February 7, 2018 – Introduced by Senators STROEBEL and COWLES, cosponsored by Representative DUCHOW. Referred to Committee on Labor and Regulatory Reform.

AN ACT to amend 102.29 (6) (b) (intro.), 102.29 (6) (b) 3., 102.29 (6) (c) (intro.), 102.29 (6) (c) 2., 102.29 (6m) (a) (intro.), 102.29 (6m) (a) 3., 102.29 (6m) (b) (intro.), 102.29 (6m) (b) 2., 102.29 (7), 102.29 (8), 102.29 (8m), 102.29 (8r), 102.29 (10), 102.29 (11) and 102.29 (12) of the statutes; relating to: actions against certain third parties by injured employees under the worker’s compensation law.

Analysis by the Legislative Reference Bureau

This bill eliminates the right of action in tort by an injured employee against certain third parties by reason of the injury if the injured employee has the right to make a claim for compensation against his or her employer under the worker’s compensation law.

Under current law, worker’s compensation is the exclusive remedy for an employee who is injured while performing services growing out of and incidental to his or her employment, except that, subject to certain exceptions, an injured employee may claim worker’s compensation from his or her employer and bring an action in tort against a third party for damages by reason of the injury. Current law also provides that certain specified types of employee are prohibited from making claims against certain third parties, such as a “temporary help agency” or “employee leasing company,” if the injured employee makes a claim for compensation under the worker’s compensation law.
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The bill prohibits an injured employee from maintaining an action in tort against certain third parties, specified under current law, regardless of whether the employee makes a claim for compensation under the worker's compensation law against his or her employer. For example, an injured employee of a temporary help agency engaged in work for the employer to which the employee is placed or leased may not maintain a tort action against the employer to which the employee is placed or leased if the employee has the right to make a claim for compensation under the worker's compensation law.

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

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

SECTION 1. 102.29 (6) (b) (intro.) of the statutes is amended to read:

102.29 (6) (b) (intro.) No employee of a temporary help agency who makes has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

SECTION 2. 102.29 (6) (b) 3. of the statutes is amended to read:

102.29 (6) (b) 3. Any employee of that compensating employer or of that other temporary help agency, unless the employee who makes has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the compensating employer or the employee of the other temporary help agency if the employees were coemployees.

SECTION 3. 102.29 (6) (c) (intro.) of the statutes is amended to read:

102.29 (6) (c) (intro.) No employee of an employer that compensates a temporary help agency for another employee's services who makes has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

SECTION 4. 102.29 (6) (c) 2. of the statutes is amended to read:
102.29 (6) (c) 2. Any employee of the temporary help agency, unless the employee who makes has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the temporary help agency if the employees were coemployees.

**SECTION 5.** 102.29 (6m) (a) (intro.) of the statutes is amended to read:

102.29 (6m) (a) (intro.) No leased employee, as defined in s. 102.315 (1) (g), who makes has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

**SECTION 6.** 102.29 (6m) (a) 3. of the statutes is amended to read:

102.29 (6m) (a) 3. Any employee of the client or of that other employee leasing company, unless the leased employee who makes has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the employee of the client or the leased employee of the other employee leasing company if the employees and leased employees were coemployees.

**SECTION 7.** 102.29 (6m) (b) (intro.) of the statutes is amended to read:

102.29 (6m) (b) (intro.) No employee of a client who makes has the right to make a claim for compensation may make a claim or maintain an action in tort against any of the following:

**SECTION 8.** 102.29 (6m) (b) 2. of the statutes is amended to read:

102.29 (6m) (b) 2. Any leased employee of the employee leasing company, unless the employee who makes has the right to make a claim for compensation would have a right under s. 102.03 (2) to bring an action against the leased employee if the employee and the leased employee were coemployees.

**SECTION 9.** 102.29 (7) of the statutes is amended to read:
102.29 (7) No employee who is loaned by his or her employer to another employer and who makes has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who accepted the loaned employee's services.

**SECTION 10.** 102.29 (8) of the statutes is amended to read:

102.29 (8) No student of a public school, a private school, or an institution of higher education who is named under s. 102.077 as an employee of the school district, private school, or institution of higher education for purposes of this chapter and who makes has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

**SECTION 11.** 102.29 (8m) of the statutes is amended to read:

102.29 (8m) No participant in a community service job under s. 49.147 (4) or a transitional placement under s. 49.147 (5) who, under s. 49.147 (4) (c) or (5) (c), is provided worker's compensation coverage by a Wisconsin works agency, as defined under s. 49.001 (9), and who makes has the right to make a claim for compensation under this chapter may make a claim or maintain an action in tort against the employer who provided the community service job or transitional placement from which the claim arose.

**SECTION 12.** 102.29 (8r) of the statutes is amended to read:

102.29 (8r) No participant in a food stamp employment and training program under s. 49.79 (9) who, under s. 49.79 (9) (a) 5., is provided worker's compensation coverage by the department of health services or by a Wisconsin Works agency, as defined in s. 49.001 (9), or other provider under contract with the department of health services or a county department under s. 46.215, 46.22, or 46.23 or tribal
governing body to administer the food stamp employment and training program and
who makes has the right to make a claim for compensation under this chapter may
make a claim or maintain an action in tort against the employer who provided the
employment and training from which the claim arose.

**SECTION 13.** 102.29 (10) of the statutes is amended to read:

102.29 (10) A practitioner who, under s. 257.03, is considered an employee of
the state for purposes of worker’s compensation coverage while providing services on
behalf of a health care facility, the department of health services, or a local health
department during a state of emergency and who makes has the right to make a
claim for compensation under this chapter may not make a claim or maintain an
action in tort against the health care facility, department, or local health department
that accepted those services.

**SECTION 14.** 102.29 (11) of the statutes is amended to read:

102.29 (11) No security officer employed by the department of military affairs
who is deputed under s. 59.26 (4m), who remains an employee of the state for
purposes of worker’s compensation coverage while conducting routine external
security checks around military installations in this state, and who makes has the
right to make a claim for compensation under this chapter may make a claim or bring
an action in tort against the county in which the security officer is conducting routine
external security checks or against the sheriff or undersheriff who deputed the
security officer.

**SECTION 15.** 102.29 (12) of the statutes is amended to read:

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

**SECTION 16. Initial applicability.**

(1) **Third-Party Liability.** This act first applies to claims for worker’s compensation made or civil tort claims filed on the effective date of this subsection.

(END)