7 directed.

8 4. When there is a finding that the employee is in fact suffering from an  
9 occupational disease caused by the employment of the employer against whom the  
10 application is filed, a final award dismissing the application upon the ground that  
11 the applicant has suffered no disability from the disease shall not bar any claim the  
12 employee may have for disability sustained after the date of the award.

13 SECTION 34. 102.18 (3) of the statutes, as affected by 2015 Wisconsin Act 55,  
14 is amended to read:

15 102.18 (3) A party in interest may petition the commission for review of an  
16 examiner's decision awarding or denying compensation if the department, the  
17 division, or the commission receives the petition within 21 days after the department  
18 or the division mailed a copy of the examiner's findings and order to the last-known  
19 addresses of the parties in interest. The commission shall dismiss a petition that is  
20 not timely filed within those 21 days unless the petitioner shows ~~probable good cause~~  
21 that the petition was filed late for a reason for failure to timely file that was beyond  
22 the petitioner's control. If no petition is filed within those 21 days ~~after the date on~~  
23 ~~which a copy of the findings or order of the examiner is mailed to the last-known~~  
24 ~~addresses of the parties in interest~~, the findings or order shall be considered final  
25 unless set aside, reversed, or modified by the examiner within that time. If the

1 findings or order are set aside by the examiner, the status shall be the same as prior  
2 to the setting aside of the findings or order. If the findings or order are reversed or  
3 modified by the examiner, the time for filing a petition commences on the date on  
4 which notice of the reversal or modification is mailed to the last-known addresses  
5 of the parties in interest. The commission shall either affirm, reverse, set aside, or  
6 modify the findings or order, in whole or in part, or direct the taking of additional  
7 evidence. The commission's action shall be based on a review of the evidence  
8 submitted.

9 **SECTION 35.** 102.18 (4) (b) of the statutes is amended to read:

10 102.18 (4) (b) Within 28 days after the date of a decision of the commission is  
11 ~~mailed to the last-known address of each party in interest~~, the commission may, on  
12 its own motion, set aside the decision for further consideration.

13 **SECTION 36.** 102.21 of the statutes, as affected by 2015 Wisconsin Act 55, is  
14 amended to read:

15 **102.21 Payment of awards by municipalities.** ~~Whenever~~ When an award  
16 is made under this chapter or s. 66.191, 1981 stats., against any ~~municipality~~ local  
17 governmental unit, the person in whose favor the award is made shall file a certified  
18 copy of the award with the ~~municipal~~ of the local governmental unit. Unless  
19 an appeal is taken, within 20 days after that filing, the ~~municipal~~ clerk shall draw  
20 an order on the ~~municipal~~ treasurer of the local governmental unit for the payment  
21 of the award. If upon appeal the award is affirmed in whole or in part, the ~~municipal~~  
22 clerk shall draw an order for payment of the award within 10 days after a certified  
23 copy of the judgment affirming the award is filed with that clerk. If the award or  
24 judgment provides for more than one payment, the ~~municipal~~ clerk shall draw orders  
25 for payment as the payments become due. No statute relating to the filing of claims

1 against, or the auditing, allowing, and payment of claims by, a ~~municipality~~ local  
2 governmental unit applies to the payment of an award or judgment under this  
3 section.

4 **SECTION 37.** 102.23 (1) (a) of the statutes, as affected by 2015 Wisconsin Act 55,  
5 is renumbered 102.23 (1) (a) 1. and amended to read:

6 102.23 (1) (a) 1. The findings of fact made by the commission acting within its  
7 powers shall, in the absence of fraud, be conclusive. The order or award granting or  
8 denying compensation, either interlocutory or final, whether judgment has been  
9 rendered on the order or award or not, is subject to review only as provided in this  
10 section and not under ch. 227 or s. 801.02. The commission shall identify in the order  
11 or award the persons that must be made parties to an action for review of the order  
12 or award.

13 2. Within 30 days after the date of an order or award made by the commission  
14 ~~either originally or after the filing of a petition for review with the department, the~~  
15 ~~division, or the commission under s. 102.18,~~ any party aggrieved by the order or  
16 award may commence an action in circuit court for review of the order or award by  
17 -serving a complaint as provided in par. (b) and filing the summons and complaint  
18 with the clerk of the circuit court ~~commence, in circuit court, an action against the~~  
19 ~~commission for the review of the order or award, in which action the adverse party~~  
20 ~~shall also be made a defendant.~~ The summons and complaint shall name the party  
21 commencing the action as the plaintiff and shall name as defendants the commission  
22 and all persons identified by the commission under subd. 1. If the circuit court  
23 determines that any other person is necessary for the proper resolution of the action,  
24 the circuit court may join that person as a party to the action, unless joinder of the  
25 person would unduly delay the resolution of the action. If the circuit court is satisfied

1 that a party in interest has been prejudiced because of an exceptional delay in the  
2 receipt of a copy of any finding or order, the circuit court may extend the time ~~in~~  
3 within which an action may be commenced by an additional 30 days.

4 3. The proceedings shall be in the circuit court of the county where the plaintiff  
5 resides, except that if the plaintiff is a state agency, the proceedings shall be in the  
6 circuit court of the county where the defendant resides. The proceedings may be  
7 brought in any circuit court if all parties stipulate and that court agrees.

8 **SECTION 38.** 102.23 (1) (c) of the statutes is amended to read:

9 102.23 (1) (c) ~~Except as provided in par. (cm), the~~ The commission shall serve  
10 its answer to the complaint within 20 days after the service of the complaint, ~~and,~~  
11 ~~within the like time, the adverse party.~~ Except as provided in par. (cm), any other  
12 defendant may serve an answer to the complaint within 20 days after the service of  
13 the complaint, which answer may, by way of counterclaim or cross complaint, ask for  
14 the review of the order or award referred to in the complaint, with the same effect  
15 as if the ~~party~~ defendant had commenced a separate action for the review ~~thereof of~~  
16 the order or award.

17 **SECTION 39.** 102.23 (1) (cm) of the statutes is amended to read:

18 102.23 (1) (cm) ~~If an adverse party to the proceeding~~ a defendant in an action  
19 brought under par. (a) is an insurance company, the insurance company may serve  
20 an answer to the complaint within 45 days after the service of the complaint.

21 **SECTION 40.** 102.28 (2) (a) of the statutes is amended to read:

22 102.28 (2) (a) *Duty to insure payment for compensation.* Unless exempted by  
23 ~~the department~~ under par. (b) or (bm) or sub. (3), every employer, as described in s.  
24 102.04 (1), shall insure payment for ~~that~~ compensation under this chapter in an  
25 insurer authorized to do business in this state. A joint venture may elect to be an



1 employer under this chapter and obtain insurance for payment of compensation. If  
2 a joint venture that is subject to this chapter only because the joint venture elected  
3 to be an employer under this chapter is dissolved and cancels or terminates its  
4 contract for the insurance of compensation under this chapter, that joint venture is  
5 deemed to have effected withdrawal, which shall be effective on the day after the  
6 contract is canceled or terminated.

7 **SECTION 41.** 102.28 (2) (b) (title) of the statutes is amended to read:

8 102.28 (2) (b) (title) *Exemption from duty to insure; employers generally.*

9 **SECTION 42.** 102.28 (2) (bm) of the statutes is created to read:

10 102.28 (2) (bm) *Exemption from duty to insure; governmental employers. 1.*

11 Subject to subds. 2. to 4., if the state or a local governmental unit that has  
12 independent taxing authority is not partially insured or fully insured for its liability  
13 for the payment of compensation under this chapter, or to the extent that the state  
14 or a local governmental unit that has independent taxing authority is not partially  
15 insured for that liability under one or more contracts issued with the consent of the  
16 department under s. 102.31 (1) (b), and if the state or local governmental unit agrees  
17 to report faithfully all compensable injuries and to comply with this chapter and all  
18 rules of the department, the state or local governmental unit may elect to self-insure  
19 that liability without further order of the department.

20 2. Notwithstanding the absence of an order of exemption from the duty to  
21 insure under par. (a), the state or a local governmental unit that elects to self-insure  
22 as provided in subd. 1. is exempt from that duty. Notwithstanding that exemption,  
23 if the state or a local governmental unit that elects to self-insure as provided in subd.  
24 1. desires partial insurance or divided insurance, the state or local governmental

1 unit shall obtain the consent of the department under s. 102.31 (1) (b) to the issuance  
2 of a contract providing such insurance.

3 3. a. A local governmental unit that elects to self-insure its liability for the  
4 payment of compensation under this chapter shall notify the department of that  
5 election in writing before commencing to self-insure that liability and shall notify  
6 the department of its intent to continue to self-insure that liability every 3 years  
7 after that initial notice. A local government unit that wishes to withdraw that  
8 election shall notify the department of that withdrawal not less than 30 days before  
9 the effective date of that withdrawal.

10 b. A notice under subd. 3. a. shall be accompanied by a resolution adopted by  
11 the governing body of the local governmental unit and signed by the elected or  
12 appointed chief executive of the local governmental unit stating that the governing  
13 body intends and agrees to self-insure the liability of the local governmental unit for  
14 the payment of compensation under this chapter and that the local government unit  
15 agrees to report faithfully all compensable injuries and to comply with this chapter  
16 and all rules of the department.

17 4. An election to self-insure under subd. 1. is subject to revocation under par.  
18 (c) 2. Once such an election is revoked, the employer whose election is revoked may  
19 not elect to self-insure its liability for the payment of compensation under this  
20 chapter unless at least 3 calendar years have elapsed since the revocation and the  
21 department finds that the employer's financial condition is adequate to pay its  
22 employees' claims for compensation, that the employer has not received an excessive  
23 number of claims for compensation, and that the employer has faithfully discharged  
24 its obligations under this chapter and the rules of the department.

25 **SECTION 43.** 102.28 (2) (c) (title) of the statutes is amended to read:

1           102.28 (2) (c) (title) *Revocation of exemption or election.*

2           **SECTION 44.** 102.28 (2) (c) of the statutes is renumbered 102.28 (2) (c) 1. and  
3 amended to read:

4           102.28 (2) (c) 1. The department, after seeking the advice of the self-insurers  
5 council, may revoke an exemption granted to an employer under par. (b), upon giving  
6 the employer 10 days' written notice, if the department finds that the employer's  
7 financial condition is inadequate to pay its employees' claims for compensation, that  
8 the employer has received an excessive number of claims for compensation, or that  
9 the employer has failed to discharge faithfully its obligations according to the  
10 agreement contained in the application for exemption. ~~The employer may, within~~

11           3. Within 10 days after receipt of the a notice of revocation, under subd. 1. or  
12 2., the employer may request in writing a review of the revocation by the secretary  
13 or the secretary's designee and the secretary or the secretary's designee shall review  
14 the revocation within 30 days after receipt of the request for review. If the employer  
15 is aggrieved by the determination of the secretary or the secretary's designee, the  
16 employer may, within 10 days after receipt of notice of that determination, request  
17 a hearing under s. 102.17. If the secretary or the secretary's designee determines  
18 that the employer's exemption or election should be revoked, the employer shall  
19 obtain insurance coverage as required under par. (a) immediately upon receipt of  
20 notice of that determination and, notwithstanding the pendency of proceedings  
21 under ss. 102.17 to 102.25, shall keep that coverage in force until another exemption  
22 under par. (b) is granted or another election under par. (bm) is made.

23           **SECTION 45.** 102.28 (2) (c) 2. of the statutes is created to read:

24           102.28 (2) (c) 2. The department may revoke an election made by an employer  
25 under par. (bm), upon giving the employer 10 days' written notice, if the department

1 finds that the employer's financial condition is inadequate to pay its employees'  
2 claims for compensation, that the employer has received an excessive number of  
3 claims for compensation, or that the employer has failed to discharge faithfully its  
4 obligations under this chapter and the rules of the department.

5 **SECTION 46.** 102.28 (2) (d) of the statutes is amended to read:

6 102.28 (2) (d) *Effect of insuring with unauthorized insurer.* ~~An employer who~~  
7 ~~procures an exemption under par. (b) and thereafter~~ If an employer that is exempted  
8 under par. (b) or (bm) from the duty to insure under par. (a) enters into any agreement  
9 for excess insurance coverage with an insurer not authorized to do business in this  
10 state, the employer shall report that agreement to the department immediately. The  
11 placing of such coverage shall not by itself be grounds for revocation of the exemption.

12 **SECTION 47.** 102.28 (2) (e) of the statutes is created to read:

13 102.28 (2) (e) *Rules.* The department shall promulgate rules to implement this  
14 subsection.

15 **SECTION 48.** 102.28 (7) (a) of the statutes is amended to read:

16 102.28 (7) (a) If an employer who is currently or was formerly exempted by  
17 written order of the department under sub. (2) (b) is unable to pay an award,  
18 judgment is rendered in accordance with s. 102.20 against that employer, and  
19 execution is levied and returned unsatisfied in whole or in part, payments for the  
20 employer's liability shall be made from the fund established under sub. (8). If a  
21 currently or formerly exempted employer files for bankruptcy and not less than 60  
22 days after that filing the department has reason to believe that compensation  
23 payments due are not being paid, the department in its discretion may make  
24 payment for the employer's liability from the fund established under sub. (8). The  
25 secretary of administration shall proceed to recover ~~such~~ those payments from the

1 employer or the employer's receiver or trustee in bankruptcy, and may commence an  
2 action or proceeding or file a claim ~~therefor~~ for those payments. The attorney general  
3 shall appear on behalf of the secretary of administration in any such action or  
4 proceeding. All moneys recovered in any such action or proceeding shall be paid into  
5 the fund established under sub. (8).

6 **SECTION 49.** 102.28 (7) (b) of the statutes is renumbered 102.28 (7) (b) 1. and  
7 amended to read:

8 102.28 (7) (b) 1. Each employer exempted by written order of the department  
9 under sub. (2) (b) shall pay into the fund established by sub. (8) ~~a sum equal to that~~  
10 ~~assessed against each of the other such exempt employers upon the issuance of an~~  
11 ~~initial order. The order~~ an initial assessment based on orders of the department as  
12 provided in subd. 2. An order of the department requiring exempt employers to pay  
13 into that fund shall provide for ~~a sum~~ an amount that is sufficient to secure  
14 estimated payments of the an insolvent exempt employer due for the period up to the  
15 date of the order and for one year following the date of the order and to pay the  
16 estimated cost of insurance carrier or insurance service organization services under  
17 par. (c). Payments ordered to be made to the fund shall be paid to the department  
18 within 30 days after the date of the order. If additional moneys are required, further  
19 assessments shall be made based on orders of the department ~~with~~ as provided under  
20 subd. 2.

21 2. An initial or further assessment under subd. 1. shall be prorated on the basis  
22 of the gross payroll for this state of the exempt employer, as reported to the  
23 department for the previous calendar year for unemployment insurance purposes  
24 under ch. 108. If the or, if an exempt employer is not covered under ch. 108, ~~then the~~  
25 ~~department shall determine~~ on the basis of the comparable gross payroll for the

1 exempt employer as determined by the department. If payment of any assessment  
2 made under ~~this subsection~~ subd. 1. is not made within 30 days of after the date of  
3 the order of the department, the attorney general may appear on behalf of the state  
4 to collect the assessment.

5 **SECTION 50.** 102.28 (7) (bm) of the statutes is created to read:

6 102.28 (7) (bm) The department may not do any of the following:

7 1. Require an employer that elects under sub. (2) (bm) to self-insure its liability  
8 for the payment of compensation under this chapter to pay into the fund established  
9 under sub. (8).

10 2. Make any payments from the fund established under sub. (8) for the liability  
11 under this chapter of an employer that elects under sub. (2) (bm) to self-insure its  
12 liability for the payment of compensation under this chapter, whether currently or  
13 formerly exempt from the duty to insure under sub. (2) (a).

14 **SECTION 51.** 102.28 (7) (d) of the statutes is created to read:

15 102.28 (7) (d) The department shall promulgate rules to implement this  
16 subsection.

17 **SECTION 52.** 102.29 (1) (b) 2. of the statutes is amended to read:

18 102.29 (1) (b) 2. Out of the balance remaining after the deduction and payment  
19 specified in subd. 1., the employer, the insurance carrier, or, if applicable, the  
20 uninsured employers fund or the work injury supplemental benefit fund shall be  
21 reimbursed for all payments made by the employer, insurance carrier, or  
22 department, or which the employer, insurance carrier, or department may be  
23 obligated to make in the future, under this chapter, except that the employer,  
24 insurance carrier, or department shall not be reimbursed for any payments made or  
25 to be made under s. 102.18 (1) (b) 3. or (bp), 102.22, 102.35 (3), 102.57, or 102.60.

1           **SECTION 53.** 102.29 (12) of the statutes is created to read:

2           102.29 (12) No individual who is an employee of an entity described in s. 102.07  
3 (20) for purposes of this chapter and who makes a claim for compensation under this  
4 chapter may make a claim or maintain an action in tort against the person described  
5 in s. 102.07 (20) who received the services from which the claim arose.

6           **SECTION 54.** 102.31 (2) (b) 2. of the statutes is amended to read:

7           102.31 (2) (b) 2. Regardless of whether the notices required under par. (a) have  
8 been given, a cancellation or termination is effective upon the effective date of  
9 replacement insurance coverage obtained by the employer ~~or, the effective date of an~~  
10 order under s. 102.28 (2) (b) exempting the employer from carrying the duty to carry  
11 insurance under s. 102.28 (2) (a), or the effective date of an election by an employer  
12 under s. 102.28 (2) (bm) to self-insure its liability for the payment of compensation  
13 under this chapter.

14           **SECTION 55.** 102.315 (2) of the statutes is amended to read:

15           102.315 (2) **EMPLOYEE LEASING COMPANY LIABLE.** An employee leasing company  
16 is liable under s. 102.03 for all compensation payable under this chapter to a leased  
17 employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or  
18 (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29,  
19 an employee leasing company may not seek or receive reimbursement from another  
20 employer for any payments made as a result of that liability. An employee leasing  
21 company is not liable under s. 102.03 for any compensation payable under this  
22 chapter to an employee of a client who is not a leased employee.

23           **SECTION 56.** 102.425 (1) (cm) of the statutes is created to read:

24           102.425 (1) (cm) “Licensed pharmacy” means a pharmacy licensed under s.  
25 450.06 or 450.065.

1           **SECTION 57.** 102.425 (3) (a) (intro.) of the statutes is amended to read:

2           102.425 (3) (a) (intro.) The liability of an employer or insurer for the cost of a  
3           prescription drug dispensed under sub. (2) for outpatient use by an injured employee,  
4           including a prescription drug dispensed outside of a licensed pharmacy, is limited to  
5           the sum of all of the following:

6           **SECTION 58.** 102.425 (3) (a) 1. of the statutes is amended to read:

7           102.425 (3) (a) 1. The average wholesale price of the prescription drug as of the  
8           date on which the prescription drug is dispensed, as quoted in the Drug Topics Red  
9           Book, published by Medical Economics Company, Inc., or its successor, or, if that book  
10          is discontinued and becomes unavailable, as quoted in another nationally recognized  
11          pricing source determined by the department.

12          **SECTION 59.** 102.425 (4m) (b) of the statutes, as affected by 2015 Wisconsin Act  
13          55, is amended to read:

14          102.425 (4m) (b) An employer or insurer that disputes the reasonableness of  
15          the amount charged for a prescription drug dispensed under sub. (2) for outpatient  
16          use by an injured employee or the department or division under sub. (4) (b) or s.  
17          102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a  
18          completed bill for the prescription drug, reasonable written notice to the pharmacist  
19          or practitioner that the charge is being disputed. After receiving reasonable written  
20          notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1)  
21          (bg) ~~1.~~ 3. that a prescription drug charge is being disputed, a pharmacist or  
22          practitioner may not collect the disputed charge from, or bring an action for collection  
23          of the disputed charge against, the employee who received the prescription drug.

24          **SECTION 60.** 102.43 (5) (c) of the statutes is amended to read:



1           102.43 (5) (c) Compensation for temporary disability on account of receiving  
2 instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account  
3 of any wages earned for the first 24 hours worked by an employee during a week in  
4 which the employee is receiving that instruction. If an employee performs more than  
5 24 hours of work during a week in which the employee is receiving that instruction,  
6 all wages earned for hours worked in excess of 24 during that week shall be offset  
7 against the employee's average weekly wage in calculating compensation for  
8 temporary disability under sub. (2). An employee who is receiving compensation for  
9 temporary disability on account of receiving instruction under s. 102.61 (1) or (1m)  
10 shall report any wages earned during the period in which the employee is receiving  
11 that instruction to the insurance carrier or self-insured employer paying that  
12 compensation. ~~This paragraph does not apply after April 30, 2014.~~

13           **SECTION 61.** 102.43 (9) (e) of the statutes is created to read:

14           102.43 (9) (e) The employee's employment with the employer has been  
15 suspended or terminated due to misconduct, as defined in s. 108.04 (5), or substantial  
16 fault, as defined in s. 108.04 (5g) (a), by the employee connected with the employee's  
17 work.

18           **SECTION 62.** 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act  
19 55, is amended to read:

20           102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
21 employee who is receiving compensation under this chapter for permanent total  
22 disability or continuous temporary total disability more than 24 months after the  
23 date of injury resulting from an injury that occurred prior to January 1, ~~2001~~ 2003,  
24 shall receive supplemental benefits that shall be payable by the employer or the  
25 employer's insurance carrier, or in the case of benefits payable to an employee under

1 s. 102.66, shall be paid by the department out of the fund created under s. 102.65.  
2 Those supplemental benefits shall be paid only for weeks of disability occurring after  
3 January 1, ~~2003~~ 2005, and shall continue during the period of such total disability  
4 subsequent to that date.

5 **SECTION 63.** 102.44 (1) (am) of the statutes is amended to read:

6 102.44 (1) (am) If the employee is receiving the maximum weekly benefits in  
7 effect at the time of the injury, the supplemental benefit for a week of disability  
8 occurring after ~~May 1, 2010~~ the effective date of this paragraph ... [LRB inserts  
9 date], shall be an amount that, when added to the regular benefit established for the  
10 case, shall equal ~~\$582~~ \$669.

11 **SECTION 64.** 102.44 (1) (b) of the statutes is amended to read:

12 102.44 (1) (b) If the employee is receiving a weekly benefit that is less than the  
13 maximum benefit that was in effect on the date of the injury, the supplemental  
14 benefit for a week of disability occurring after ~~May 1, 2010~~ the effective date of this  
15 paragraph ... [LRB inserts date], shall be an amount sufficient to bring the total  
16 weekly benefits to the same proportion of ~~\$582~~ \$669 as the employee's weekly benefit  
17 bears to the maximum in effect on the date of injury.

18 **SECTION 65.** 102.44 (4m) of the statutes is created to read:

19 102.44 (4m) (a) The department shall promulgate rules establishing minimum  
20 permanent disability ratings for amputation levels, losses of motion, sensory losses,  
21 and surgical procedures resulting from injuries for which permanent partial  
22 disability is claimed under sub. (3) or (4). At least once every 8 years the department  
23 shall review and revise those minimum permanent disability ratings as necessary  
24 to reflect advances in the science of medicine. Before the department may revise  
25 those ratings, the department shall appoint a medical advisory committee under s.

1 227.13, composed of physicians practicing in one or more areas of specialization or  
2 treating disciplines within the medical profession, to review and recommend  
3 revision of those ratings, based on typical loss of function, to the department and the  
4 council on worker's compensation.

5 (b) In considering an individual for appointment to the medical advisory  
6 committee under par. (a), the department shall consider the individual's training and  
7 experience, the number of years the individual has been practicing in the individual's  
8 area of specialization or treating discipline, any certifications by a recognized  
9 medical speciality board or other agency held by the individual, any  
10 recommendations made by organizations that regulate or promote profession  
11 standards in the area of specialization or treating discipline in which the individual  
12 practices, and any other factors that the department determines are relevant to the  
13 individual's knowledge and ability to serve as a member of the medical advisory  
14 committee.

15 **SECTION 66.** 102.58 of the statutes, as affected by 2015 Wisconsin Act 55, is  
16 amended to read:

17 **102.58 Decreased compensation.** If injury is caused by the failure of the  
18 employee to use safety devices that are provided in accordance with any statute, rule,  
19 or order of the department of safety and professional services and that are  
20 adequately maintained, and the use of which is reasonably enforced by the employer,  
21 or if injury results from the employee's failure to obey any reasonable rule adopted  
22 and reasonably enforced by the employer for the safety of the employee and of which  
23 the employee has notice, or if injury results from the intoxication of the employee by  
24 alcohol beverages, as defined in s. 125.02 (1), or use of a controlled substance, as  
25 defined in s. 961.01 (4), or a controlled substance analog, as defined in s. 961.01 (4m),

**SECTION 66**

1 the compensation and death benefit provided in this chapter shall be reduced by 15  
2 percent but the total reduction may not exceed \$15,000. If an employee violates the  
3 employer's policy concerning employee drug or alcohol use and is injured, and if that  
4 violation is causal to the employee's injury, no compensation or death benefits shall  
5 be payable to the injured employee or a dependent of the injured employee. Nothing  
6 in this section shall reduce or eliminate an employer's liability for incidental  
7 compensation under s. 102.42 (1) to (8) or drug treatment under s. 102.425.

8 **SECTION 67.** 102.75 (1) of the statutes, as affected by 2015 Wisconsin Act 55,  
9 is amended to read:

10 102.75 (1) The department shall assess upon and collect from each licensed  
11 worker's compensation insurance carrier and from each employer exempted under  
12 s. 102.28 (2) ~~by special order or by rule, (b) or (bm) from the duty to carry insurance~~  
13 under s. 102.28 (2) (a) the proportion of total costs and expenses incurred by the  
14 council on worker's compensation for travel and research and by the department, the  
15 division, and the commission in the administration of this chapter for the current  
16 fiscal year, plus any deficiencies in collections and anticipated costs from the  
17 previous fiscal year, that the total indemnity paid or payable under this chapter by  
18 each such carrier and exempt employer in worker's compensation cases initially  
19 closed during the preceding calendar year, other than for increased, double, or treble  
20 compensation, bore to the total indemnity paid in cases closed the previous calendar  
21 year under this chapter by all carriers and exempt employers, other than for  
22 increased, double, or treble compensation. The council on worker's compensation,  
23 the division, and the commission shall annually certify any costs and expenses for  
24 worker's compensation activities to the department at such time as the secretary  
25 requires.

1           **SECTION 68.** 102.75 (2) of the statutes, as affected by 2015 Wisconsin Act 55,  
2 is amended to read:

3           102.75 (2) The department shall require each licensed worker's compensation  
4 insurance carrier and employer exempted under s. 102.28 (2) (b) or (bm) from the  
5 duty to insure under s. 102.28 (2) (a) to make the payments required under sub. (1)  
6 for each fiscal year on such dates as the department prescribes. The department  
7 shall also require each licensed worker's compensation insurance carrier to make the  
8 payments required under sub. (1g) for each fiscal year on those dates. Each such  
9 payment shall be a sum equal to a proportionate share of the annual costs and  
10 expenses assessed upon each carrier and employer as estimated by the department.  
11 Interest shall accrue on amounts not paid within 30 days after the date prescribed  
12 by the department under this subsection at the rate of 1 percent per month. All  
13 interest payments received under this subsection shall be deposited in the fund  
14 established under s. 102.65.

15           **SECTION 69.** 102.75 (4) of the statutes is amended to read:

16           102.75 (4) From the appropriation under s. 20.445 (1) (ra), the department  
17 shall allocate the amounts that it collects in application fees from employers  
18 applying for exemption under s. 102.28 (2) (b) and the annual amount that it collects  
19 from employers that have been exempted under s. 102.28 (2) (b) to fund the activities  
20 of the department under s. 102.28 (2) (b) and (c) with respect to those employers.

21           **SECTION 70.** 102.81 (1) (a) of the statutes is amended to read:

22           102.81 (1) (a) If an employee of an uninsured employer, other than an employee  
23 who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for  
24 which the uninsured employer is liable under s. 102.03, the department or the  
25 department's reinsurer shall pay to or on behalf of the injured employee or to the

1 employee's dependents an amount equal to the compensation owed them by the  
2 uninsured employer under this chapter except penalties and interest due under ss.  
3 102.16 (3), 102.18 (1) (b) 3. and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

4 **SECTION 71.** 108.10 (4) of the statutes is amended to read:

5 108.10 (4) The department or the employing unit may commence action for the  
6 judicial review of a commission decision under this section, provided the department,  
7 or the employing unit, after exhausting the remedies provided under this section, has  
8 commenced such action within 30 days after such decision was mailed to the  
9 employing unit's last-known address. The scope of judicial review, and the manner  
10 thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In  
11 an action commenced by an employing unit under this section, the department shall  
12 be ~~an adverse party~~ a defendant under s. 102.23 (1) (a) and shall be named as a ~~party~~  
13 defendant in the summons and complaint commencing the action.

14 **SECTION 72.** 165.60 of the statutes is amended to read:

15 **165.60 Law enforcement.** The department of justice is authorized to enforce  
16 ss. 101.123 (2), (2m), and (8), 175.60 (17) (e), 944.30 (1m), 944.31, 944.33, 944.34,  
17 945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and, with respect to a false  
18 statement submitted or made under s. 175.60 (7) (b) or (15) (b) 2. or as described  
19 under s. 175.60 (17) (c), to enforce s. 946.32, is authorized to assist the department  
20 of workforce development in the investigation and prosecution of suspected  
21 fraudulent activity related to worker's compensation as provided in s. 102.125, and  
22 is invested with the powers conferred by law upon sheriffs and municipal police  
23 officers in the performance of those duties. This section does not deprive or relieve  
24 sheriffs, constables, and other local police officers of the power and duty to enforce  
25 those sections, and those officers shall likewise enforce those sections.

1           **SECTION 73. Nonstatutory provisions.**

2           (1) FRAUD INVESTIGATION AND PROSECUTION; DEPARTMENT OF JUSTICE POSITION  
3 AUTHORIZATION. The authorized FTE positions for the department of justice are  
4 increased by 1.0 PR–S position, to be funded from the appropriation under section  
5 20.455 (2) (k) of the statutes, for the purpose of investigating and prosecuting  
6 fraudulent activity related to worker’s compensation.

7           **SECTION 74. Fiscal changes.**

8           (1) REPLACEMENT OF UNINSURED EMPLOYERS FUND COMPUTER SYSTEM. In the  
9 schedule under section 20.005 (3) of the statutes for the appropriation to the  
10 department of workforce development under section 20.445 (1) (ra) of the statutes,  
11 as affected by the acts of 2015, the dollar amount for fiscal year 2015–16 is increased  
12 by \$200,000, and the dollar amount for fiscal year 2016–17 is increased by \$796,000,  
13 to replace the computer system used for the accounting of collections and other  
14 moneys received for the uninsured employers fund and of payments made from that  
15 fund.

16           **SECTION 75. Initial applicability.**

17           (1) JUDICIAL REVIEW OF WORKER’S COMPENSATION DECISIONS. The treatment of  
18 sections 102.23 (1) (a), (c), and (cm) and 108.10 (4) of the statutes first applies to an  
19 action for the review of an order or award of the labor and industry review  
20 commission commenced in circuit court on the effective date of this subsection.

21           (2) ADMINISTRATIVE REVIEW OF WORKER’S COMPENSATION DECISIONS. The treatment  
22 of section 102.18 (3) and (4) (b) of the statutes first applies to a petition for the review  
23 of a decision of a department of workforce development hearing examiner filed with  
24 the labor and industry review commission on the effective date of this subsection.





## Malaise, Gordon

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**From:** O'Malley, Jim T - DWD <Jim.OMalley@dwd.wisconsin.gov>  
**Sent:** Tuesday, December 15, 2015 2:52 PM  
**To:** Malaise, Gordon  
**Subject:** CHANGES TO WC AGREED UPON BILL APPROVED BY WCAC



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(1).pdf

On pages 19-20, Section 32, s.102.175 (3) (a) & (b). The Worker's Compensation Advisory Council (WCAC) agreed to the language that is to be used in s. 102.175 (3) (a) and (b). The language to be used in these paragraphs was included on the attachment that I forwarded to you on November 19, 2015. The WCAC had a difficult time in reaching agreement on the amendments to ch. 102, Stats., for this session. It is necessary for the language approved by the WCAC to be used in these paragraphs for the bill to go forward.

No other changes are requested on the draft bill.

Thank you very much for your assistance.