

**2015 DRAFTING REQUEST**

**Bill**

Received: **10/16/2014** Received By: **gmalaise**  
Wanted: **As time permits** Same as LRB:  
For: **Administration-Budget 6-8219** By/Representing: **Kirschbaum**  
May Contact: Drafter: **gmalaise**  
Subject: **Employ Priv - worker's comp** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email:  
Carbon copy (CC) to: **sbostatlanguage@webapps.wi.gov**

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**Pre Topic:**

DOA:.....Kirschbaum, BB0151 -

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**Topic:**

Work injury supplemental benefit and uninsured employers funds

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/16/2014	kfollett 10/22/2014		_____			
/1	gmalaise 1/28/2015		rschluet 10/22/2014	_____	srose 10/22/2014		State
/2		kfollett 1/28/2015	jfrantze 1/28/2015	_____	lparisi 1/28/2015		State

FE Sent For:

<END>

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/?	gmalaise 10/16/2014	kfollett 10/22/2014		_____			
/1		<i>12/5/14</i> rschlue 10/22/2014		_____	srose 10/22/2014		State

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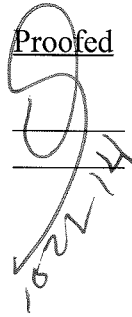
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See attached

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/?	gmalaise	llg 10/22	llg 10/22				

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Hanaman, Cathlene  
**Sent:** Wednesday, October 15, 2014 9:09 AM  
**To:** Duchek, Michael; Malaise, Gordon  
**Subject:** FW: Statutory Language Drafting Request - BB0151  
**Attachments:** StatLanguageChangesWISB\_UEF.pdf

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**From:** Bryan.Kirschbaum@wisconsin.gov [mailto:Bryan.Kirschbaum@wisconsin.gov]  
**Sent:** Wednesday, October 15, 2014 9:00 AM  
**To:** Hanaman, Cathlene  
**Cc:** Hynek, Sara - DOA; Kirschbaum, Bryan W - DOA; Connor, Christopher B - DOA  
**Subject:** Statutory Language Drafting Request - BB0151

Biennial Budget: 2015-17

Topic: Work Injury Supplemental Benefit Fund and Uninsured Employers Fund Legislative Fixes

Tracking Code: BB0151

SBO Team: EWD

SBO Analyst: Kirschbaum, Bryan  
Phone: 608-266-8219  
E-mail: [Bryan.Kirschbaum@wisconsin.gov](mailto:Bryan.Kirschbaum@wisconsin.gov)

Agency Acronym: DWD

Agency Number: 445

Priority: Medium

Intent:

Proposal providers several legislative fixes to both the Work Injury Supplemental Benefit Fund (WISB) and the Uninsured Employers Fund (UEF). Please see attached document for full list of changes for each fund program and proposed changes by the agency.

Attachments: True

Please send completed drafts to [SBOSatlanguage@webapps.wi.gov](mailto:SBOSatlanguage@webapps.wi.gov)

2/3  
WC 13-4097

## **Work Injury Supplemental Benefit Fund and Uninsured Employers Fund**

### **Issue**

The WISBF fund has suspended payments to employers and insurers due to solvency issues. Pending insurance carrier and self-insured employer supplemental reimbursements that are outstanding: \$3,873,837.

### **Background/Overview**

The WISBF has seven separate revenue sources, including revenue from fatalities involving no dependents. It also has five different benefit expenditures. These include

- Supplemental Benefits - The insurance carrier or self-insured employer is responsible -- for the duration of a permanently disabled claim -- to make claim payments at the rate that is in effect on the date of injury, with future increases paid out by WISBF.
- Barred Claims - Compensation paid to individuals who sustain occupational injuries or disease which are meritorious -- but barred by the 12 year statute of limitations.
- Second Injury Fund -- Acts as a pre-existing injury fund.
- Children's Fund - Benefits paid for the support of minor dependent children of employees who died as a result of a work related injury.
- Barred Traumatic Claims - These are traumatic injuries resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement.

### **Request**

Under this proposal the total amount of supplemental reimbursements requested by worker's compensation insurance companies will be added to the Department's annual operations assessment, the amount to be reimbursed will be paid by insurance companies as part of their annual assessment and the Department will pay reimbursements requested by the insurance companies from this revenue.

This proposal was part of the agreed upon bill in 2014.

3/3  
WC

## **Work Injury Supplemental Benefit Fund and Uninsured Employers Fund Legislative Fixes**

### **Analysis by the Department of Workforce Development - Worker's Compensation Division**

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

### **PAYMENT OF BENEFITS**

#### ***Work injury supplemental benefit fund - Supplemental benefits***

The proposed law change terminates reimbursement from the WISB fund for supplemental benefits paid by insurers beginning on the effective date of the proposed law change. For supplemental benefits paid by an insurer for an injury that occurs before January 1, 2016, the proposal provides that reimbursement of those benefits is from the worker's compensation operations fund and not from the WISB fund. To fund that reimbursement, the proposal requires DWD to collect from each licensed worker's compensation carrier the proportion of reimbursement approved by DWD for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable by the carrier in worker's compensation cases initially closed during the preceding calendar year bore to the total indemnity paid in cases closed the previous calendar year by all carriers. [By limiting reimbursement to a maximum of \$5,000,000 per calendar year,] reimbursement payments will be spread out (smoothed) over a course of time to mitigate the impact of reimbursement claims.

[ For injuries occurring on and after January 1, 2016 employers and insurance carriers will pay supplemental benefits. ]

## PROGRAM ADMINISTRATION

### ***Uninsured employers fund***

Under current law, if an employee of an uninsured employer suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund, or, if DWD obtains excess or stop-loss reinsurance from a reinsurer, the reinsurer pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer. This proposal requires DWD to pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the uninsured employers fund in the first instance, but provides that if the claim is not covered by excess or stop-loss reinsurance, the secretary of administration annually must transfer from the worker's compensation operations fund to the uninsured employers fund an amount equal to the amount by which payments from the uninsured employers fund on all such claims in the prior year are in excess of \$1,000,000 per claim, subject to a \$500,000 annual limit on the amount that the secretary of administration may transfer. If the amount to be transferred exceeds that \$500,000 annual limit, the secretary of administration must transfer the amount in excess of \$500,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$500,000 is transferred in full. By limiting a fund reimbursement request to \$500,000 per calendar year, reimbursement payments will be spread out (smoothed) over a course of time to mitigate the impact of year-to-year volatility if multiple catastrophic claims are made against the uninsured employers fund.

### **Proposed Law Change**

**Section 1.** 20.445 (1) (ra) of the statutes, is amended to read:



20.445 (1) (ra) *Worker's compensation operations fund; administration.* From the worker's compensation operations fund, the amounts in the schedule for the administration of the worker's compensation program by the department, for transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to the appropriation accounts under par. (rp) and sub. (2) (ra). All moneys received under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation, an amount not to exceed \$500,000 may be transferred in each fiscal year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the schedule under par. (rp) shall be transferred to the appropriation account under par. (rp), and the amount in the schedule under sub. (2) (ra) shall be transferred to the appropriation account under sub. (2) (ra).

**Section 2.** 102.44 (1) (ag) of the statutes is amended to read:

102.44 (1) (ag) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury that occurred prior to January 1, 2001, shall receive supplemental benefits that shall be payable ~~in the first instance~~ by the employer or, subject to par. (c), by the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. Those supplemental benefits shall be paid only for weeks of disability occurring after January 1, 2003, and shall continue during the period of such total disability subsequent to that date.

**Section 3.** 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act .... (this act), is amended to read:

102.44 (1) (ag) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury that occurred prior to January 1, 2001, shall receive supplemental benefits that shall be payable by the employer or, ~~subject to par. (c),~~ by the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. Those supplemental benefits shall be paid only for weeks of disability occurring after January 1, 2003, and shall continue during the period of such total disability subsequent to that date.

**Section 4.** 102.44 (1) (c) of the statutes is renumbered 102.44 (1) (c) 1. and amended to read:

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

**Section 5.** 102.44 (1) (c) 2. of the statutes is created to read:

102.44 (1) (c) 2. After the expiration of the deadline for filing a claim under subd. 1., the department shall determine the total amount of all claims filed by that deadline and shall use that total to determine the amount to be collected under s. 102.75 (1g) from each licensed worker's compensation insurance carrier, deposited in the worker's compensation operations

3. The

that the dept may pay under 4. b. 2. in

fund, and used to provide reimbursement to insurance carriers paying supplemental benefits under this subsection. The department shall pay claims for reimbursement approved by the department by no later than 16 months after the end of the year in which the claim was received by the department subject to the maximum amount of \$5,000,000 per calendar year under s. 102.75 (1g) 1. <sup>is \$5M</sup> ~~if the amount determined payable~~ <sup>is at under subd. 2.</sup> exceeds \$5,000,000 in a calendar year the department shall pay \$5,000,000 in the year in which the determination is made and, subject to <sup>amt payable</sup> the maximum of \$5,000,000 per calendar year, shall pay the excess in the next calendar year or in subsequent calendar years until that excess is paid in full. Reimbursement payment made under this section shall be paid in chronological order by the date <sup>on which</sup> a claim for reimbursement is received by the department.

**Section 6.** 102.44 (1) (c) 3. of the statutes is created to read:

102.44 (1) (c) 3. This paragraph does not apply to supplemental benefits paid for an injury that occurs on or after January 1, 2016.

**Section 7.** 102.65 (4) (intro.) of the statutes is amended to read:

102.65 (4) (intro.) The secretary shall monitor the cash balance in, and incurred losses to, the work injury supplemental benefit fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the work injury supplemental benefit fund on known claims exceed 85 percent of the cash balance in that fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the work injury supplemental benefit fund may become inadequate to fund all claims under ss. 102.44 (1) (e), 102.49, 102.59, and 102.66, the secretary shall file with the secretary of administration a certificate attesting that the cash balance in that fund is likely to become

inadequate to fund all claims under ss. 402.44 (1) (e), 102.49, 102.59, and 102.66 and specifying one of the following:

**Section 8.** 102.75 (1g) of the statutes is created to read:

102.75 (1g) 1. The department shall collect from each licensed worker's compensation carrier the proportion of reimbursement approved by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable under this chapter by the carrier in worker's compensation cases initially closed during the preceding calendar year, other than for increased, double, or treble compensation, bore to the total indemnity paid in cases closed the previous calendar year under this chapter by all carriers, other than for increased, double, or treble compensation. This subsection does not apply to claims for reimbursement under s. 102.44 (1) (c) 1. for supplemental benefits paid for injuries that occur on or after January 1, 2016.

2. The maximum amount that the department may collect under subd. 1. in a calendar year is \$5,000,000. If the amount <sup>collectible</sup> determined under subd. 1. is \$5,000,000 or less, the department shall collect that amount. If the amount <sup>current</sup> determined under subd. 1. exceeds \$5,000,000, the department shall collect \$5,000,000 in the <sup>current</sup> calendar year in which the determination is made and, subject to the maximum collection amount of \$5,000,000 per calendar year, shall transfer <sup>collect</sup> that excess to be collected in the next calendar year or in subsequent calendar years until that excess is collected in full.

**Section 9.** 102.75 (1m) of the statutes is amended to read:

102.75 (1m) The moneys collected under sub- subs. (1) and (1g) and under ss. 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a separate nonlapsible fund designated as the worker's compensation operations fund. Moneys in the fund may be

expended only as provided in s. 20.445 (1) (ra), (rb), and (rp) and (2) (ra) and may not be used for any other purpose of the state.

**Section 10.** 102.75 (2) of the statutes is amended to read:

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

**Section 11.** 102.80 (1) (f) of the statutes is created to read:

102.80 **(1)** (f) Amounts transferred to the uninsured employers fund from the appropriation under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

**Section 12.** 102.81 (1) (a) of the statutes is amended to read:

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

compensation owed them by the uninsured employer under this chapter except penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

**Section 13.** 102.81 (1) (c) of the statutes is created to read:

102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of \$1,000,000 from the uninsured employers fund in the first instance. If the claim is not covered by excess or stop-loss reinsurance under sub. (2), the secretary of administration shall transfer from the appropriation account under s. 20.445 (1) (ra) to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to the amount by which payments from the uninsured employers fund on the claim are in excess of \$1,000,000.

2. Each calendar year the department shall file with the secretary of administration a certificate setting forth the number of claims in excess of \$1,000,000 in the preceding year paid from the uninsured employers fund, the payments made from the uninsured employers fund on each such claim in the preceding year, and the total payments made from the uninsured employers fund on all such claims and, based on that information, the secretary of administration shall determine the amount to be transferred under subd. 1. in that calendar year.

3. The maximum amount that the secretary of administration may transfer under subd. 1. in a calendar year is \$500,000. If the amount determined under subd. 2. is \$500,000 or less, the secretary of administration shall transfer the amount determined under subd. 2. If the amount determined under subd. 2. exceeds \$500,000, the secretary of administration shall transfer \$500,000 in the calendar year in which the determination is made and, subject to the maximum transfer amount of \$500,000 per calendar year, shall transfer that excess in the next calendar year or in subsequent calendar years until that excess is transferred in full.

**Section 14. Fiscal changes.**

(1) Transfer to uninsured employers fund. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (ra) of the statutes, as affected by this act, the dollar amount is increased by \$500,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to provide funding for transfer to the uninsured employers fund in reimbursement of claims paid from that fund in excess of \$1,000,000 in 2014. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of workforce development under section 20.445 (1) (ra) of the statutes, as affected by this act, the dollar amount is increased by \$500,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect to provide funding for transfer to the uninsured employers fund in reimbursement of claims paid from that fund in excess of \$1,000,000 in 2015.

**Section 15. Initial applicability.**

(1) Transfer to uninsured employers fund. The treatment of sections 20.445 (1) (ra) (with respect to the transfer of moneys to the uninsured employers fund) and 102.81 (1) (c) of the statutes first applies to claims paid from the uninsured employers fund in 2014.

(2) Reimbursement of supplemental benefits paid. The renumbering and amendment of section 102.44 (1) (c) of the statutes and the creation of section 102.44 (1) (c) 2. and 3. of the statutes first apply to supplemental benefits paid under section 102.44 (1) (ag) of the statutes on the effective date of this subsection.

(3) Reimbursement of supplemental benefits. The treatment of section 102.44 (1) (ag) of the statutes (by section 3) takes effect on January 1, 2016.



State of Wisconsin  
2015 - 2016 LEGISLATURE

EN 12/16



LRB-0452/7  
GMM.....

DOA:.....Kirschbaum, BB0151 – Work injury supplemental benefit and uninsured employers funds

**FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION**

Don't Gen

1 **AN ACT ...; relating to:** the budget.

*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

Under current law, an injured employee who is receiving the maximum weekly worker's compensation benefit in effect at the time of the injury for permanent or continuous temporary total disability resulting from an injury that occurred before January 1, 2001, is entitled to receive certain supplemental benefits in addition to the employee's regular benefits. Those supplemental benefits are payable in the first instance by the employer or insurer, but the employer or insurer then is entitled to reimbursement for those supplemental benefits paid from the work injury supplemental benefit (WISB) fund, which is a fund that, among other things, is used to pay supplemental worker's compensation to injured employees with permanent total disability.

This bill terminates reimbursement from the WISB fund for supplemental benefits paid by an employer or insurer beginning on the effective date of the bill and terminates reimbursement altogether for supplemental benefits paid for an injury that occurs on or after January 1, 2016. For supplemental benefits paid by an insurer for an injury that occurs before January 1, 2016, the bill provides that reimbursement of those benefits is from the worker's compensation operations fund and not from the WISB fund. To fund that reimbursement, the bill requires DWD to collect from each licensed worker's compensation carrier the proportion of



reimbursement approved by DWD for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable by the carrier in worker's compensation cases initially closed during the preceding calendar year bore to the total indemnity paid in cases closed the previous calendar year by all carriers, subject to a \$5,000,000 annual limit on the amount that DWD may collect and pay in reimbursement. If the amount DWD determines to be collectible and payable exceeds that \$5,000,000 annual limit, DWD must collect and pay the amount in excess of \$5,000,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$5,000,000 is collected and paid in full.

Under current law, if an employee of an employer that is not insured for worker's compensation (uninsured employer) suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund, or, if DWD obtains excess or stop-loss reinsurance from a reinsurer, the reinsurer pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer.

This bill requires DWD to pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the uninsured employers fund in the first instance, but provides that if the claim is not covered by excess or stop-loss reinsurance, the secretary of administration annually must transfer from the worker's compensation operations fund to the uninsured employers fund an amount equal to the amount by which payments from the uninsured employers fund on all such claims in the prior year are in excess of \$1,000,000 per claim, subject to a \$500,000 annual limit on the amount that the secretary of administration may transfer. If the amount to be transferred exceeds that \$500,000 annual limit, the secretary of administration must transfer the amount in excess of \$500,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$500,000 is transferred in full.

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

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

1           SECTION 1. 20.445 (1) (ra) of the statutes is amended to read:  
2           20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
3 the worker's compensation operations fund, the amounts in the schedule for the  
4 administration of the worker's compensation program by the department, for  
5 transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to  
6 the appropriation accounts under par. (rp) and sub. (2) (ra). All moneys received

1 under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account.  
 2 From this appropriation, an amount not to exceed \$5,000 may be expended each  
 3 fiscal year for payment of expenses for travel and research by the council on worker's  
 4 compensation, an amount not to exceed \$500,000 may be transferred in each fiscal  
 5 year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the  
 6 schedule under par. (rp) shall be transferred to the appropriation account under par.  
 7 (rp), and the amount in the schedule under sub. (2) (ra) shall be transferred to the  
 8 appropriation account under sub. (2) (ra).

**History:** 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; 1999 a. 9 ss. 270, 458 to 478; 1999 a. 15, 32; 2001 a. 16, 35, 43, 104, 109; 2003 a. 33, 197; 2005 a. 25, 86, 172; 2005 a. 443 s. 265; 2007 a. 20, 59; 2009 a. 28, 180; 2011 a. 32, 123, 183, 198; 2013 a. 9, 20; 2013 a. 36 ss. 6p to 7, 236m; 2013 a. 57, 139.

9 **SECTION 2.** 102.44 (1) (ag) of the statutes is amended to read:

10 102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
 11 employee who is receiving compensation under this chapter for permanent total  
 12 disability or continuous temporary total disability more than 24 months after the  
 13 date of injury resulting from an injury that occurred prior to January 1, 2001, shall  
 14 receive supplemental benefits that shall be payable ~~in the first instance~~ by the  
 15 employer or, subject to par. (c), the employer's insurance carrier, or in the case of  
 16 benefits payable to an employee under s. 102.66, shall be paid by the department out  
 17 of the fund created under s. 102.65. Those supplemental benefits shall be paid only  
 18 for weeks of disability occurring after January 1, 2003, and shall continue during the  
 19 period of such total disability subsequent to that date.

**History:** 1971 c. 148; 1973 c. 150; 1975 a. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185; 2009 a. 177, 206; 2011 a. 183, 257.

20 **SECTION 3.** 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act ...

21 (this act), is amended to read:

1           102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
2 employee who is receiving compensation under this chapter for permanent total  
3 disability or continuous temporary total disability more than 24 months after the  
4 date of injury resulting from an injury that occurred prior to January 1, 2001, shall  
5 receive supplemental benefits that shall be payable by the employer or, ~~subject to par-~~  
6 ~~(e),~~ by the employer's insurance carrier, or in the case of benefits payable to an  
7 employee under s. 102.66, shall be paid by the department out of the fund created  
8 under s. 102.65. Those supplemental benefits shall be paid only for weeks of  
9 disability occurring after January 1, 2003, and shall continue during the period of  
10 such total disability subsequent to that date.

11           **SECTION 4.** 102.44 (1) (c) of the statutes is ~~is~~ renumbered 102.44 (1) (c) 1. and  
12 amended to read:

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

History: 1971 c. 148; 1973 c. 150; 1975 c. 147 ss. 33, 54, 57; 1975 c. 199; 1977 c. 195; 1979 c. 278; 1981 c. 92; 1983 a. 98; 1991 a. 85; 1995 a. 117; 2001 a. 37; 2003 a. 144; 2005 a. 172; 2007 a. 185; 2009 a. 177, 206; 2011 a. 183, 257.

22           **SECTION 5.** 102.44 (1) (c) 2. of the statutes is created to read:

23           102.44 (1) (c) 2. After the expiration of the deadline for filing a claim under  
24 subd. 1., the department shall determine the total amount of all claims filed by that

1 deadline and shall use that total to determine the amount to be collected under s.  
2 102.75 (1g) from each licensed worker's compensation insurance carrier, deposited  
3 in the worker's compensation operations fund, and used to provide reimbursement  
4 to insurance carriers paying supplemental benefits under this subsection. Subject  
5 to subd. 3., the department shall pay a claim for reimbursement approved by the  
6 department by no later than 16 months after the end of the year in which the claim  
7 was received by the department.

8 **SECTION 6.** 102.44 (1) (c) 3. of the statutes is created to read:

9 102.44 (1) (c) 3. The maximum amount that the department may pay under  
10 subd. 2. in a calendar year is \$5,000,000. If the amount determined payable under  
11 subd. 2. in a calendar year is \$5,000,000 or less, the department shall pay that  
12 amount. If the amount determined payable under subd. 2. in a calendar year exceeds  
13 \$5,000,000, the department shall pay \$5,000,000 in the year in which the  
14 determination is made and, subject to the maximum amount payable of \$5,000,000  
15 per calendar year, shall pay the excess in the next calendar year or in subsequent  
16 calendar years until that excess is paid in full. The department shall pay claims for  
17 reimbursement under subd. 2. in the chronological order in which those claims are  
18 received.

19 **SECTION 7.** 102.44 (1) (c) 4. of the statutes is created to read:

20 102.44 (1) (c) 4. This paragraph does not apply to supplemental benefits paid  
21 for an injury that occurs on or after January 1, 2016.

22 **SECTION 8.** 102.65 (4) (intro.) of the statutes is amended to read:

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

1 to the work injury supplemental benefit fund on known claims exceed 85 percent of  
2 the cash 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) (e), 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) (e),  
9 102.49, 102.59, and 102.66 and specifying one of the following:

History: 1975 c. 147; 1977 c. 29; 1981 c. 20 s. 2202 (28) (a); 1983 a. 98 s. 31; 1989 a. 64; 1991 a. 174; 1995 a. 117; 2005 a. 172; 2007 a. 185; 2011 a. 183.

10 **SECTION 9.** 102.75 (1g) of the statutes is created to read:

11 102.75 (1g) (a) Subject to par. (b), the department shall collect from each  
12 licensed worker's compensation carrier the proportion of reimbursement approved  
13 by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year  
14 before the previous year that the total indemnity paid or payable under this chapter  
15 by the carrier in worker's compensation cases initially closed during the preceding  
16 calendar year, other than for increased, double, or treble compensation, bore to the  
17 total indemnity paid in cases closed the previous calendar year under this chapter  
18 by all carriers, other than for increased, double, or treble compensation.

19 (b) The maximum amount that the department may collect under par. (a) in a  
20 calendar year is \$5,000,000. If the amount determined collectible under par. (a) in  
21 a calendar year is \$5,000,000 or less, the department shall collect that amount. If  
22 the amount determined collectible under par. (a) in a calendar year exceeds  
23 \$5,000,000, the department shall collect \$5,000,000 in the year in which the  
24 determination is made and, subject to the maximum amount collectible of \$5,000,000

1 per calendar year, shall collect the excess in the next calendar year or in subsequent  
2 calendar years until that excess is collected in full.

3 (c) This subsection does not apply to claims for reimbursement under s. 102.44  
4 (1) (c) 1. for supplemental benefits paid for injuries that occur on or after January 1,  
5 2016.

6 **SECTION 10.** 102.75 (1m) of the statutes is amended to read:

7 102.75 (1m) The moneys collected under sub. subs. (1) and (1g) and under ss.  
8 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a  
9 separate nonlapsible fund designated as the worker's compensation operations fund.  
10 Moneys in the fund may be expended only as provided in s. 20.445 (1) (ra), (rb), and  
11 (rp) and (2) (ra) and may not be used for any other purpose of the state.

12 **History:** 1975 c. 39; 1975 c. 147 s. 54; 1977 c. 195, 418; 1981 c. 20, 92; 1987 a. 27; 1991 a. 85; 1995 a. 117; 2005 a. 172; 2009 a. 206; 2013 a. 20.

12 **SECTION 11.** 102.75 (2) of the statutes is amended to read:

13 102.75 (2) The department shall require ~~that payments for costs and expenses~~  
14 ~~for each fiscal year shall be made on such dates as the department prescribes by each~~  
15 ~~licensed worker's compensation insurance carrier and employer exempted under s.~~  
16 102.28 (2) (b) from the duty to insure under s. 102.28 (2) (a) to make the payments  
17 required under sub. (1) for each fiscal year on such dates as the department  
18 prescribes. The department shall also require each licensed worker's compensation  
19 insurance carrier to make the payments required under sub. (1g) for each fiscal year  
20 on those dates. Each such payment shall be a sum equal to a proportionate share of  
21 the annual costs and expenses assessed upon each carrier and employer as estimated  
22 by the department. Interest shall accrue on amounts not paid within 30 days after  
23 the date prescribed by the department under this subsection at the rate of 1 percent

1 per month. All interest payments received under this subsection shall be deposited  
2 in the fund established under s. 102.65.

3 **History:** 1975 c. 39; 1975 c. 147 s. 54; 1977 c. 195, 418; 1981 c. 20, 92; 1987 a. 27; 1991 a. 85; 1995 a. 117; 2005 a. 172; 2009 a. 206; 2013 a. 20.

4 **SECTION 12.** 102.80 (1) (f) of the statutes is created to read:

5 102.80 (1) (f) Amounts transferred to the uninsured employers fund from the  
6 appropriation <sup>account</sup> under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

7 **SECTION 13.** 102.81 (1) (c) of the statutes is created to read:

8 102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of  
9 \$1,000,000 from the uninsured employers fund in the first instance. If the claim is  
10 not covered by excess or stop-loss reinsurance under sub. (2), the secretary of  
11 administration shall transfer from the appropriation <sup>account</sup> under s. 20.445 (1) (ra)  
12 to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to  
13 the amount by which payments from the uninsured employers fund on the claim are  
14 in excess of \$1,000,000.

15 2. Each calendar year the department shall file with the secretary of  
16 administration a certificate setting forth the number of claims in excess of  
17 \$1,000,000 in the preceding year paid from the uninsured employers fund, the  
18 payments made from the uninsured employers fund on each such claim in the  
19 preceding year, and the total payments made from the uninsured employers fund on  
20 all such claims and, based on that information, the secretary of administration shall  
21 determine the amount to be transferred under subd. 1. in that calendar year.

22 3. The maximum amount that the secretary of administration may transfer  
23 under subd. 1. in a calendar year is \$500,000. If the amount determined under subd.  
24 2. is \$500,000 or less, the secretary of administration shall transfer the amount  
determined under subd. 2. If the amount determined under subd. 2. exceeds

1 \$500,000, the secretary of administration shall transfer \$500,000 in the calendar  
2 year in which the determination is made and, subject to the maximum transfer  
3 amount of \$500,000 per calendar year, shall transfer that excess in the next calendar  
4 year or in subsequent calendar years until that excess is transferred in full.

5 **SECTION 9351. Initial applicability; Workforce Development.**

6 (1) TRANSFER TO WORKER'S COMPENSATION UNINSURED EMPLOYERS FUND. The  
7 treatment of sections 20.445 (1) (ra) and 102.81 (1) (c) of the statutes first applies to  
8 claims paid from the uninsured employers fund in 2014.

9 (2) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS PAID.  
10 The renumbering and amendment of section 102.44 (1) (c) of the statutes and the  
11 creation of section 102.44 (1) (c) 2. and 3. of the statutes first apply to supplemental  
12 benefits paid under section 102.44 (1) (ag) of the statutes on the effective date of this  
13 subsection.

14 **SECTION 9451. Effective dates; Workforce Development.**

15 (1) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS. The  
16 treatment of section 102.44 (1) (ag) of the statutes (by SECTION #) takes effect on  
17 January 1, 2016.

18 (END)





State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0452/1

GMM:kjf:rs

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IN 1128  
DNOTE

DOA:.....Kirschbaum, BB0151 - Work injury supplemental benefit and uninsured employers funds

**FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION**

Don't Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

Under current law, an injured employee who is receiving the maximum weekly worker's compensation benefit in effect at the time of the injury for permanent or continuous temporary total disability resulting from an injury that occurred before January 1, 2001, is entitled to receive certain supplemental benefits in addition to the employee's regular benefits. Those supplemental benefits are payable in the first instance by the employer or insurer, but the employer or insurer then is entitled to reimbursement for those supplemental benefits paid from the work injury supplemental benefit (WISB) fund, which is a fund that, among other things, is used to pay supplemental worker's compensation to injured employees with permanent total disability.

This bill terminates reimbursement from the WISB fund for supplemental benefits paid by an employer or insurer beginning on the effective date of the bill and terminates reimbursement altogether for supplemental benefits paid for an injury that occurs on or after January 1, 2016. For supplemental benefits paid by an insurer for an injury that occurs before January 1, 2016, the bill provides that reimbursement of those benefits is from the worker's compensation operations fund and not from the WISB fund. To fund that reimbursement, the bill requires DWD to collect from each licensed worker's compensation carrier the proportion of

reimbursement approved by DWD for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable by the carrier in worker's compensation cases initially closed during the preceding calendar year bore to the total indemnity paid in cases closed the previous calendar year by all carriers, subject to a \$5,000,000 annual limit on the amount that DWD may collect and pay in reimbursement. If the amount DWD determines to be collectible and payable exceeds that \$5,000,000 annual limit, DWD must collect and pay the amount in excess of \$5,000,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$5,000,000 is collected and paid in full.

Under current law, if an employee of an employer that is not insured for worker's compensation (uninsured employer) suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund, or, if DWD obtains excess or stop-loss reinsurance from a reinsurer, the reinsurer pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer.

This bill requires DWD to pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the uninsured employers fund in the first instance, but provides that if the claim is not covered by excess or stop-loss reinsurance, the secretary of administration annually must transfer from the worker's compensation operations fund to the uninsured employers fund an amount equal to the amount by which payments from the uninsured employers fund on all such claims in the prior year are in excess of \$1,000,000 per claim, subject to a \$500,000 annual limit on the amount that the secretary of administration may transfer. If the amount to be transferred exceeds that \$500,000 annual limit, the secretary of administration must transfer the amount in excess of \$500,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$500,000 is transferred in full.

For further information see the *state* 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 is amended to read:  
2           20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
3 the worker's compensation operations fund, the amounts in the schedule for the  
4 administration of the worker's compensation program by the department, for  
5 transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to  
6 the appropriation accounts under par. (rp) and sub. (2) (ra). All moneys received

1 under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account.  
2 From this appropriation, an amount not to exceed \$5,000 may be expended each  
3 fiscal year for payment of expenses for travel and research by the council on worker's  
4 compensation, an amount not to exceed \$500,000 may be transferred in each fiscal  
5 year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the  
6 schedule under par. (rp) shall be transferred to the appropriation account under par.  
7 (rp), and the amount in the schedule under sub. (2) (ra) shall be transferred to the  
8 appropriation account under sub. (2) (ra).

9 **SECTION 2.** 102.44 (1) (ag) of the statutes is amended to read:

10 102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
11 employee who is receiving compensation under this chapter for permanent total  
12 disability or continuous temporary total disability more than 24 months after the  
13 date of injury resulting from an injury that occurred prior to January 1, 2001, shall  
14 receive supplemental benefits that shall be payable ~~in the first instance~~ by the  
15 employer or, subject to par. (c), the employer's insurance carrier, or in the case of  
16 benefits payable to an employee under s. 102.66, shall be paid by the department out  
17 of the fund created under s. 102.65. Those supplemental benefits shall be paid only  
18 for weeks of disability occurring after January 1, 2003, and shall continue during the  
19 period of such total disability subsequent to that date.

20 ~~**SECTION 3.** 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act ....~~

21 ~~(this act), is amended to read:~~

22 ~~102.44 (1) (ag) Notwithstanding any other provision of this chapter, every~~  
23 ~~employee who is receiving compensation under this chapter for permanent total~~  
24 ~~disability or continuous temporary total disability more than 24 months after the~~  
25 ~~date of injury resulting from an injury that occurred prior to January 1, 2001, shall~~

1 ~~receive supplemental benefits that shall be payable by the employer or, subject to par-~~  
 2 ~~(e), by the employer's insurance carrier, or in the case of benefits payable to an~~  
 3 ~~employee under s. 102.66, shall be paid by the department out of the fund created~~  
 4 ~~under s. 102.65. Those supplemental benefits shall be paid only for weeks of~~  
 5 ~~disability occurring after January 1, 2003, and shall continue during the period of~~  
 6 ~~such total disability subsequent to that date.~~

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4-6  
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7

7 **SECTION 4.** 102.44 (1) (c) of the statutes is renumbered 102.44 (1) (c) 1. and  
 8 amended to read:

9 102.44 (1) (c) 1. ~~Subject to any certificate filed under s. 102.65 (4), an employer~~  
 10 ~~or~~ An insurance carrier paying the supplemental benefits required under this  
 11 subsection shall be entitled to reimbursement for each such case from the ~~fund~~  
 12 ~~established by s. 102.65~~ worker's compensation operations fund, commencing one  
 13 year after the date of the first payment of those benefits and annually thereafter  
 14 while those payments continue. To receive reimbursement under this paragraph, an  
 15 ~~employer or~~ insurance carrier must file a claim for that reimbursement with the  
 16 department by no later than 12 months after the end of the year in which the  
 17 supplemental benefits were paid and the claim must be approved by the department.

18 **SECTION 5.** 102.44 (1) (c) 2. of the statutes is created to read:

19 102.44 (1) (c) 2. After the expiration of the deadline for filing a claim under  
 20 subd. 1., the department shall determine the total amount of all claims filed by that  
 21 deadline and shall use that total to determine the amount to be collected under s.  
 22 102.75 (1g) from each licensed worker's compensation insurance carrier, deposited  
 23 in the worker's compensation operations fund, and used to provide reimbursement  
 24 to insurance carriers paying supplemental benefits under this subsection. Subject  
 25 to subd. 3., the department shall pay a claim for reimbursement approved by the

1 department by no later than 16 months after the end of the year in which the claim  
2 was received by the department.

3 **SECTION 6.** 102.44 (1) (c) 3. of the statutes is created to read:

4 102.44 (1) (c) 3. The maximum amount that the department may pay under  
5 subd. 2. in a calendar year is \$5,000,000. If the amount determined payable under  
6 subd. 2. in a calendar year is \$5,000,000 or less, the department shall pay that  
7 amount. If the amount determined payable under subd. 2. in a calendar year exceeds  
8 \$5,000,000, the department shall pay \$5,000,000 in the year in which the  
9 determination is made and, subject to the maximum amount payable of \$5,000,000  
10 per calendar year, shall pay the excess in the next calendar year or in subsequent  
11 calendar years until that excess is paid in full. The department shall pay claims for  
12 reimbursement under subd. 2. in the chronological order in which those claims are  
13 received.

14 **SECTION 7.** 102.44 (1) (c) 4. of the statutes is created to read:

15 102.44 (1) (c) 4. This paragraph does not apply to supplemental benefits paid  
16 for an injury that occurs on or after January 1, 2016.

17 **SECTION 8.** 102.65 (4) (intro.) of the statutes is amended to read:

18 102.65 (4) (intro.) The secretary shall monitor the cash balance in, and incurred  
19 losses to, the work injury supplemental benefit fund using generally accepted  
20 actuarial principles. If the secretary determines that the expected ultimate losses  
21 to the work injury supplemental benefit fund on known claims exceed 85 percent of  
22 the cash balance in that fund, the secretary shall consult with the council on worker's  
23 compensation. If the secretary, after consulting with the council on worker's  
24 compensation, determines that there is a reasonable likelihood that the cash balance  
25 in the work injury supplemental benefit fund may become inadequate to fund all

1 claims under ss. ~~102.44 (1) (e)~~, 102.49, 102.59, and 102.66, the secretary shall file  
2 with the secretary of administration a certificate attesting that the cash balance in  
3 that fund is likely to become inadequate to fund all claims under ss. ~~102.44 (1) (e)~~,  
4 102.49, 102.59, and 102.66 and specifying one of the following:

5 **SECTION 9.** 102.75 (1g) of the statutes is created to read:

6 102.75 (1g) (a) Subject to par. (b), the department shall collect from each  
7 licensed worker's compensation carrier the proportion of reimbursement approved  
8 by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year  
9 before the previous year that the total indemnity paid or payable under this chapter  
10 by the carrier in worker's compensation cases initially closed during the preceding  
11 calendar year, other than for increased, double, or treble compensation, bore to the  
12 total indemnity paid in cases closed the previous calendar year under this chapter  
13 by all carriers, other than for increased, double, or treble compensation.

14 (b) The maximum amount that the department may collect under par. (a) in a  
15 calendar year is \$5,000,000. If the amount determined collectible under par. (a) in  
16 a calendar year is \$5,000,000 or less, the department shall collect that amount. If  
17 the amount determined collectible under par. (a) in a calendar year exceeds  
18 \$5,000,000, the department shall collect \$5,000,000 in the year in which the  
19 determination is made and, subject to the maximum amount collectible of \$5,000,000  
20 per calendar year, shall collect the excess in the next calendar year or in subsequent  
21 calendar years until that excess is collected in full.

22 (c) This subsection does not apply to claims for reimbursement under s. 102.44  
23 (1) (c) 1. for supplemental benefits paid for injuries that occur on or after January 1,  
24 2016.

25 **SECTION 10.** 102.75 (1m) of the statutes is amended to read:

1           102.75 (1m) The moneys collected under ~~sub.~~ subs. (1) and (1g) and under ss.  
2           102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a  
3           separate nonlapsible fund designated as the worker's compensation operations fund.  
4           Moneys in the fund may be expended only as provided in s. 20.445 (1) (ra), (rb), and  
5           (rp) and (2) (ra) and may not be used for any other purpose of the state.

6           **SECTION 11.** 102.75 (2) of the statutes is amended to read:

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

20          **SECTION 12.** 102.80 (1) (f) of the statutes is created to read:

21          102.80 (1) (f) Amounts transferred to the uninsured employers fund from the  
22          appropriation account under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

23          **SECTION 13.** 102.81 (1) (c) of the statutes is created to read:

24          102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of  
25          \$1,000,000 from the uninsured employers fund in the first instance. If the claim is

1 not covered by excess or stop-loss reinsurance under sub. (2), the secretary of  
2 administration shall transfer from the appropriation account under s. 20.445 (1) (ra)  
3 to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to  
4 the amount by which payments from the uninsured employers fund on the claim are  
5 in excess of \$1,000,000.

6 2. Each calendar year the department shall file with the secretary of  
7 administration a certificate setting forth the number of claims in excess of  
8 \$1,000,000 in the preceding year paid from the uninsured employers fund, the  
9 payments made from the uninsured employers fund on each such claim in the  
10 preceding year, and the total payments made from the uninsured employers fund on  
11 all such claims and, based on that information, the secretary of administration shall  
12 determine the amount to be transferred under subd. 1. in that calendar year.

13 3. The maximum amount that the secretary of administration may transfer  
14 under subd. 1. in a calendar year is \$500,000. If the amount determined under subd.  
15 2. is \$500,000 or less, the secretary of administration shall transfer the amount  
16 determined under subd. 2. If the amount determined under subd. 2. exceeds  
17 \$500,000, the secretary of administration shall transfer \$500,000 in the calendar  
18 year in which the determination is made and, subject to the maximum transfer  
19 amount of \$500,000 per calendar year, shall transfer that excess in the next calendar  
20 year or in subsequent calendar years until that excess is transferred in full.

21 **SECTION 9351. Initial applicability; Workforce Development.**

22 <sup>amendment</sup> (I) **TRANSFER TO WORKER'S COMPENSATION UNINSURED EMPLOYERS FUND.** The  
23 <sup>apply</sup> ~~treatment~~ of sections 20.445 (1) (ra) and 102.81 (1) (c) of the statutes first applies to  
24 claims paid from the uninsured employers fund in 2014.

*of the statutes and the creation of*



1           (2) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS PAID.  
2           The renumbering and amendment of section 102.44 (1) (c) of the statutes and the  
3           creation of section 102.44 (1) (c) 2. and 3. of the statutes first apply to supplemental  
4           benefits paid under section 102.44 (1) (ag) of the statutes on the effective date of this  
5           subsection.

6           **SECTION 9451. Effective dates; Workforce Development.**

7           (1) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS. The  
8           treatment of section 102.44 (1) (ag) (by SECTION 8) of the statutes takes effect on  
9           January 1, 2016.

10

(END)

2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0452/2ins  
GMM.....

create  
a.r. (a) (INSERT 4-6)

1 SECTION 1. 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act ...  
2 (this act), is amended to read:  
3 102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
4 employee who is receiving compensation under this chapter for permanent total  
5 disability or continuous temporary total disability more than 24 months after the  
6 date of injury resulting from an injury that occurred prior to January 1, 2001, shall  
7 receive supplemental benefits that shall be payable by the employer or, subject to par.  
8 (e), <sup>by</sup> the employer's insurance carrier, or in the case of benefits payable to an  
9 employee under s. 102.66, shall be paid by the department office out of the fund  
10 created under s. 102.65. Those supplemental benefits shall be paid only for weeks  
11 of disability occurring after January 1, 2003, and shall continue during the period  
12 of such total disability subsequent to that date.

X

\*\*\*NOTE: This is reconciled s. 102.44 (1) (ag). This SECTION has been affected by drafts with the following LRB numbers: -0452/1 and -0610/P2.

(INSERT 4-6)  
End of

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0452/2dn

GMM...:G...  
*GF*

*Date*

Bryan:

*✓*  
This draft reconciles LRB-0452/1 and LRB-0610/P2. All of these drafts should continue to appear in the compiled bill. *✓*

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

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0452/2dn  
GMM:kjf:jf

January 28, 2015

Bryan:

This draft reconciles LRB-0452/1 and LRB-0610/P2. All of these drafts should continue to appear in the compiled bill.

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



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-0452/2  
GMM:kjf:jf

DOA:.....Kirschbaum, BB0151 – Work injury supplemental benefit and  
uninsured employers funds

**FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION**

1 **AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

Under current law, an injured employee who is receiving the maximum weekly worker's compensation benefit in effect at the time of the injury for permanent or continuous temporary total disability resulting from an injury that occurred before January 1, 2001, is entitled to receive certain supplemental benefits in addition to the employee's regular benefits. Those supplemental benefits are payable in the first instance by the employer or insurer, but the employer or insurer then is entitled to reimbursement for those supplemental benefits paid from the work injury supplemental benefit (WISB) fund, which is a fund that, among other things, is used to pay supplemental worker's compensation to injured employees with permanent total disability.

This bill terminates reimbursement from the WISB fund for supplemental benefits paid by an employer or insurer beginning on the effective date of the bill and terminates reimbursement altogether for supplemental benefits paid for an injury that occurs on or after January 1, 2016. For supplemental benefits paid by an insurer for an injury that occurs before January 1, 2016, the bill provides that reimbursement of those benefits is from the worker's compensation operations fund and not from the WISB fund. To fund that reimbursement, the bill requires DWD to collect from each licensed worker's compensation carrier the proportion of

reimbursement approved by DWD for supplemental benefits paid in the year before the previous year that the total indemnity paid or payable by the carrier in worker's compensation cases initially closed during the preceding calendar year bore to the total indemnity paid in cases closed the previous calendar year by all carriers, subject to a \$5,000,000 annual limit on the amount that DWD may collect and pay in reimbursement. If the amount DWD determines to be collectible and payable exceeds that \$5,000,000 annual limit, DWD must collect and pay the amount in excess of \$5,000,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$5,000,000 is collected and paid in full.

Under current law, if an employee of an employer that is not insured for worker's compensation (uninsured employer) suffers an injury for which the uninsured employer is liable, DWD, from the uninsured employers fund, or, if DWD obtains excess or stop-loss reinsurance from a reinsurer, the reinsurer pays benefits to the injured employee that are equal to the worker's compensation owed by the uninsured employer.

This bill requires DWD to pay a claim of an employee of an uninsured employer in excess of \$1,000,000 from the uninsured employers fund in the first instance, but provides that if the claim is not covered by excess or stop-loss reinsurance, the secretary of administration annually must transfer from the worker's compensation operations fund to the uninsured employers fund an amount equal to the amount by which payments from the uninsured employers fund on all such claims in the prior year are in excess of \$1,000,000 per claim, subject to a \$500,000 annual limit on the amount that the secretary of administration may transfer. If the amount to be transferred exceeds that \$500,000 annual limit, the secretary of administration must transfer the amount in excess of \$500,000 in the next calendar year or in subsequent calendar years until the amount in excess of \$500,000 is transferred in full.

For further information see the *state* 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 is amended to read:  
2           20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
3 the worker's compensation operations fund, the amounts in the schedule for the  
4 administration of the worker's compensation program by the department, for  
5 transfer to the uninsured employers fund under s. 102.81 (1) (c), and for transfer to  
6 the appropriation accounts under par. (rp) and sub. (2) (ra). All moneys received

1 under ss. 102.28 (2) (b) and 102.75 shall be credited to this appropriation account.  
2 From this appropriation, an amount not to exceed \$5,000 may be expended each  
3 fiscal year for payment of expenses for travel and research by the council on worker's  
4 compensation, an amount not to exceed \$500,000 may be transferred in each fiscal  
5 year to the uninsured employers fund under s. 102.81 (1) (c), the amount in the  
6 schedule under par. (rp) shall be transferred to the appropriation account under par.  
7 (rp), and the amount in the schedule under sub. (2) (ra) shall be transferred to the  
8 appropriation account under sub. (2) (ra).

9 **SECTION 2.** 102.44 (1) (ag) of the statutes is amended to read:

10 102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
11 employee who is receiving compensation under this chapter for permanent total  
12 disability or continuous temporary total disability more than 24 months after the  
13 date of injury resulting from an injury that occurred prior to January 1, 2001, shall  
14 receive supplemental benefits that shall be payable ~~in the first instance~~ by the  
15 employer or, subject to par. (c), the employer's insurance carrier, or in the case of  
16 benefits payable to an employee under s. 102.66, shall be paid by the department out  
17 of the fund created under s. 102.65. Those supplemental benefits shall be paid only  
18 for weeks of disability occurring after January 1, 2003, and shall continue during the  
19 period of such total disability subsequent to that date.

20 **SECTION 3.** 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act ....  
21 (this act), is amended to read:

22 102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
23 employee who is receiving compensation under this chapter for permanent total  
24 disability or continuous temporary total disability more than 24 months after the  
25 date of injury resulting from an injury that occurred prior to January 1, 2001, shall

1 receive supplemental benefits that shall be payable by the employer or, ~~subject to par-~~  
2 (e), the employer's insurance carrier, or in the case of benefits payable to an employee  
3 under s. 102.66, shall be paid by the ~~department~~ office out of the fund created under  
4 s. 102.65. Those supplemental benefits shall be paid only for weeks of disability  
5 occurring after January 1, 2003, and shall continue during the period of such total  
6 disability subsequent to that date.

\*\*\*\*NOTE: This is reconciled s. 102.44 (1) (ag). This SECTION has been affected by  
drafts with the following LRB numbers: -0452/1 and -0610/P2.

7 SECTION 4. 102.44 (1) (c) of the statutes is renumbered 102.44 (1) (c) 1. and  
8 amended to read:

9 102.44 (1) (c) 1. ~~Subject to any certificate filed under s. 102.65 (4), an employer~~  
10 ~~or~~ An insurance carrier paying the supplemental benefits required under this  
11 subsection shall be entitled to reimbursement for each such case from the fund  
12 ~~established by s. 102.65~~ worker's compensation operations fund, commencing one  
13 year after the date of the first payment of those benefits and annually thereafter  
14 while those payments continue. To receive reimbursement under this paragraph, an  
15 ~~employer or~~ insurance carrier must file a claim for that reimbursement with the  
16 department by no later than 12 months after the end of the year in which the  
17 supplemental benefits were paid and the claim must be approved by the department.

18 SECTION 5. 102.44 (1) (c) 2. of the statutes is created to read:

19 102.44 (1) (c) 2. After the expiration of the deadline for filing a claim under  
20 subd. 1., the department shall determine the total amount of all claims filed by that  
21 deadline and shall use that total to determine the amount to be collected under s.  
22 102.75 (1g) from each licensed worker's compensation insurance carrier, deposited  
23 in the worker's compensation operations fund, and used to provide reimbursement



1 to insurance carriers paying supplemental benefits under this subsection. Subject  
2 to subd. 3., the department shall pay a claim for reimbursement approved by the  
3 department by no later than 16 months after the end of the year in which the claim  
4 was received by the department.

5 **SECTION 6.** 102.44 (1) (c) 3. of the statutes is created to read:

6 102.44 (1) (c) 3. The maximum amount that the department may pay under  
7 subd. 2. in a calendar year is \$5,000,000. If the amount determined payable under  
8 subd. 2. in a calendar year is \$5,000,000 or less, the department shall pay that  
9 amount. If the amount determined payable under subd. 2. in a calendar year exceeds  
10 \$5,000,000, the department shall pay \$5,000,000 in the year in which the  
11 determination is made and, subject to the maximum amount payable of \$5,000,000  
12 per calendar year, shall pay the excess in the next calendar year or in subsequent  
13 calendar years until that excess is paid in full. The department shall pay claims for  
14 reimbursement under subd. 2. in the chronological order in which those claims are  
15 received.

16 **SECTION 7.** 102.44 (1) (c) 4. of the statutes is created to read:

17 102.44 (1) (c) 4. This paragraph does not apply to supplemental benefits paid  
18 for an injury that occurs on or after January 1, 2016.

19 **SECTION 8.** 102.65 (4) (intro.) of the statutes is amended to read:

20 102.65 (4) (intro.) The secretary shall monitor the cash balance in, and incurred  
21 losses to, the work injury supplemental benefit fund using generally accepted  
22 actuarial principles. If the secretary determines that the expected ultimate losses  
23 to the work injury supplemental benefit fund on known claims exceed 85 percent of  
24 the cash balance in that fund, the secretary shall consult with the council on worker's  
25 compensation. If the secretary, after consulting with the council on worker's

1 compensation, determines that there is a reasonable likelihood that the cash balance  
2 in the work injury supplemental benefit fund may become inadequate to fund all  
3 claims under ss. ~~102.44 (1) (e)~~, 102.49, 102.59, and 102.66, the secretary shall file  
4 with the secretary of administration a certificate attesting that the cash balance in  
5 that fund is likely to become inadequate to fund all claims under ss. ~~102.44 (1) (e)~~,  
6 102.49, 102.59, and 102.66 and specifying one of the following:

7 **SECTION 9.** 102.75 (1g) of the statutes is created to read:

8 102.75 (1g) (a) Subject to par. (b), the department shall collect from each  
9 licensed worker's compensation carrier the proportion of reimbursement approved  
10 by the department under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year  
11 before the previous year that the total indemnity paid or payable under this chapter  
12 by the carrier in worker's compensation cases initially closed during the preceding  
13 calendar year, other than for increased, double, or treble compensation, bore to the  
14 total indemnity paid in cases closed the previous calendar year under this chapter  
15 by all carriers, other than for increased, double, or treble compensation.

16 (b) The maximum amount that the department may collect under par. (a) in a  
17 calendar year is \$5,000,000. If the amount determined collectible under par. (a) in  
18 a calendar year is \$5,000,000 or less, the department shall collect that amount. If  
19 the amount determined collectible under par. (a) in a calendar year exceeds  
20 \$5,000,000, the department shall collect \$5,000,000 in the year in which the  
21 determination is made and, subject to the maximum amount collectible of \$5,000,000  
22 per calendar year, shall collect the excess in the next calendar year or in subsequent  
23 calendar years until that excess is collected in full.

1 (c) This subsection does not apply to claims for reimbursement under s. 102.44  
2 (1) (c) 1. for supplemental benefits paid for injuries that occur on or after January 1,  
3 2016.

4 **SECTION 10.** 102.75 (1m) of the statutes is amended to read:

5 102.75 (1m) The moneys collected under ~~sub.~~ subs. (1) and (1g) and under ss.  
6 102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a  
7 separate nonlapsible fund designated as the worker's compensation operations fund.  
8 Moneys in the fund may be expended only as provided in s. 20.445 (1) (ra), (rb), and  
9 (rp) and (2) (ra) and may not be used for any other purpose of the state.

10 **SECTION 11.** 102.75 (2) of the statutes is amended to read:

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

24 **SECTION 12.** 102.80 (1) (f) of the statutes is created to read:

1           102.80 (1) (f) Amounts transferred to the uninsured employers fund from the  
2           appropriation account under s. 20.445 (1) (ra) as provided in s. 102.81 (1) (c).

3           **SECTION 13.** 102.81 (1) (c) of the statutes is created to read:

4           102.81 (1) (c) 1. The department shall pay a claim under par. (a) in excess of  
5           \$1,000,000 from the uninsured employers fund in the first instance. If the claim is  
6           not covered by excess or stop-loss reinsurance under sub. (2), the secretary of  
7           administration shall transfer from the appropriation account under s. 20.445 (1) (ra)  
8           to the uninsured employers fund as provided in subds. 2. and 3. an amount equal to  
9           the amount by which payments from the uninsured employers fund on the claim are  
10          in excess of \$1,000,000.

11          2. Each calendar year the department shall file with the secretary of  
12          administration a certificate setting forth the number of claims in excess of  
13          \$1,000,000 in the preceding year paid from the uninsured employers fund, the  
14          payments made from the uninsured employers fund on each such claim in the  
15          preceding year, and the total payments made from the uninsured employers fund on  
16          all such claims and, based on that information, the secretary of administration shall  
17          determine the amount to be transferred under subd. 1. in that calendar year.

18          3. The maximum amount that the secretary of administration may transfer  
19          under subd. 1. in a calendar year is \$500,000. If the amount determined under subd.  
20          2. is \$500,000 or less, the secretary of administration shall transfer the amount  
21          determined under subd. 2. If the amount determined under subd. 2. exceeds  
22          \$500,000, the secretary of administration shall transfer \$500,000 in the calendar  
23          year in which the determination is made and, subject to the maximum transfer  
24          amount of \$500,000 per calendar year, shall transfer that excess in the next calendar  
25          year or in subsequent calendar years until that excess is transferred in full.

