



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1323/P2
MED:cdc

DOA:.....Bork, BB0196 - Transfer of Worker's Compensation Functions from
DHA to DWD

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

EMPLOYMENT

1. Worker's compensation; authority to conduct hearings

Under current law, DWD performs various administrative and adjudicatory functions relating to worker's compensation, except that the adjudicatory functions of DWD relating to disputed worker's compensation claims are performed the Division of Hearings and Appeals in DOA (DHA). This bill transfers the adjudicatory functions of DHA relating to disputed worker's compensation claims to DWD.

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:

2 **SECTION 1.** 40.65 (2) (a) of the statutes is amended to read:

3 40.65 (2) (a) This paragraph applies to participants who first apply for benefits
4 before May 3, 1988. Any person desiring a benefit under this section must apply to

1 the department of workforce development, which department shall determine
2 whether the applicant is eligible to receive the benefit and the participant's monthly
3 salary. Appeals from the eligibility decision shall follow the procedures under ss.
4 102.16 to 102.26. If it is determined that an applicant is eligible, the department of
5 workforce development shall notify the department of employee trust funds and
6 shall certify the applicant's monthly salary. If at the time of application for benefits
7 an applicant is still employed in any capacity by the employer in whose employ the
8 disabling injury occurred or disease was contracted, that continued employment
9 shall not affect that applicant's right to have his or her eligibility to receive those
10 benefits determined in proceedings before the ~~division of hearings and appeals in the~~
11 ~~department of administration~~ department of workforce development or the labor and
12 industry review commission or in proceedings in the courts. The department of
13 workforce development may promulgate rules needed to administer this paragraph.

14 **SECTION 2.** 40.65 (2) (b) 3. of the statutes is amended to read:

15 40.65 (2) (b) 3. The department shall determine whether or not the applicant
16 is eligible for benefits under this section on the basis of the evidence in subd. 2. An
17 applicant may appeal a determination under this subdivision to the ~~division of~~
18 ~~hearings and appeals in the department of administration~~ department of workforce
19 development.

20 **SECTION 3.** 40.65 (2) (b) 4. of the statutes is amended to read:

21 40.65 (2) (b) 4. In hearing an appeal under subd. 3., the ~~division of hearings and~~
22 ~~appeals in the department of administration~~ department of workforce development
23 shall follow the procedures under ss. 102.16 to 102.26.

24 **SECTION 4.** 102.01 (2) (ad) of the statutes is repealed.

25 **SECTION 5.** 102.01 (2) (ar) of the statutes is repealed.

1 **SECTION 6.** 102.01 (2) (dm) of the statutes is amended to read:

2 102.01 (2) (dm) "Order" means any decision, rule, regulation, direction,
3 requirement, or standard of the department ~~or the division~~, or any other
4 determination arrived at or decision made by the department ~~or the division~~.

5 **SECTION 7.** 102.04 (2r) (b) of the statutes is amended to read:

6 102.04 (2r) (b) The franchisor has been found by the department ~~or the division~~
7 to have exercised a type or degree of control over the franchisee or the franchisee's
8 employees that is not customarily exercised by a franchisor for the purpose of
9 protecting the franchisor's trademarks and brand.

10 **SECTION 8.** 102.07 (8) (c) of the statutes is amended to read:

11 102.07 (8) (c) The ~~division~~ department may not admit in evidence any state or
12 federal law, regulation, or document granting operating authority, or a license when
13 determining whether an independent contractor meets the conditions specified in
14 par. (b) 1. or 3.

15 **SECTION 9.** 102.11 (1) (am) 1. of the statutes is amended to read:

16 102.11 (1) (am) 1. The employee is a member of a class of employees that does
17 the same type of work at the same location and, in the case of an employee in the
18 service of the state, is employed in the same office, department, independent agency,
19 authority, institution, association, society, or other body in state government or, if the
20 department ~~or the division~~ determines appropriate, in the same subunit of an office,
21 department, independent agency, authority, institution, association, society, or other
22 body in state government.

23 **SECTION 10.** 102.12 of the statutes is amended to read:

24 **102.12 Notice of injury, exception, laches.** No claim for compensation may
25 be maintained unless, within 30 days after the occurrence of the injury or within 30

1 days after the employee knew or ought to have known the nature of his or her
2 disability and its relation to the employment, actual notice was received by the
3 employer or by an officer, manager or designated representative of an employer. If
4 no representative has been designated by posters placed in one or more conspicuous
5 places where notices to employees are customarily posted, then notice received by
6 any superior is sufficient. Absence of notice does not bar recovery if it is found that
7 the employer was not misled by that absence. Regardless of whether notice was
8 received, if no payment of compensation, other than medical treatment or burial
9 expense, is made, and if no application is filed with the department within 2 years
10 after the date of the injury or death or the date the employee or his or her dependent
11 knew or ought to have known the nature of the disability and its relation to the
12 employment, the right to compensation for the injury or death is barred, except that
13 the right to compensation is not barred if the employer knew or should have known,
14 within the 2-year period, that the employee had sustained the injury on which the
15 claim is based. Issuance of notice of a hearing on the motion of the department or
16 ~~the division~~ has the same effect for the purposes of this section as the filing of an
17 application. This section does not affect any claim barred under s. 102.17 (4).

18 **SECTION 11.** 102.13 (1) (c) of the statutes is amended to read:

19 102.13 (1) (c) So long as the employee, after a written request of the employer
20 or insurer that complies with par. (b), refuses to submit to or in any way obstructs
21 the examination, the employee's right to begin or maintain any proceeding for the
22 collection of compensation is suspended, except as provided in sub. (4). If the
23 employee refuses to submit to the examination after direction by the department, ~~the~~
24 ~~division~~, or an examiner, or in any way obstructs the examination, the employee's

1 right to the weekly indemnity that accrues and becomes payable during the period
2 of that refusal or obstruction, is barred, except as provided in sub. (4).

3 **SECTION 12.** 102.13 (1) (d) 2. of the statutes is amended to read:

4 102.13 (1) (d) 2. Any physician, chiropractor, psychologist, dentist, physician
5 assistant, advanced practice nurse prescriber, or podiatrist who attended a worker's
6 compensation claimant for any condition or complaint reasonably related to the
7 condition for which the claimant claims compensation may be required to testify
8 before the ~~division~~ department when the ~~division~~ department so directs.

9 **SECTION 13.** 102.13 (1) (d) 3. of the statutes is amended to read:

10 102.13 (1) (d) 3. Notwithstanding any statutory provisions except par. (e), any
11 physician, chiropractor, psychologist, dentist, physician assistant, advanced
12 practice nurse prescriber, or podiatrist attending a worker's compensation claimant
13 for any condition or complaint reasonably related to the condition for which the
14 claimant claims compensation may furnish to the employee, employer, worker's
15 compensation insurer, or department, ~~or division~~ information and reports relative to
16 a compensation claim.

17 **SECTION 14.** 102.13 (1) (f) of the statutes is amended to read:

18 102.13 (1) (f) If an employee claims compensation under s. 102.81 (1), the
19 department ~~or the division~~ may require the employee to submit to physical or
20 vocational examinations under this subsection.

21 **SECTION 15.** 102.13 (2) (a) of the statutes is amended to read:

22 102.13 (2) (a) An employee who reports an injury alleged to be work-related
23 or files an application for hearing waives any physician-patient,
24 psychologist-patient, or chiropractor-patient privilege with respect to any condition
25 or complaint reasonably related to the condition for which the employee claims

1 compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any
2 physician, chiropractor, psychologist, dentist, podiatrist, physician assistant,
3 advanced practice nurse prescriber, hospital, or health care provider shall, within a
4 reasonable time after written request by the employee, employer, worker's
5 compensation insurer, or department, ~~or division~~, or its representative, provide that
6 person with any information or written material reasonably related to any injury for
7 which the employee claims compensation.

8 **SECTION 16.** 102.13 (3) of the statutes is amended to read:

9 102.13 (3) If 2 or more physicians, chiropractors, psychologists, dentists, or
10 podiatrists disagree as to the extent of an injured employee's temporary disability,
11 the end of an employee's healing period, an employee's ability to return to work at
12 suitable available employment or the necessity for further treatment or for a
13 particular type of treatment, the department ~~or the division~~ may appoint another
14 physician, chiropractor, psychologist, dentist, or podiatrist to examine the employee
15 and render an opinion as soon as possible. The department ~~or the division~~ shall
16 promptly notify the parties of this appointment. If the employee has not returned
17 to work, payment for temporary disability shall continue until the department ~~or the~~
18 ~~division~~ receives the opinion. The employer or its insurance carrier, or both, shall
19 pay for the examination and opinion. The employer or insurance carrier, or both,
20 shall receive appropriate credit for any overpayment to the employee determined by
21 the department ~~or the division~~ after receipt of the opinion.

22 **SECTION 17.** 102.13 (4) of the statutes is amended to read:

23 102.13 (4) The right of an employee to begin or maintain proceedings for the
24 collection of compensation and to receive weekly indemnities that accrue and become
25 payable shall not be suspended or barred under sub. (1) when an employee refuses

1 to submit to a physical examination, upon the request of the employer or worker's
2 compensation insurer or at the direction of the department, ~~the division~~, or an
3 examiner, that would require the employee to travel a distance of 100 miles or more
4 from his or her place of residence, unless the employee has claimed compensation for
5 treatment from a practitioner whose office is located 100 miles or more from the
6 employee's place of residence or the department, ~~division~~, or examiner determines
7 that any other circumstances warrant the examination. If the employee has claimed
8 compensation for treatment from a practitioner whose office is located 100 miles or
9 more from the employee's place of residence, the employer or insurer may request,
10 or the department, ~~the division~~, or an examiner may direct, the employee to submit
11 to a physical examination in the area where the employee's treatment practitioner
12 is located.

13 **SECTION 18.** 102.13 (5) of the statutes is amended to read:

14 102.13 (5) The department ~~or the division~~ may refuse to receive testimony as
15 to conditions determined from an autopsy if it appears that the party offering the
16 testimony had procured the autopsy and had failed to make reasonable effort to
17 notify at least one party in adverse interest or the department ~~or the division~~ at least
18 12 hours before the autopsy of the time and place at which the autopsy would be
19 performed, or that the autopsy was performed by or at the direction of the coroner
20 or medical examiner or at the direction of the district attorney for purposes not
21 authorized under ch. 979. The department ~~or the division~~ may withhold findings
22 until an autopsy is held in accordance with its directions.

23 **SECTION 19.** 102.14 (title) of the statutes is amended to read:

24 **102.14 (title) Jurisdiction of department and ~~division~~; advisory**
25 **committee council.**

1 **SECTION 20.** 102.14 (1) of the statutes is amended to read:

2 102.14 (1) Except as otherwise provided, this chapter shall be administered by
3 the department ~~and the division~~.

4 **SECTION 21.** 102.14 (2) of the statutes is amended to read:

5 102.14 (2) The council on worker's compensation shall advise the department
6 ~~and the division~~ in carrying out the purposes of this chapter, shall submit its
7 recommendations with respect to amendments to this chapter to each regular
8 session of the legislature, and shall report its views upon any pending bill relating
9 to this chapter to the proper legislative committee. At the request of the chairpersons
10 of the senate and assembly committees on labor, the department shall schedule a
11 meeting of the council with the members of the senate and assembly committees on
12 labor to review and discuss matters of legislative concern arising under this chapter.

13 **SECTION 22.** 102.15 (1) of the statutes is amended to read:

14 102.15 (1) Subject to this chapter, the ~~division~~ department may ~~adopt its own~~
15 promulgate rules of procedure ~~and may change the same from time to time~~.

16 **SECTION 23.** 102.15 (2) of the statutes is amended to read:

17 102.15 (2) The ~~division~~ department may provide by rule the conditions under
18 which transcripts of testimony and proceedings shall be furnished.

19 **SECTION 24.** 102.16 (1) of the statutes is repealed and recreated to read:

20 102.16 (1) Any controversy concerning compensation or a violation of sub. (3),
21 including a controversy in which the state may be a party, shall be submitted to the
22 department in the manner and with the effect provided in this chapter. Every
23 compromise of any claim for compensation may be reviewed and set aside, modified,
24 or confirmed by the department within one year after the date on which the
25 compromise is filed with the department, the date on which an award has been

1 entered based on the compromise, or the date on which an application for the
2 department to take any of those actions is filed with the department. Unless the
3 word "compromise" appears in a stipulation of settlement, the settlement shall not
4 be considered a compromise, and further claim is not barred except as provided in
5 s. 102.17 (4) regardless of whether an award is made. The employer, insurer or
6 dependent under s. 102.51 (5) shall have equal rights with the employee to have a
7 compromise or any other stipulation of settlement reviewed under this subsection.
8 Upon petition filed with the department under this subsection, the department may
9 set aside the award or otherwise determine the rights of the parties.

10 **SECTION 25.** 102.16 (1m) (a) of the statutes is amended to read:

11 102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise
12 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured
13 employer is liable under this chapter for any health services provided to an injured
14 employee by a health service provider, but disputes the reasonableness of the fee
15 charged by the health service provider, the department ~~or the division~~ may include
16 in its order confirming the compromise or stipulation a determination made by the
17 department under sub. (2) as to the reasonableness of the fee or, if such a
18 determination has not yet been made, the department ~~or the division~~ may notify, or
19 direct the insurer or self-insured employer to notify, the health service provider
20 under sub. (2) (b) that the reasonableness of the fee is in dispute. The department
21 ~~or the division~~ shall deny payment of a health service fee that the department
22 determines under sub. (2) to be unreasonable. A health service provider and an
23 insurer or self-insured employer that are parties to a fee dispute under this
24 paragraph are bound by the department's determination under sub. (2) on the
25 reasonableness of the disputed fee, unless that determination is set aside, reversed,

1 or modified by the department under sub. (2) (f) or is set aside on judicial review as
2 provided in sub. (2) (f).

3 **SECTION 26.** 102.16 (1m) (b) of the statutes is amended to read:

4 102.16 (1m) (b) If an insurer or self-insured employer concedes by compromise
5 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured
6 employer is liable under this chapter for any treatment provided to an injured
7 employee by a health service provider, but disputes the necessity of the treatment,
8 the department ~~or the division~~ may include in its order confirming the compromise
9 or stipulation a determination made by the department under sub. (2m) as to the
10 necessity of the treatment or, if such a determination has not yet been made, the
11 department ~~or the division~~ may notify, or direct the insurer or self-insured employer
12 to notify, the health service provider under sub. (2m) (b) that the necessity of the
13 treatment is in dispute. Before determining under sub. (2m) the necessity of
14 treatment provided to an injured employee, the department may, but is not required
15 to, obtain the opinion of an expert selected by the department who is qualified as
16 provided in sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be
17 applied by an expert and by the department in rendering an opinion as to, and in
18 determining, necessity of treatment under this paragraph. In cases in which no
19 standards promulgated under sub. (2m) (g) apply, the department shall find the facts
20 regarding necessity of treatment. The department ~~or the division~~ shall deny
21 payment for any treatment that the department determines under sub. (2m) to be
22 unnecessary. A health service provider and an insurer or self-insured employer that
23 are parties to a dispute under this paragraph over the necessity of treatment are
24 bound by the department's determination under sub. (2m) on the necessity of the
25 disputed treatment, unless that determination is set aside, reversed, or modified by

1 the department under sub. (2m) (e) or is set aside on judicial review as provided in
2 sub. (2m) (e).

3 **SECTION 27.** 102.16 (1m) (c) of the statutes is amended to read:

4 102.16 (1m) (c) If an insurer or self-insured employer concedes by compromise
5 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured
6 employer is liable under this chapter for the cost of a prescription drug dispensed
7 under s. 102.425 (2) for outpatient use by an injured employee, but disputes the
8 reasonableness of the amount charged for the prescription drug, the department ~~or~~
9 ~~the division~~ may include in its order confirming the compromise or stipulation a
10 determination made by the department under s. 102.425 (4m) as to the
11 reasonableness of the prescription drug charge or, if such a determination has not
12 yet been made, the department ~~or the division~~ may notify, or direct the insurer or
13 self-insured employer to notify, the pharmacist or practitioner dispensing the
14 prescription drug under s. 102.425 (4m) (b) that the reasonableness of the
15 prescription drug charge is in dispute. The department ~~or the division~~ shall deny
16 payment of a prescription drug charge that the department determines under s.
17 102.425 (4m) to be unreasonable. A pharmacist or practitioner and an insurer or
18 self-insured employer that are parties to a dispute under this paragraph over the
19 reasonableness of a prescription drug charge are bound by the department's
20 determination under s. 102.425 (4m) on the reasonableness of the disputed
21 prescription drug charge, unless that determination is set aside, reversed, or
22 modified by the department under s. 102.425 (4m) (e) or is set aside on judicial review
23 as provided in s. 102.425 (4m) (e).

24 **SECTION 28.** 102.16 (2) (a) of the statutes is amended to read:

1 102.16 (2) (a) Except as provided in this paragraph, the department has
2 jurisdiction under this subsection, ~~the department and the division have jurisdiction~~
3 ~~under sub. (1m) (a), and the division has jurisdiction under s. 102.17~~ to resolve a
4 dispute between a health service provider and an insurer or self-insured employer
5 over the reasonableness of a fee charged by the health service provider for health
6 services provided to an injured employee who claims benefits under this chapter. A
7 health service provider may not submit a fee dispute to the department under this
8 subsection before all treatment by the health service provider of the employee's
9 injury has ended if the amount in controversy, whether based on a single charge or
10 a combination of charges for one or more days of service, is less than \$25. After all
11 treatment by a health service provider of an employee's injury has ended, the health
12 service provider may submit any fee dispute to the department, regardless of the
13 amount in controversy. The department shall deny payment of a health service fee
14 that the department determines under this subsection to be unreasonable.

15 **SECTION 29.** 102.16 (2) (b) of the statutes is amended to read:

16 102.16 (2) (b) An insurer or self-insured employer that disputes the
17 reasonableness of a fee charged by a health service provider or the department ~~or the~~
18 ~~division~~ under sub. (1m) (a) or s. 102.18 (1) (bg) 1. shall provide reasonable written
19 notice to the health service provider that the fee is being disputed. After receiving
20 reasonable written notice under this paragraph or under sub. (1m) (a) or s. 102.18
21 (1) (bg) 1. that a health service fee is being disputed, a health service provider may
22 not collect the disputed fee from, or bring an action for collection of the disputed fee
23 against, the employee who received the services for which the fee was charged.

24 **SECTION 30.** 102.16 (2m) (a) of the statutes is amended to read:

1 102.16 (2m) (a) Except as provided in this paragraph, the department has
2 jurisdiction under this subsection, ~~the department and the division have jurisdiction~~
3 ~~under sub. (1m) (b), and the division has jurisdiction under s. 102.17~~ to resolve a
4 dispute between a health service provider and an insurer or self-insured employer
5 over the necessity of treatment provided for an injured employee who claims benefits
6 under this chapter. A health service provider may not submit a dispute over
7 necessity of treatment to the department under this subsection before all treatment
8 by the health service provider of the employee's injury has ended if the amount in
9 controversy, whether based on a single charge or a combination of charges for one or
10 more days of service, is less than \$25. After all treatment by a health service provider
11 of an employee's injury has ended, the health service provider may submit any
12 dispute over necessity of treatment to the department, regardless of the amount in
13 controversy. The department shall deny payment for any treatment that the
14 department determines under this subsection to be unnecessary.

15 **SECTION 31.** 102.16 (2m) (b) of the statutes is amended to read:

16 102.16 (2m) (b) An insurer or self-insured employer that disputes the
17 necessity of treatment provided by a health service provider or the department ~~or the~~
18 ~~division~~ under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable written
19 notice to the health service provider that the necessity of that treatment is being
20 disputed. After receiving reasonable written notice under this paragraph or under
21 sub. (1m) (b) or s. 102.18 (1) (bg) 2. that the necessity of treatment is being disputed,
22 a health service provider may not collect a fee for that disputed treatment from, or
23 bring an action for collection of the fee for that disputed treatment against, the
24 employee who received the treatment.

25 **SECTION 32.** 102.16 (4) of the statutes is amended to read:

1 102.16 (4) The department ~~and the division~~ have has jurisdiction to pass on any
2 question arising out of sub. (3) and to order the employer to reimburse an employee
3 or other person for any sum deducted from wages or paid by him or her in violation
4 of that subsection. In addition to the penalty provided in s. 102.85 (1), any employer
5 violating sub. (3) shall be liable to an injured employee for the reasonable value of
6 the necessary services rendered to that employee under any arrangement made in
7 violation of sub. (3) without regard to that employee's actual disbursements for those
8 services.

9 **SECTION 33.** 102.17 (1) (a) 1. of the statutes is amended to read:

10 102.17 (1) (a) 1. Upon the filing with the department by any party in interest
11 of any application in writing stating the general nature of any claim as to which any
12 dispute or controversy may have arisen, the department shall mail a copy of the
13 application to all other parties in interest, and the insurance carrier shall be
14 considered a party in interest. The department ~~or the division~~ may bring in
15 additional parties by service of a copy of the application.

16 **SECTION 34.** 102.17 (1) (a) 2. of the statutes is amended to read:

17 102.17 (1) (a) 2. Subject to subd. 3., the ~~division~~ department shall cause notice
18 of hearing on the application to be given to each interested party by service of that
19 notice on the interested party personally or by mailing a copy of that notice to the
20 interested party's last-known address at least 10 days before the hearing. If a party
21 in interest is located without this state, and has no post-office address within this
22 state, the copy of the application and copies of all notices shall be filed with the
23 department of financial institutions and shall also be sent by registered or certified
24 mail to the last-known post-office address of the party. Such filing and mailing shall

1 constitute sufficient service, with the same effect as if served upon a party located
2 within this state.

3 **SECTION 35.** 102.17 (1) (a) 3. of the statutes is amended to read:

4 102.17 (1) (a) 3. If a party in interest claims that the employer or insurer has
5 acted with malice or bad faith as described in s. 102.18 (1) (b) 3. or (bp), that party
6 shall provide written notice stating with reasonable specificity the basis for the claim
7 to the employer, the insurer, and the department, ~~and the division~~ before the ~~division~~
8 department schedules a hearing on the claim of malice or bad faith.

9 **SECTION 36.** 102.17 (1) (a) 4. of the statutes is amended to read:

10 102.17 (1) (a) 4. The hearing may be adjourned in the discretion of the ~~division~~
11 department, and hearings may be held at such places as the ~~division~~ department
12 designates, within or without the state. The ~~division~~ department may also arrange
13 to have hearings held by the commission, officer, or tribunal having authority to hear
14 cases arising under the worker's compensation law of any other state, of the District
15 of Columbia, or of any territory of the United States, with the testimony and
16 proceedings at any such hearing to be reported to the ~~division~~ department and to be
17 made part of the record in the case. Any evidence so taken shall be subject to rebuttal
18 upon final hearing before the ~~division~~ department.

19 **SECTION 37.** 102.17 (1) (b) of the statutes is amended to read:

20 102.17 (1) (b) In any dispute or controversy pending before the ~~division~~
21 department, the ~~division~~ department may direct the parties to appear before an
22 examiner for a conference to consider the clarification of issues, the joining of
23 additional parties, the necessity or desirability of amendments to the pleadings, the
24 obtaining of admissions of fact or of documents, records, reports, and bills that may
25 avoid unnecessary proof, and such other matters as may aid in disposition of the

1 dispute or controversy. After that conference the ~~division~~ department may issue an
2 order requiring disclosure or exchange of any information or written material that
3 the ~~division~~ department considers material to the timely and orderly disposition of
4 the dispute or controversy. If a party fails to disclose or exchange that information
5 within the time stated in the order, the ~~division~~ department may issue an order
6 dismissing the claim without prejudice or excluding evidence or testimony relating
7 to the information or written material. The ~~division~~ department shall provide each
8 party with a copy of any order issued under this paragraph.

9 **SECTION 38.** 102.17 (1) (c) 1. of the statutes is amended to read:

10 102.17 (1) (c) 1. Any party shall have the right to be present at any hearing,
11 in person or by attorney or any other agent, and to present such testimony as may
12 be pertinent to the controversy before the ~~division~~ department. No person, firm, or
13 corporation, other than an attorney at law who is licensed to practice law in the state,
14 may appear on behalf of any party in interest before the ~~division~~ department or any
15 member or employee of the ~~division~~ department assigned to conduct any hearing,
16 investigation, or inquiry relative to a claim for compensation or benefits under this
17 chapter, unless the person is 18 years of age or older, does not have an arrest or
18 conviction record, subject to ss. 111.321, 111.322 and 111.335, is otherwise qualified,
19 and has obtained from the department a license with authorization to appear in
20 matters or proceedings before the ~~division~~ department. Except as provided under
21 pars. (cm), (cr), and (ct), the license shall be issued by the department under rules
22 promulgated by the department. The department shall maintain in its office a
23 current list of persons to whom licenses have been issued.

24 **SECTION 39.** 102.17 (1) (d) 1. of the statutes is amended to read:

1 102.17 (1) (d) 1. The contents of certified medical and surgical reports by
2 physicians, podiatrists, surgeons, dentists, psychologists, physician assistants,
3 advanced practice nurse prescribers, and chiropractors licensed in and practicing in
4 this state, and of certified reports by experts concerning loss of earning capacity
5 under s. 102.44 (2) and (3), presented by a party for compensation constitute prima
6 facie evidence as to the matter contained in those reports, subject to any rules and
7 limitations the ~~division~~ department prescribes. Certified reports of physicians,
8 podiatrists, surgeons, dentists, psychologists, physician assistants, advanced
9 practice nurse prescribers, and chiropractors, wherever licensed and practicing, who
10 have examined or treated the claimant, and of experts, if the practitioner or expert
11 consents to being subjected to cross-examination, also constitute prima facie
12 evidence as to the matter contained in those reports. Certified reports of physicians,
13 podiatrists, surgeons, psychologists, and chiropractors are admissible as evidence of
14 the diagnosis, necessity of the treatment, and cause and extent of the disability.
15 Certified reports by doctors of dentistry, physician assistants, and advanced practice
16 nurse prescribers are admissible as evidence of the diagnosis and necessity of
17 treatment but not of the cause and extent of disability. Any physician, podiatrist,
18 surgeon, dentist, psychologist, chiropractor, physician assistant, advanced practice
19 nurse prescriber, or expert who knowingly makes a false statement of fact or opinion
20 in a certified report may be fined or imprisoned, or both, under s. 943.395.

21 **SECTION 40.** 102.17 (1) (d) 2. of the statutes is amended to read:

22 102.17 (1) (d) 2. The record of a hospital or sanatorium in this state that is
23 satisfactory to the ~~division~~ department, established by certificate, affidavit, or
24 testimony of the supervising officer of the hospital or sanatorium, any other person
25 having charge of the record, or a physician, podiatrist, surgeon, dentist, psychologist,

1 physician assistant, advanced practice nurse prescriber, or chiropractor to be the
2 record of the patient in question, and made in the regular course of examination or
3 treatment of the patient, constitutes prima facie evidence as to the matter contained
4 in the record, to the extent that the record is otherwise competent and relevant.

5 **SECTION 41.** 102.17 (1) (d) 3. of the statutes is amended to read:

6 102.17 (1) (d) 3. The ~~division~~ department may, by rule, establish the
7 qualifications of and the form used for certified reports submitted by experts who
8 provide information concerning loss of earning capacity under s. 102.44 (2) and (3).
9 The ~~division~~ department may not admit into evidence a certified report of a
10 practitioner or other expert or a record of a hospital or sanatorium that was not filed
11 with the ~~division~~ department and all parties in interest at least 15 days before the
12 date of the hearing, unless the ~~division~~ department is satisfied that there is good
13 cause for the failure to file the report.

14 **SECTION 42.** 102.17 (1) (d) 4. of the statutes is amended to read:

15 102.17 (1) (d) 4. A report or record described in subd. 1., 2., or 3. that is admitted
16 or received into evidence by the ~~division~~ department constitutes substantial
17 evidence under s. 102.23 (6) as to the matter contained in the report or record.

18 **SECTION 43.** 102.17 (1) (e) of the statutes is amended to read:

19 102.17 (1) (e) The ~~division~~ department may, with or without notice to any party,
20 cause testimony to be taken, an inspection of the premises where the injury occurred
21 to be made, or the time books and payrolls of the employer to be examined by any
22 examiner, and may direct any employee claiming compensation to be examined by
23 a physician, chiropractor, psychologist, dentist, or podiatrist. The testimony so
24 taken, and the results of any such inspection or examination, shall be reported to the
25 ~~division~~ department for its consideration upon final hearing. All ex parte testimony

1 taken by the ~~division~~ department shall be reduced to writing, and any party shall
2 have opportunity to rebut that testimony on final hearing.

3 **SECTION 44.** 102.17 (1) (f) 1. of the statutes is amended to read:

4 102.17 (1) (f) 1. Beyond reach of the subpoena of the ~~division~~ department.

5 **SECTION 45.** 102.17 (1) (g) of the statutes is amended to read:

6 102.17 (1) (g) Whenever the testimony presented at any hearing indicates a
7 dispute or creates a doubt as to the extent or cause of disability or death, the ~~division~~
8 department may direct that the injured employee be examined, that an autopsy be
9 performed, or that an opinion be obtained without examination or autopsy, by or from
10 an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist
11 designated by the ~~division~~ department who is not under contract with or regularly
12 employed by a compensation insurance carrier or self-insured employer. The
13 expense of the examination, autopsy, or opinion shall be paid by the employer or, if
14 the employee claims compensation under s. 102.81, from the uninsured employers
15 fund. The report of the examination, autopsy, or opinion shall be transmitted in
16 writing to the ~~division~~ department and a copy of the report shall be furnished by the
17 ~~division~~ department to each party, who shall have an opportunity to rebut the report
18 on further hearing.

19 **SECTION 46.** 102.17 (1) (h) of the statutes is amended to read:

20 102.17 (1) (h) The contents of certified reports of investigation made by
21 industrial safety specialists who are employed, contracted, or otherwise secured by
22 the department ~~or the division~~ and who are available for cross-examination, if
23 served upon the parties 15 days prior to hearing, shall constitute prima facie
24 evidence as to matter contained in those reports. A report described in this
25 paragraph that is admitted or received into evidence by the ~~division~~ department

1 constitutes substantial evidence under s. 102.23 (6) as to the matter contained in the
2 report.

3 **SECTION 47.** 102.17 (2) of the statutes is amended to read:

4 102.17 (2) If the ~~division~~ department has reason to believe that the payment
5 of compensation has not been made, the ~~division~~ department may on its own motion
6 give notice to the parties, in the manner provided for the service of an application,
7 of a time and place when a hearing will be held for the purpose of determining the
8 facts. The notice shall contain a statement of the matter to be considered. All
9 provisions of this chapter governing proceedings on an application shall apply,
10 insofar as applicable, to a proceeding under this subsection. When the ~~division~~
11 department schedules a hearing on its own motion, the ~~division~~ department does not
12 become a party in interest and is not required to appear at the hearing.

13 **SECTION 48.** 102.17 (2m) of the statutes is amended to read:

14 102.17 (2m) ~~The division or any~~ Any party, including the department, may
15 require any person to produce books, papers, and records at the hearing by personal
16 service of a subpoena upon the person along with a tender of witness fees as provided
17 in ss. 814.67 and 885.06. Except as provided in sub. (2s), the subpoena shall be on
18 a form provided by the ~~division~~ department and shall give the name and address of
19 the party requesting the subpoena.

20 **SECTION 49.** 102.17 (2s) of the statutes is amended to read:

21 102.17 (2s) A party's attorney of record may issue a subpoena to compel the
22 attendance of a witness or the production of evidence. A subpoena issued by an
23 attorney must be in substantially the same form as provided in s. 805.07 (4) and must
24 be served in the manner provided in s. 805.07 (5). The attorney shall, at the time of

1 issuance, send a copy of the subpoena to the hearing examiner or other
2 representative of the ~~division~~ department responsible for conducting the proceeding.

3 **SECTION 50.** 102.17 (7) (b) of the statutes is amended to read:

4 102.17 (7) (b) Except as provided in par. (c), the ~~division~~ department shall
5 exclude from evidence testimony or certified reports from expert witnesses under
6 par. (a) offered by the party that raises the issue of loss of earning capacity if that
7 party failed to notify the ~~division~~ department and the other parties of interest, at
8 least 60 days before the date of the hearing, of the party's intent to provide the
9 testimony or reports and of the names of the expert witnesses involved. Except as
10 provided in par. (c), the ~~division~~ department shall exclude from evidence testimony
11 or certified reports from expert witnesses under par. (a) offered by a party of interest
12 in response to the party that raises the issue of loss of earning capacity if the
13 responding party failed to notify the ~~division~~ department and the other parties of
14 interest, at least 45 days before the date of the hearing, of the party's intent to provide
15 the testimony or reports and of the names of the expert witnesses involved.

16 **SECTION 51.** 102.17 (7) (c) of the statutes is amended to read:

17 102.17 (7) (c) Notwithstanding the notice deadlines provided in par. (b), the
18 ~~division~~ department may receive in evidence testimony or certified reports from
19 expert witnesses under par. (a) when the applicable notice deadline under par. (b) is
20 not met if good cause is shown for the delay in providing the notice required under
21 par. (b) and if no party is prejudiced by the delay.

22 **SECTION 52.** 102.17 (8) of the statutes is amended to read:

23 102.17 (8) Unless otherwise agreed to by all parties, an injured employee shall
24 file with the ~~division~~ department and serve on all parties at least 15 days before the
25 date of the hearing an itemized statement of all medical expenses and incidental

1 compensation under s. 102.42 claimed by the injured employee. The itemized
2 statement shall include, if applicable, information relating to any travel expenses
3 incurred by the injured employee in obtaining treatment including the injured
4 employee's destination, number of trips, round trip mileage, and meal and lodging
5 expenses. The ~~division~~ department may not admit into evidence any information
6 relating to medical expenses and incidental compensation under s. 102.42 claimed
7 by an injured employee if the injured employee failed to file with the ~~division~~
8 department and serve on all parties at least 15 days before the date of the hearing
9 an itemized statement of the medical expenses and incidental compensation under
10 s. 102.42 claimed by the injured employee, unless the ~~division~~ department is satisfied
11 that there is good cause for the failure to file and serve the itemized statement.

12 **SECTION 53.** 102.175 (2) of the statutes is amended to read:

13 102.175 (2) If after a hearing or a prehearing conference the ~~division~~
14 department determines that an injured employee is entitled to compensation but
15 that there remains in dispute only the issue of which of 2 or more parties is liable for
16 that compensation, the ~~division~~ department may order one or more parties to pay
17 compensation in an amount, time, and manner as determined by the ~~division~~
18 department. If the ~~division~~ department later determines that another party is liable
19 for compensation, the ~~division~~ department shall order that other party to reimburse
20 any party that was ordered to pay compensation under this subsection.

21 **SECTION 54.** 102.175 (3) (c) of the statutes is amended to read:

22 102.175 (3) (c) Upon request of the department, ~~the division,~~ the employer, or
23 the employer's worker's compensation insurer, an injured employee who claims
24 compensation for an injury causing permanent disability shall disclose all previous

1 findings of permanent disability or other impairments that are relevant to that
2 injury.

3 **SECTION 55.** 102.18 (1) (b) 1. of the statutes is amended to read:

4 102.18 (1) (b) 1. Within 90 days after the final hearing and close of the record,
5 the ~~division~~ department shall make and file its findings upon the ultimate facts
6 involved in the controversy, and its order, which shall state the ~~division's~~
7 department's determination as to the rights of the parties. Pending the final
8 determination of any controversy before it, the ~~division~~ department, after any
9 hearing, may, in its discretion, make interlocutory findings, orders, and awards,
10 which may be enforced in the same manner as final awards.

11 **SECTION 56.** 102.18 (1) (b) 2. of the statutes is amended to read:

12 102.18 (1) (b) 2. The ~~division~~ department may include in any interlocutory or
13 final award or order an order directing the employer or insurer to pay for any future
14 treatment that may be necessary to cure and relieve the employee from the effects
15 of the injury or to pay for a future course of instruction or other rehabilitation
16 training services provided under a rehabilitation training program developed under
17 s. 102.61 (1) or (1m).

18 **SECTION 57.** 102.18 (1) (b) 3. of the statutes is amended to read:

19 102.18 (1) (b) 3. If the ~~division~~ department finds that the employer or insurer
20 has not paid any amount that the employer or insurer was directed to pay in any
21 interlocutory order or award and that the nonpayment was not in good faith, the
22 ~~division~~ department may include in its final award a penalty not exceeding 25
23 percent of each amount that was not paid as directed.

24 **SECTION 58.** 102.18 (1) (bg) 1. of the statutes is amended to read:

1 102.18 (1) (bg) 1. If the ~~division~~ department finds under par. (b) that an insurer
2 or self-insured employer is liable under this chapter for any health services provided
3 to an injured employee by a health service provider, but that the reasonableness of
4 the fee charged by the health service provider is in dispute, the ~~division~~ department
5 may include in its order under par. (b) a determination made by the department
6 under s. 102.16 (2) as to the reasonableness of the fee or, if such a determination has
7 not yet been made, the ~~division~~ department may notify, or direct the insurer or
8 self-insured employer to notify, the health service provider under s. 102.16 (2) (b)
9 that the reasonableness of the fee is in dispute.

10 **SECTION 59.** 102.18 (1) (bg) 2. of the statutes is amended to read:

11 102.18 (1) (bg) 2. If the ~~division~~ department finds under par. (b) that an
12 employer or insurance carrier is liable under this chapter for any treatment provided
13 to an injured employee by a health service provider, but that the necessity of the
14 treatment is in dispute, the ~~division~~ department may include in its order under par.
15 (b) a determination made by the department under s. 102.16 (2m) as to the necessity
16 of the treatment or, if such a determination has not yet been made, the ~~division~~
17 department may notify, or direct the employer or insurance carrier to notify, the
18 health service provider under s. 102.16 (2m) (b) that the necessity of the treatment
19 is in dispute.

20 **SECTION 60.** 102.18 (1) (bg) 3. of the statutes is amended to read:

21 102.18 (1) (bg) 3. If the ~~division~~ department finds under par. (b) that an insurer
22 or self-insured employer is liable under this chapter for the cost of a prescription
23 drug dispensed under s. 102.425 (2) for outpatient use by an injured employee, but
24 that the reasonableness of the amount charged for that prescription drug is in
25 dispute, the ~~division~~ department may include in its order under par. (b) a

1 determination made by the department under s. 102.425 (4m) as to the
2 reasonableness of the prescription drug charge or, if such a determination has not
3 yet been made, the ~~division~~ department may notify, or direct the insurer or
4 self-insured employer to notify, the pharmacist or practitioner dispensing the
5 prescription drug under s. 102.425 (4m) (b) that the reasonableness of the
6 prescription drug charge is in dispute.

7 **SECTION 61.** 102.18 (1) (bp) of the statutes is amended to read:

8 102.18 (1) (bp) If the ~~division~~ department determines that the employer or
9 insurance carrier suspended, terminated, or failed to make payments or failed to
10 report an injury as a result of malice or bad faith, the ~~division~~ department may
11 include a penalty in an award to an employee for each event or occurrence of malice
12 or bad faith. That penalty is the exclusive remedy against an employer or insurance
13 carrier for malice or bad faith. If the penalty is imposed for an event or occurrence
14 of malice or bad faith that causes a payment that is due an injured employee to be
15 delayed in violation of s. 102.22 (1) or overdue in violation of s. 628.46 (1), the ~~division~~
16 department may not also order an increased payment under s. 102.22 (1) or the
17 payment of interest under s. 628.46 (1). The ~~division~~ department may award an
18 amount that the ~~division~~ department considers just, not to exceed the lesser of 200
19 percent of total compensation due or \$30,000 for each event or occurrence of malice
20 or bad faith. The ~~division~~ department may assess the penalty against the employer,
21 the insurance carrier, or both. Neither the employer nor the insurance carrier is
22 liable to reimburse the other for the penalty amount. The ~~division~~ department may,
23 by rule, define actions that demonstrate malice or bad faith.

24 **SECTION 62.** 102.18 (1) (bw) of the statutes is amended to read:

1 102.18 (1) (bw) If an insurer, a self-insured employer, or, if applicable, the
2 uninsured employers fund pays compensation to an employee in excess of its liability
3 and another insurer or self-insured employer is liable for all or part of the excess
4 payment, the department ~~or the division~~ may order the insurer or self-insured
5 employer that is liable for that excess payment to reimburse the insurer or
6 self-insured employer that made the excess payment or, if applicable, the uninsured
7 employers fund.

8 **SECTION 63.** 102.18 (1) (c) of the statutes is amended to read:

9 102.18 (1) (c) If 2 or more examiners have conducted a formal hearing on a claim
10 and are unable to agree on the order or award to be issued, the decision shall be the
11 decision of the majority. If the examiners are equally divided on the decision, the
12 ~~division~~ department may appoint an additional examiner who shall review the
13 record and consult with the other examiners concerning their impressions of the
14 credibility of the evidence. Findings of fact and an order or award may then be issued
15 by a majority of the examiners.

16 **SECTION 64.** 102.18 (1) (e) of the statutes is amended to read:

17 102.18 (1) (e) Except as provided in s. 102.21, if the department ~~or the division~~
18 orders a party to pay an award of compensation, the party shall pay the award no
19 later than 21 days after the date on which the order is mailed to the last-known
20 address of the party, unless the party files a petition for review under sub. (3). This
21 paragraph applies to all awards of compensation ordered by the department ~~or the~~
22 ~~division~~, whether the award results from a hearing, the default of a party, or a
23 compromise or stipulation confirmed by the department ~~or the division~~.

24 **SECTION 65.** 102.18 (2) of the statutes is repealed and recreated to read:

1 102.18 (2) The department shall have and maintain on its staff such examiners
2 as are necessary to hear and decide claims and to assist in the effective
3 administration of this chapter. Those examiners shall be attorneys and may be
4 designated as administrative law judges. Those examiners may make findings and
5 orders and may approve, review, set aside, modify, or confirm stipulations of
6 settlement or compromises of claims for compensation.

7 **SECTION 66.** 102.18 (3) of the statutes is amended to read:

8 102.18 (3) A party in interest may petition the commission for review of an
9 examiner's decision awarding or denying compensation if the department, ~~the~~
10 ~~division,~~ or the commission receives the petition within 21 days after the department
11 ~~or the division~~ mailed a copy of the examiner's findings and order to the last-known
12 addresses of the parties in interest. The commission shall dismiss a petition that is
13 not filed within those 21 days unless the petitioner shows that the petition was filed
14 late for a reason that was beyond the petitioner's control. If no petition is filed within
15 those 21 days, the findings or order shall be considered final unless set aside,
16 reversed, or modified by the examiner within that time. If the findings or order are
17 set aside by the examiner, the status shall be the same as prior to the ~~setting aside~~
18 ~~of the findings or order~~ that were set aside. If the findings or order are reversed or
19 modified by the examiner, the time for filing a petition commences on the date on
20 which notice of the reversal or modification is mailed to the last-known addresses
21 of the parties in interest. The commission shall either affirm, reverse, set aside, or
22 modify the findings or order, in whole or in part, or direct the taking of additional
23 evidence. The commission's action shall be based on a review of the evidence
24 submitted.

25 **SECTION 67.** 102.18 (4) (c) 3. of the statutes is amended to read:

1 102.18 (4) (c) 3. Remand the case to the department ~~or the division~~ for further
2 proceedings.

3 **SECTION 68.** 102.18 (4) (d) of the statutes is amended to read:

4 102.18 (4) (d) While a petition for review by the commission is pending or after
5 entry of an order or award by the commission but before commencement of an action
6 for judicial review or expiration of the period in which to commence an action for
7 judicial review, the commission shall remand any compromise presented to it to the
8 department ~~or the division~~ for consideration and approval or rejection under s.
9 102.16 (1). Presentation of a compromise does not affect the period in which to
10 commence an action for judicial review.

11 **SECTION 69.** 102.18 (5) of the statutes is amended to read:

12 102.18 (5) If it appears to the ~~division~~ department that a mistake may have
13 been made as to cause of injury in the findings, order, or award upon an alleged injury
14 based on accident, when in fact the employee was suffering from an occupational
15 disease, within 3 years after the date of the findings, order, or award the ~~division~~
16 department may, upon its own motion, with or without hearing, set aside the
17 findings, order or award, or the ~~division~~ department may take that action upon
18 application made within those 3 years. After an opportunity for hearing, the ~~division~~
19 department may, if in fact the employee is suffering from disease arising out of the
20 employment, make new findings, and a new order or award, or the ~~division~~
21 department may reinstate the previous findings, order, or award.

22 **SECTION 70.** 102.18 (6) of the statutes is amended to read:

23 102.18 (6) In case of disease arising out of employment, the ~~division~~
24 department may from time to time review its findings, order, or award, and make
25 new findings, or a new order or award, based on the facts regarding disability or

1 otherwise as those facts may appear at the time of the review. This subsection shall
2 not affect the application of the limitation in s. 102.17 (4).

3 **SECTION 71.** 102.195 of the statutes is amended to read:

4 **102.195 Employees confined in institutions; payment of benefits.** In
5 case an employee is adjudged mentally ill or incompetent or convicted of a felony, and
6 is confined in a public institution and has wholly dependent upon the employee for
7 support a person whose dependency is determined as if the employee were deceased,
8 compensation payable during the period of the employee's confinement may be paid
9 to the employee and the employee's dependents in such manner, for such time, and
10 in such amount as the department ~~or division~~ by order provides.

11 **SECTION 72.** 102.22 (1) of the statutes is amended to read:

12 102.22 (1) If the employer or his or her insurer inexcusably delays in making
13 the first payment that is due an injured employee for more than 30 days after the date
14 on which the employee leaves work as a result of an injury and if the amount due is
15 \$500 or more, the payments as to which the delay is found shall be increased by 10
16 percent. If the employer or his or her insurer inexcusably delays in making the first
17 payment that is due an injured employee for more than 14 days after the date on
18 which the employee leaves work as a result of an injury, the payments as to which
19 the delay is found may be increased by 10 percent. If the employer or his or her
20 insurer inexcusably delays for any length of time in making any other payment that
21 is due an injured employee, the payments as to which the delay is found may be
22 increased by 10 percent. If the delay is chargeable to the employer and not to the
23 insurer, s. 102.62 applies and the relative liability of the parties shall be fixed and
24 discharged as provided in that section. The department ~~or the division~~ may also
25 order the employer or insurance carrier to reimburse the employee for any finance

1 charges, collection charges, or interest that the employee paid as a result of the
2 inexcusable delay by the employer or insurance carrier.

3 **SECTION 73.** 102.22 (2) of the statutes is amended to read:

4 102.22 (2) If any sum that the department ~~or the division~~ orders to be paid is
5 not paid when due, that sum shall bear interest at the rate of 10 percent per year.
6 The state is liable for interest on awards issued against it under this chapter. The
7 department ~~or the division~~ has jurisdiction to issue an award for payment of interest
8 under this subsection at any time within one year after the date of its order or, if the
9 order is appealed, within one year after final court determination. Interest awarded
10 under this subsection becomes due from the date the examiner's order becomes final
11 or from the date of a decision by the commission, whichever is later.

12 **SECTION 74.** 102.23 (2) of the statutes is amended to read:

13 102.23 (2) Upon the trial of an action for review of an order or award, the court
14 shall disregard any irregularity or error of the commission, or the the department,
15 ~~or the division~~ unless it is made to affirmatively appear that the plaintiff was
16 damaged by that irregularity or error.

17 **SECTION 75.** 102.23 (3) of the statutes is amended to read:

18 102.23 (3) The record in any case shall be transmitted to the department ~~or the~~
19 ~~division~~ within 5 days after expiration of the time for appeal from the order or
20 judgment of the court, unless an appeal is taken from that order or judgment.

21 **SECTION 76.** 102.23 (5) of the statutes is amended to read:

22 102.23 (5) When an action for review involves only the question of liability as
23 between the employer and one or more insurance companies or as between several
24 insurance companies, a party that has been ordered by the department, ~~the division,~~

1 the commission, or a court to pay compensation is not relieved from paying
2 compensation as ordered.

3 **SECTION 77.** 102.24 (2) of the statutes is amended to read:

4 102.24 (2) After the commencement of an action to review any order or award
5 of the commission, the parties may have the record remanded by the court for such
6 time and under such condition as the parties may provide, for the purpose of having
7 the department ~~or the division~~ act upon the question of approving or disapproving
8 any settlement or compromise that the parties may desire to have so approved. If
9 approved, the action shall be at an end and judgment may be entered upon the
10 approval as upon an award. If not approved, the department ~~or the division~~ shall
11 immediately return the record to the circuit court and the action shall proceed as if
12 no remand had been made.

13 **SECTION 78.** 102.25 (1) of the statutes is amended to read:

14 102.25 (1) Any party aggrieved by a judgment entered upon the review of any
15 order or award may appeal the judgment within the period specified in s. 808.04 (1).
16 A trial court may not require the commission or any party to the action to execute,
17 serve, or file an undertaking under s. 808.07 or to serve, or secure approval of, a
18 transcript of the notes of the stenographic reporter or the tape of the recording
19 machine. The state is a party aggrieved under this subsection if a judgment is
20 entered upon the review confirming any order or award against the state. At any
21 time before the case is set down for hearing in the court of appeals or the supreme
22 court, the parties may have the record remanded by the court to the department ~~or~~
23 ~~the division~~ in the same manner and for the same purposes as provided for
24 remanding from the circuit court to the department ~~or the division~~ under s. 102.24
25 (2).

1 **SECTION 79.** 102.26 (2) of the statutes is amended to read:

2 102.26 (2) Unless previously authorized by the department ~~or the division~~, no
3 fee may be charged or received for the enforcement or collection of any claim for
4 compensation nor may any contract for that enforcement or collection be enforceable
5 when that fee, inclusive of all taxable attorney fees paid or agreed to be paid for that
6 enforcement or collection, exceeds 20 percent of the amount at which the claim is
7 compromised or of the amount awarded, adjudged, or collected, except that in cases
8 of admitted liability in which there is no dispute as to the amount of compensation
9 due and in which no hearing or appeal is necessary, the fee charged may not exceed
10 10 percent, but not to exceed \$250, of the amount at which the claim is compromised
11 or of the amount awarded, adjudged, or collected. The limitation as to fees shall
12 apply to the combined charges of attorneys, solicitors, representatives, and adjusters
13 who knowingly combine their efforts toward the enforcement or collection of any
14 compensation claim.

15 **SECTION 80.** 102.26 (3) (b) 1. of the statutes is amended to read:

16 102.26 (3) (b) 1. Subject to sub. (2), upon application of any interested party,
17 the department ~~or the division~~ may fix the fee of the claimant's attorney or
18 representative and provide in the award for that fee to be paid directly to the attorney
19 or representative.

20 **SECTION 81.** 102.26 (3) (b) 3. of the statutes is amended to read:

21 102.26 (3) (b) 3. The claimant may request the insurer or self-insured employer
22 to pay any compensation that is due the claimant by depositing the payment directly
23 into an account maintained by the claimant at a financial institution. If the insurer
24 or self-insured employer agrees to the request, the insurer or self-insured employer
25 may deposit the payment by direct deposit, electronic funds transfer, or any other

1 money transfer technique approved by the department ~~or the division~~. The claimant
2 may revoke a request under this subdivision at any time by providing appropriate
3 written notice to the insurer or self-insured employer.

4 **SECTION 82.** 102.26 (4) of the statutes is amended to read:

5 102.26 (4) Any attorney or other person who charges or receives any fee in
6 violation of this section may be required to forfeit double the amount retained by the
7 attorney or other person, which forfeiture shall be collected by the state in an action
8 in debt upon complaint of the department ~~or the division~~. Out of the sum recovered
9 the court shall direct payment to the injured party of the amount of the overcharge.

10 **SECTION 83.** 102.27 (2) (b) of the statutes is amended to read:

11 102.27 (2) (b) If a governmental unit provides public assistance under ch. 49
12 to pay medical costs or living expenses related to a claim under this chapter and if
13 the governmental unit has given the parties to the claim written notice stating that
14 the governmental unit provided the assistance and the cost of that assistance, the
15 department ~~or the division~~ shall order the employer or insurance carrier owing
16 compensation to reimburse that governmental unit for the amount of assistance the
17 governmental unit provided or two-thirds of the amount of the award or payment
18 remaining after deduction of attorney fees and any other fees or costs chargeable
19 under ch. 102, whichever is less. The department shall comply with this paragraph
20 when making payments under s. 102.81.

21 **SECTION 84.** 102.28 (3) (c) of the statutes is amended to read:

22 102.28 (3) (c) An employee who has signed a waiver under par. (a) 1. and an
23 affidavit under par. (a) 2., who sustains an injury that, but for that waiver, the
24 employer would be liable for under s. 102.03, who at the time of the injury was a
25 member of a religious sect whose authorized representative has filed an affidavit

1 under par. (a) 3. and an agreement under par. (a) 4., and who as a result of the injury
2 becomes dependent on the religious sect for financial and medical assistance, or the
3 employee's dependent, may request a hearing under s. 102.17 (1) to determine if the
4 religious sect has provided the employee and his or her dependents with a standard
5 of living and medical treatment that are reasonable when compared to the general
6 standard of living and medical treatment for members of the religious sect. If, after
7 hearing, the ~~division~~ department determines that the religious sect has not provided
8 that standard of living or medical treatment, or both, the ~~division~~ department may
9 order the religious sect to provide alternative benefits to that employee or his or her
10 dependent, or both, in an amount that is reasonable under the circumstances, but
11 not in excess of the benefits that the employee or dependent could have received
12 under this chapter but for the waiver under par. (a) 1.

13 **SECTION 85.** 102.28 (4) (c) of the statutes is amended to read:

14 102.28 (4) (c) After a hearing under par. (b), or without a hearing if one is not
15 requested, the ~~division~~ department may issue an order to an employer to cease
16 operations on a finding that the employer is an uninsured employer. ~~If no hearing~~
17 ~~is requested, the department may issue such an order.~~

18 **SECTION 86.** 102.29 (1) (b) (intro.) of the statutes is amended to read:

19 102.29 (1) (b) (intro.) If a party entitled to notice cannot be found, the
20 department shall become the agent of that party for the giving of a notice as required
21 in par. (a) and the notice, when given to the department, shall include an affidavit
22 setting forth the facts, including the steps taken to locate that party. Each party shall
23 have an equal voice in the prosecution of the claim, and any disputes arising shall
24 be passed upon by the court before whom the case is pending, and if no action is
25 pending, then by a court of record or by the department ~~or the division~~. If notice is

1 given as provided in par. (a), the liability of the tort-feasor shall be determined as
2 to all parties having a right to make claim and, irrespective of whether or not all
3 parties join in prosecuting the claim, the proceeds of the claim shall be divided as
4 follows:

5 **SECTION 87.** 102.29 (1) (c) of the statutes is amended to read:

6 102.29 (1) (c) If both the employee or the employee's personal representative
7 or other person entitled to bring action, and the employer, compensation insurer, or
8 department, join in the pressing of said claim and are represented by counsel, the
9 attorney fees allowed as a part of the costs of collection shall be, unless otherwise
10 agreed upon, divided between the attorneys for those parties as directed by the court
11 or by the department ~~or the division~~.

12 **SECTION 88.** 102.29 (1) (d) of the statutes is amended to read:

13 102.29 (1) (d) A settlement of a 3rd-party claim shall be void unless the
14 settlement and the distribution of the proceeds of the settlement are approved by the
15 court before whom the action is pending or, if no action is pending, then by a court
16 of record or by the department ~~or the division~~.

17 **SECTION 89.** 102.30 (7) (a) of the statutes is amended to read:

18 102.30 (7) (a) The department ~~or the division~~ may order direct reimbursement
19 out of the proceeds payable under this chapter for payments made under a
20 nonindustrial insurance policy covering the same disability and expenses
21 compensable under s. 102.42 when the claimant consents or when it is established
22 that the payments under the nonindustrial insurance policy were improper. No
23 attorney fee is due with respect to that reimbursement.

24 **SECTION 90.** 102.32 (1m) (intro.) of the statutes is amended to read:

1 102.32 (1m) (intro.) In any case in which compensation payments for an injury
2 have extended or will extend over 6 months or more after the date of the injury or in
3 any case in which death benefits are payable, any party in interest may, in the
4 discretion of the department ~~or the division~~, be discharged from, or compelled to
5 guarantee, future compensation payments by doing any of the following:

6 **SECTION 91.** 102.32 (1m) (a) of the statutes is amended to read:

7 102.32 (1m) (a) Depositing the present value of the total unpaid compensation
8 upon a 5 percent interest discount basis with a credit union, savings bank, savings
9 and loan association, bank, or trust company designated by the department ~~or the~~
10 ~~division~~.

11 **SECTION 92.** 102.32 (1m) (c) of the statutes is amended to read:

12 102.32 (1m) (c) Making payment in gross upon a 5 percent interest discount
13 basis to be approved by the department ~~or the division~~.

14 **SECTION 93.** 102.32 (1m) (d) of the statutes is amended to read:

15 102.32 (1m) (d) In cases in which the time for making payments or the amounts
16 of payments cannot be definitely determined, furnishing a bond, or other security,
17 satisfactory to the department ~~or the division~~ for the payment of compensation as
18 may be due or become due. The acceptance of the bond, or other security, and the form
19 and sufficiency of the bond or other security, shall be subject to the approval of the
20 department ~~or the division~~. If the employer or insurer is unable or fails to
21 immediately procure the bond, the employer or insurer, in lieu of procuring the bond,
22 shall deposit with a credit union, savings bank, savings and loan association, bank,
23 or trust company designated by the department ~~or the division~~ the maximum
24 amount that may reasonably become payable in those cases, to be determined by the
25 department ~~or the division~~ at amounts consistent with the extent of the injuries and

1 the law. The bonds and deposits may be reduced only to satisfy claims and may be
2 withdrawn only after the claims which they are to guarantee are fully satisfied or
3 liquidated under par. (a), (b), or (c).

4 **SECTION 94.** 102.32 (5) of the statutes is amended to read:

5 102.32 (5) Any insured employer may, in the discretion of the department ~~or~~
6 ~~the division~~, compel the insurer to discharge, or to guarantee payment of, the
7 employer's liabilities in any case described in sub. (1m) and by that discharge or
8 guarantee release the employer from liability for compensation in that case, except
9 that if for any reason a bond furnished or deposit made under sub. (1m) (d) does not
10 fully protect the beneficiary of the bond or deposit, the compensation insurer or
11 insured employer, as the case may be, shall still be liable to that beneficiary.

12 **SECTION 95.** 102.32 (6m) of the statutes is amended to read:

13 102.32 (6m) The department ~~or the division~~ may direct an advance on a
14 payment of unaccrued compensation for permanent disability or death benefits if the
15 department ~~or the division~~ determines that the advance payment is in the best
16 interest of the injured employee or the employee's dependents. In directing the
17 advance, the department ~~or the division~~ shall give the employer or the employer's
18 insurer an interest credit against its liability. The credit shall be computed at 5
19 percent. An injured employee or dependent may receive no more than 3 advance
20 payments per calendar year.

21 **SECTION 96.** 102.32 (7) of the statutes is amended to read:

22 102.32 (7) No lump sum settlement shall be allowed in any case of permanent
23 total disability upon an estimated life expectancy, except upon consent of all parties,
24 after hearing and finding by the ~~division~~ department that the interests of the injured
25 employee will be conserved by the lump sum settlement.

1 **SECTION 97.** 102.33 (1) of the statutes is amended to read:

2 102.33 (1) The department ~~and the division~~ shall print and furnish free to any
3 employer or employee any blank forms that are necessary to facilitate efficient
4 administration of this chapter. The department ~~and the division~~ shall keep any
5 record books or records that are necessary for the proper and efficient administration
6 of this chapter.

7 **SECTION 98.** 102.33 (2) (a) of the statutes is amended to read:

8 102.33 (2) (a) Except as provided in pars. (b) and (c), the records of the
9 department, ~~the division~~, and the commission, related to the administration of this
10 chapter are subject to inspection and copying under s. 19.35 (1).

11 **SECTION 99.** 102.33 (2) (b) (intro.) of the statutes is amended to read:

12 102.33 (2) (b) (intro.) Except as provided in this paragraph and par. (d), a record
13 maintained by the department, ~~the division~~, or the commission that reveals the
14 identity of an employee who claims worker's compensation benefits, the nature of the
15 employee's claimed injury, the employee's past or present medical condition, the
16 extent of the employee's disability, or the amount, type, or duration of benefits paid
17 to the employee and a record maintained by the department that reveals any
18 financial information provided to the department by a self-insured employer or by
19 an applicant for exemption under s. 102.28 (2) (b) are confidential and not open to
20 public inspection or copying under s. 19.35 (1). The department, ~~the division~~, or the
21 commission may deny a request made under s. 19.35 (1) or, subject to s. 102.17 (2m)
22 and (2s), refuse to honor a subpoena issued by an attorney of record in a civil or
23 criminal action or special proceeding to inspect and copy a record that is confidential
24 under this paragraph, unless one of the following applies:

25 **SECTION 100.** 102.33 (2) (b) 1. of the statutes is amended to read:

1 102.33 (2) (b) 1. The requester is the employee who is the subject of the record
2 or an attorney or authorized agent of that employee. An attorney or authorized agent
3 of an employee who is the subject of a record shall provide a written authorization
4 for inspection and copying from the employee if requested by the department,~~the~~
5 ~~division,~~ or the commission.

6 **SECTION 101.** 102.33 (2) (b) 2. of the statutes is amended to read:

7 102.33 (2) (b) 2. The record that is requested contains confidential information
8 concerning a worker's compensation claim and the requester is an insurance carrier
9 or employer that is a party to any worker's compensation claim involving the same
10 employee or an attorney or authorized agent of that insurance carrier or employer,
11 except that the department,~~the division,~~ or the commission is not required to do a
12 random search of its records and may require the requester to provide the
13 approximate date of the injury and any other relevant information that would assist
14 the department,~~the division,~~ or the commission in finding the record requested. An
15 attorney or authorized agent of an insurance carrier or employer that is a party to
16 an employee's worker's compensation claim shall provide a written authorization for
17 inspection and copying from the insurance carrier or employer if requested by the
18 department,~~the division,~~ or the commission.

19 **SECTION 102.** 102.33 (2) (b) 4. of the statutes is amended to read:

20 102.33 (2) (b) 4. A court of competent jurisdiction in this state orders the
21 department,~~the division,~~ or the commission to release the record.

22 **SECTION 103.** 102.33 (2) (c) of the statutes is amended to read:

23 102.33 (2) (c) A record maintained by the department,~~the division,~~ or the
24 commission that contains employer or insurer information obtained from the
25 Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is

1 confidential and not open to public inspection or copying under s. 19.35 (1) unless the
2 Wisconsin compensation rating bureau authorizes public inspection or copying of
3 that information.

4 **SECTION 104.** 102.33 (2) (d) 2. of the statutes is amended to read:

5 102.33 (2) (d) 2. The department, ~~the division,~~ or the commission may release
6 information that is confidential under par. (b) to a government unit, an institution
7 of higher education, or a nonprofit research organization for purposes of research and
8 may release information that is confidential under par. (c) to those persons for that
9 purpose if the Wisconsin compensation rating bureau authorizes that release. A
10 government unit, institution of higher education, or nonprofit research organization
11 may not permit inspection or disclosure of any information released to it under this
12 subdivision that is confidential under par. (b) unless the department, ~~the division,~~
13 or the commission authorizes that inspection or disclosure and may not permit
14 inspection or disclosure of any information released to it under this subdivision that
15 is confidential under par. (c) unless the department, ~~the division,~~ or the commission,
16 and the Wisconsin compensation rating bureau, authorize the inspection or
17 disclosure. A government unit, institution of higher education, or nonprofit research
18 organization that obtains any confidential information under this subdivision for
19 purposes of research shall provide the results of that research free of charge to the
20 person that released or authorized the release of that information.

21 **SECTION 105.** 102.35 (3) of the statutes is amended to read:

22 102.35 (3) Any employer who without reasonable cause refuses to rehire an
23 employee who is injured in the course of employment, when suitable employment is
24 available within the employee's physical and mental limitations, upon order of the
25 department ~~or the division,~~ has exclusive liability to pay to the employee, in addition

1 to other benefits, the wages lost during the period of such refusal, not exceeding one
2 year's wages. In determining the availability of suitable employment the
3 continuance in business of the employer shall be considered and any written rules
4 promulgated by the employer with respect to seniority or the provisions of any
5 collective bargaining agreement with respect to seniority shall govern.

6 **SECTION 106.** 102.42 (1m) of the statutes is amended to read:

7 102.42 (1m) LIABILITY FOR UNNECESSARY TREATMENT. If an employee who has
8 sustained a compensable injury undertakes in good faith invasive treatment that is
9 generally medically acceptable, but that is unnecessary, the employer shall pay
10 disability indemnity for all disability incurred as a result of that treatment. An
11 employer is not liable for disability indemnity for any disability incurred as a result
12 of any unnecessary treatment undertaken in good faith that is noninvasive or not
13 medically acceptable. This subsection applies to all findings that an employee has
14 sustained a compensable injury, whether the finding results from a hearing, the
15 default of a party, or a compromise or stipulation confirmed by the department ~~or the~~
16 division.

17 **SECTION 107.** 102.42 (6) of the statutes is amended to read:

18 102.42 (6) TREATMENT REJECTED BY EMPLOYEE. Unless the employee has elected
19 Christian Science treatment in lieu of medical, surgical, dental, or hospital
20 treatment, no compensation shall be payable for the death or disability of an
21 employee, if the death is caused, or insofar as the disability may be aggravated,
22 caused, or continued by an unreasonable refusal or neglect to submit to or follow any
23 competent and reasonable medical, surgical, or dental treatment or, in the case of
24 tuberculosis, by refusal or neglect to submit to or follow hospital or medical
25 treatment when found by the department ~~or the division~~ to be necessary. The right

1 to compensation accruing during a period of refusal or neglect to submit to or follow
2 hospital or medical treatment when found by the department ~~or the division~~ to be
3 necessary in the case of tuberculosis shall be barred, irrespective of whether
4 disability was aggravated, caused, or continued by that refusal or neglect.

5 **SECTION 108.** 102.42 (8) of the statutes is amended to read:

6 102.42 (8) AWARD TO STATE EMPLOYEE. Whenever the department ~~or the division~~
7 makes an award on behalf of a state employee, the department ~~or the division~~ shall
8 file duplicate copies of the award with the subunit of the department of
9 administration responsible for risk management. Upon receipt of the copies of the
10 award, the department of administration shall promptly issue a voucher in payment
11 of the award from the proper appropriation under s. 20.865 (1) (fm), (kr) or (ur), and
12 shall transmit one copy of the voucher and the award to the officer, department, or
13 agency by whom the affected employee is employed.

14 **SECTION 109.** 102.425 (4m) (a) of the statutes is amended to read:

15 102.425 (4m) (a) The department has jurisdiction under this subsection, ~~the~~
16 ~~department and the division have jurisdiction under s. and ss. 102.16 (1m) (c), and~~
17 ~~the division has jurisdiction under s. 102.17~~ to resolve a dispute between a
18 pharmacist or practitioner and an employer or insurer over the reasonableness of the
19 amount charged for a prescription drug dispensed under sub. (2) for outpatient use
20 by an injured employee who claims benefits under this chapter.

21 **SECTION 110.** 102.425 (4m) (b) of the statutes is amended to read:

22 102.425 (4m) (b) An employer or insurer that disputes the reasonableness of
23 the amount charged for a prescription drug dispensed under sub. (2) for outpatient
24 use by an injured employee or the department ~~or division~~ under sub. (4) (b) or s.
25 102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a

1 completed bill for the prescription drug, reasonable written notice to the pharmacist
2 or practitioner that the charge is being disputed. After receiving reasonable written
3 notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1)
4 (bg) 3. that a prescription drug charge is being disputed, a pharmacist or practitioner
5 may not collect the disputed charge from, or bring an action for collection of the
6 disputed charge against, the employee who received the prescription drug.

7 **SECTION 111.** 102.43 (5) (b) of the statutes is amended to read:

8 102.43 (5) (b) Except as provided in s. 102.61 (1g), temporary disability shall
9 also include such period as the employee may be receiving instruction under s. 102.61
10 (1) or (1m). Temporary disability on account of receiving instruction under s. 102.61
11 (1) or (1m), and not otherwise resulting from the injury, shall not be in excess of 80
12 weeks. That 80-week limitation does not apply to temporary disability benefits
13 under this section, the cost of tuition, fees, books, travel, or maintenance under s.
14 102.61 (1), or the cost of private rehabilitation counseling or rehabilitative training
15 under s. 102.61 (1m) if the department ~~or the division~~ determines that additional
16 training is warranted. The necessity for additional training as authorized by the
17 department ~~or the division~~ for any employee shall be subject to periodic review and
18 reevaluation.

19 **SECTION 112.** 102.44 (2) of the statutes is amended to read:

20 102.44 (2) In case of permanent total disability, aggregate indemnity shall be
21 weekly indemnity for the period that the employee may live. Total impairment for
22 industrial use of both eyes, the loss of both arms at or near the shoulder, the loss of
23 both legs at or near the hip, or the loss of one arm at the shoulder and one leg at the
24 hip constitutes permanent total disability. This enumeration is not exclusive, but in
25 other cases the ~~division~~ department shall find the facts.

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1 **SECTION 113.** 102.44 (6) (b) of the statutes is amended to read:

2 102.44 (6) (b) If during the period set forth in s. 102.17 (4) the employment
3 relationship is terminated by the employer at the time of the injury or by the
4 employee because his or her physical or mental limitations prevent his or her
5 continuing in such employment, or if during that period a wage loss of 15 percent or
6 more occurs, the ~~division~~ department may reopen any award and make a
7 redetermination taking into account loss of earning capacity.

8 **SECTION 114.** 102.475 (6) of the statutes is amended to read:

9 102.475 (6) ~~PROOF.~~ In administering this section the department ~~or the division~~
10 may require reasonable proof of birth, marriage, domestic partnership under ch. 770,
11 relationship, or dependency.

12 **SECTION 115.** 102.48 (1) of the statutes is amended to read:

13 102.48 (1) An unestranged surviving parent or parents to whose support the
14 deceased has contributed less than \$500 in the 52 weeks next preceding the injury
15 causing death shall receive a death benefit of \$6,500. If the parents are not living
16 together, the department ~~or the division~~ shall divide this sum in such proportion as
17 the department ~~or division~~ considers to be just, considering their ages and other facts
18 bearing on dependency.

19 **SECTION 116.** 102.48 (2) of the statutes is amended to read:

20 102.48 (2) In all other cases the death benefit shall be such sum as the
21 department ~~or the division~~ determines to represent fairly and justly the aid to
22 support which the dependent might reasonably have anticipated from the deceased
23 employee but for the injury. To establish anticipation of support and dependency, it
24 shall not be essential that the deceased employee made any contribution to support.
25 The aggregate benefits in that case shall not exceed twice the average annual

1 earnings of the deceased or 4 times the contributions of the deceased to the support
2 of his or her dependents during the year immediately preceding the deceased
3 employee's death, whichever amount is the greater. In no event shall the aggregate
4 benefits in that case exceed the amount that would accrue to a person who is solely
5 and wholly dependent. When there is more than one partial dependent the weekly
6 benefit shall be apportioned according to their relative dependency. The term
7 "support" as used in ss. 102.42 to 102.63 shall include contributions to the capital
8 fund of the dependents for their necessary comfort.

9 **SECTION 117.** 102.48 (3) of the statutes is amended to read:

10 102.48 (3) Except as otherwise provided, a death benefit, other than burial
11 expenses, shall be paid in weekly installments corresponding in amount to
12 two-thirds of the weekly earnings of the employee, until otherwise ordered by the
13 department ~~or the division~~.

14 **SECTION 118.** 102.49 (3) of the statutes is amended to read:

15 102.49 (3) If the employee leaves a spouse or domestic partner under ch. 770
16 wholly dependent and also a child by a former marriage, domestic partnership under
17 ch. 770, or adoption, likewise wholly dependent, aggregate benefits shall be the same
18 in amount as if the child were the child of the surviving spouse or partner, and the
19 entire benefit shall be apportioned to the dependents in the amounts that the
20 department ~~or the division~~ determines to be just, considering the ages of the
21 dependents and other factors bearing on dependency. The benefit awarded to the
22 surviving spouse or partner shall not exceed 4 times the average annual earnings of
23 the deceased employee.

24 **SECTION 119.** 102.49 (6) of the statutes is amended to read:

SECTION 119

1 102.49 (6) The department ~~or the division~~ may award the additional benefits
2 payable under this section to the surviving parent of the child, to the child's guardian,
3 or to such other person, bank, or trust company for the child's use as may be found
4 best calculated to conserve the interests of the child. If the child dies while benefits
5 are still payable, there shall be paid the reasonable expense for burial, not exceeding
6 \$1,500.

7 **SECTION 120.** 102.51 (3) of the statutes is amended to read:

8 102.51 (3) DIVISION AMONG DEPENDENTS. If there is more than one person wholly
9 or partially dependent on a deceased employee, the death benefit shall be divided
10 between those dependents in such proportion as the department ~~or the division~~
11 determines to be just, considering their ages and other facts bearing on their
12 dependency.

13 **SECTION 121.** 102.51 (4) of the statutes is amended to read:

14 102.51 (4) DEPENDENCY AS OF THE DATE OF DEATH. Questions as to who is a
15 dependent and the extent of his or her dependency shall be determined as of the date
16 of the death of the employee, and the dependent's right to any death benefit becomes
17 fixed at that time, regardless of any subsequent change in conditions. The death
18 benefit shall be directly recoverable by and payable to the dependents entitled to the
19 death benefit or their legal guardians or trustees. In case of the death of a dependent
20 whose right to a death benefit has become fixed, so much of the benefit as is unpaid
21 is payable to the dependent's personal representatives in gross, unless the
22 department ~~or the division~~ determines that the unpaid benefit shall be reassigned
23 under sub. (6) and paid to any other dependent who is physically or mentally
24 incapacitated or a minor. For purposes of this subsection, a child of the employee who

1 is born after the death of the employee is considered to be a dependent as of the date
2 of death.

3 **SECTION 122.** 102.51 (6) of the statutes is amended to read:

4 102.51 (6) DIVISION AMONG DEPENDENTS. Benefits accruing to a minor dependent
5 child may be awarded to either parent in the discretion of the department ~~or the~~
6 ~~division~~. Notwithstanding sub. (1), the department ~~or the division~~ may reassign the
7 death benefit as between a surviving spouse or a domestic partner under ch. 770 and
8 any children specified in sub. (1) and s. 102.49 in accordance with their respective
9 needs for the death benefit.

10 **SECTION 123.** 102.55 (3) of the statutes is amended to read:

11 102.55 (3) For all other injuries to the members of the body or its faculties that
12 are specified in the schedule under s. 102.52 resulting in permanent disability,
13 though the member is not actually severed or the faculty is not totally lost,
14 compensation shall bear such relation to the compensation named in the schedule
15 as the disability bears to the disability named in the schedule. Indemnity in those
16 cases shall be determined by allowing weekly indemnity during the healing period
17 resulting from the injury and the percentage of permanent disability resulting after
18 the healing period as found by the department ~~or the division~~.

19 **SECTION 124.** 102.555 (12) (a) of the statutes is amended to read:

20 102.555 (12) (a) An employer, or the department, ~~or the division~~ is not liable
21 for the expense of any examination or test for hearing loss, any evaluation of such
22 an exam or test, any medical treatment for improving or restoring hearing, or any
23 hearing aid to relieve the effect of hearing loss unless it is determined that
24 compensation for occupational deafness is payable under sub. (3), (4), or (11).

25 **SECTION 125.** 102.56 (1) of the statutes is amended to read:

1 102.56 (1) Subject to sub. (2), if an employee is so permanently disfigured as
2 to occasion potential wage loss due to the disfigurement, the department ~~or the~~
3 ~~division~~ may allow such sum as the department ~~or the division~~ considers just as
4 compensation for the disfigurement, not exceeding the employee's average annual
5 earnings. In determining the potential for wage loss due to the disfigurement and
6 the sum awarded, the department ~~or the division~~ shall take into account the age,
7 education, training, and previous experience and earnings of the employee, the
8 employee's present occupation and earnings, and likelihood of future suitable
9 occupational change. Consideration for disfigurement allowance is confined to those
10 areas of the body that are exposed in the normal course of employment. The
11 department ~~or the division~~ shall also take into account the appearance of the
12 disfigurement, its location, and the likelihood of its exposure in occupations for which
13 the employee is suited.

14 **SECTION 126.** 102.56 (2) of the statutes is amended to read:

15 102.56 (2) If an employee who claims compensation under sub. (1) returns to
16 work for the employer who employed the employee at the time of the injury, or is
17 offered employment with that employer, at the same or a higher wage, the
18 department ~~or the division~~ may not allow that compensation unless the employee
19 suffers an actual wage loss due to the disfigurement.

20 **SECTION 127.** 102.565 (1) of the statutes is amended to read:

21 102.565 (1) When, as a result of exposure in the course of employment over a
22 period of time to toxic or hazardous substances or conditions, an employee
23 performing work that is subject to this chapter develops any clinically observable
24 abnormality or condition that, on competent medical opinion, predisposes or renders
25 the employee in any manner differentially susceptible to disability to such an extent

1 that it is inadvisable for the employee to continue employment involving that
2 exposure, is discharged from or ceases to continue the employment, and suffers wage
3 loss by reason of that discharge from, or cessation of, employment, the department
4 ~~or the division~~ may allow such sum as the department ~~or the division~~ considers just
5 as compensation for that wage loss, not exceeding \$13,000. If a nondisabling
6 condition may also be caused by toxic or hazardous exposure not related to
7 employment and if the employee has a history of that exposure, compensation as
8 provided under this section or any other remedy for loss of earning capacity shall not
9 be allowed. If the employee is discharged from employment prior to a finding by the
10 department ~~or the division~~ that it is inadvisable for the employee to continue in that
11 employment and if it is reasonably probable that continued exposure would result
12 in disability, the liability of the employer who discharges the employee is primary,
13 and the liability of the employer's insurer is secondary, under the same procedure
14 and to the same effect as provided by s. 102.62.

15 **SECTION 128.** 102.565 (2) of the statutes is amended to read:

16 102.565 (2) Upon application of any employer or employee, the department ~~or~~
17 ~~the division~~ may direct any employee of the employer or an employee who, in the
18 course of his or her employment, has been exposed to toxic or hazardous substances
19 or conditions to submit to examination by one or more physicians appointed by the
20 department ~~or the division~~ to determine whether the employee has developed any
21 abnormality or condition under sub. (1), and the degree of that abnormality or
22 condition. The cost of the medical examination shall be borne by the person making
23 application. The physician conducting the examination shall submit the results of
24 the examination to the department ~~or the division~~, which shall submit copies of the
25 reports to the employer and employee, who shall have an opportunity to rebut the

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1 reports if a request to submit a rebuttal is made to the department ~~or the division~~
2 within 10 days after the department ~~or the division~~ mails the report to the parties.
3 The department ~~or the division~~ shall make its findings as to whether it is inadvisable
4 for the employee to continue in his or her employment.

5 **SECTION 129.** 102.565 (3) of the statutes is amended to read:

6 102.565 (3) If, after direction by the commission, ~~or~~ any member of the
7 commission, the department, ~~the division~~, or an examiner, an employee refuses to
8 submit to an examination or in any way obstructs the examination, the employee's
9 right to compensation under this section shall be barred.

10 **SECTION 130.** 102.61 (1g) (c) of the statutes is amended to read:

11 102.61 (1g) (c) On receiving notice that he or she is eligible to receive vocational
12 rehabilitation services under 29 USC 701 to 797a, an employee shall provide the
13 employer with a written report from a physician, chiropractor, psychologist, or
14 podiatrist stating the employee's permanent work restrictions. Within 60 days after
15 receiving that report, the employer shall provide to the employee in writing an offer
16 of suitable employment, a statement that the employer has no suitable employment
17 for the employee, or a report from a physician, chiropractor, psychologist, or
18 podiatrist showing that the permanent work restrictions provided by the employee's
19 practitioner are in dispute and documentation showing that the difference in work
20 restrictions would materially affect either the employer's ability to provide suitable
21 employment or a vocational rehabilitation counselor's ability to recommend a
22 rehabilitative training program. If the employer and employee cannot resolve the
23 dispute within 30 days after the employee receives the employer's report and
24 documentation, the employer or employee may request a hearing before the ~~division~~
25 department to determine the employee's work restrictions. Within 30 days after the

1 ~~division~~ department determines the employee's work restrictions, the employer shall
2 provide to the employee in writing an offer of suitable employment or a statement
3 that the employer has no suitable employment for the employee.

4 **SECTION 131.** 102.61 (1m) (c) of the statutes is amended to read:

5 102.61 (1m) (c) The employer or insurance carrier shall pay the reasonable cost
6 of any services provided for an employee by a private rehabilitation counselor under
7 par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c)
8 and by rule, if the private rehabilitation counselor determines that rehabilitative
9 training is necessary, the reasonable cost of the rehabilitative training program
10 recommended by that counselor, including the cost of tuition, fees, books,
11 maintenance, and travel at the same rate as is provided for state officers and
12 employees under s. 20.916 (8). Notwithstanding that the department ~~or the division~~
13 may authorize under s. 102.43 (5) (b) a rehabilitative training program that lasts
14 longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less
15 is presumed to be reasonable.

16 **SECTION 132.** 102.61 (2) of the statutes is amended to read:

17 102.61 (2) The ~~division~~ department, the commission, and the courts shall
18 determine the rights and liabilities of the parties under this section in like manner
19 and with like effect as the ~~division~~ department, the commission, and the courts
20 determine other issues under this chapter. A determination under this subsection
21 may include a determination based on the evidence regarding the cost or scope of the
22 services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost
23 or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

24 **SECTION 133.** 102.62 of the statutes is amended to read:

1 **102.62 Primary and secondary liability; unchangeable.** In case of
2 liability under s. 102.57 or 102.60, the liability of the employer shall be primary and
3 the liability of the insurance carrier shall be secondary. If proceedings are had before
4 the ~~division~~ department for the recovery of that liability, the ~~division~~ department
5 shall set forth in its award the amount and order of liability as provided in this
6 section. Execution shall not be issued against the insurance carrier to satisfy any
7 judgment covering that liability until execution has first been issued against the
8 employer and has been returned unsatisfied as to any part of that liability. Any
9 provision in any insurance policy undertaking to guarantee primary liability or to
10 avoid secondary liability for a liability under s. 102.57 or 102.60 is void. If the
11 employer has been adjudged bankrupt or has made an assignment for the benefit of
12 creditors, if the employer, other than an individual, has gone out of business or has
13 been dissolved, or if the employer is a corporation and its charter has been forfeited
14 or revoked, the insurer shall be liable for the payment of that liability without
15 judgment or execution against the employer, but without altering the primary
16 liability of the employer.

17 **SECTION 134.** 102.64 (1) of the statutes is amended to read:

18 102.64 (1) Upon request of the department of administration, a representative
19 of the department of justice shall represent the state in cases involving payment into
20 or out of the state treasury under s. 20.865 (1) (fm), (kr), or (ur) or 102.29. The
21 department of justice, after giving notice to the department of administration, may
22 compromise the amount of those payments but such compromises shall be subject to
23 review by the department ~~or the division~~. If the spouse or domestic partner under
24 ch. 770 of the deceased employee compromises his or her claim for a primary death
25 benefit, the claim of the children of the employee under s. 102.49 shall be

1 compromised on the same proportional basis, subject to approval by the department
2 ~~or the division~~. If the persons entitled to compensation on the basis of total
3 dependency under s. 102.51 (1) compromise their claim, payments under s. 102.49
4 (5) (a) shall be compromised on the same proportional basis.

5 **SECTION 135.** 102.64 (2) of the statutes is amended to read:

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

17 **SECTION 136.** 102.65 (3) of the statutes is amended to read:

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

1 **SECTION 137.** 102.66 (1) of the statutes is amended to read:

2 102.66 (1) Subject to any certificate filed under s. 102.65 (4), if there is an
3 otherwise meritorious claim for occupational disease, or for a traumatic injury
4 described in s. 102.17 (4) in which the date of injury or death or last payment of
5 compensation, other than for treatment or burial expenses, is before April 1, 2006,
6 and if the claim is barred solely by the statute of limitations under s. 102.17 (4), the
7 department ~~or the division~~ may, in lieu of worker's compensation benefits, direct
8 payment from the work injury supplemental benefit fund under s. 102.65 of such
9 compensation and such medical expenses as would otherwise be due, based on the
10 date of injury, to or on behalf of the injured employee. The benefits shall be
11 supplemental, to the extent of compensation liability, to any disability or medical
12 benefits payable from any group insurance policy whose premium is paid in whole
13 or in part by any employer, or under any federal insurance or benefit program
14 providing disability or medical benefits. Death benefits payable under any such
15 group policy do not limit the benefits payable under this section.

16 **SECTION 138.** 102.75 (1) of the statutes is amended to read:

17 102.75 (1) The department shall assess upon and collect from each licensed
18 worker's compensation insurance carrier and from each employer exempted under
19 s. 102.28 (2) (b) or (bm) from the duty to carry insurance under s. 102.28 (2) (a) the
20 proportion of total costs and expenses incurred by the council on worker's
21 compensation for travel and research and by the department, ~~the division~~, and the
22 commission in the administration of this chapter for the current fiscal year, plus any
23 deficiencies in collections and anticipated costs from the previous fiscal year, that the
24 total indemnity paid or payable under this chapter by each such carrier and exempt
25 employer in worker's compensation cases initially closed during the preceding

1 calendar year, other than for increased, double, or treble compensation, bore to the
2 total indemnity paid in cases closed the previous calendar year under this chapter
3 by all carriers and exempt employers, other than for increased, double, or treble
4 compensation. The council on worker's compensation, ~~the division~~, and the
5 commission shall annually certify any costs and expenses for worker's compensation
6 activities to the department at such time as the secretary requires.

7 **SECTION 139.** 227.43 (1) (bm) of the statutes is repealed.

8 **SECTION 140.** 227.43 (2) (am) of the statutes is repealed.

9 **SECTION 141.** 227.43 (3) (bm) of the statutes is repealed.

10 **SECTION 142.** 227.43 (4) (bm) of the statutes is repealed.

11 **SECTION 9150. Nonstatutory provisions; Workforce Development.**

12 (1) TRANSFER OF WORKER'S COMPENSATION ADJUDICATORY FUNCTIONS.

13 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and
14 liabilities of the division of hearings and appeals in the department of administration
15 that are primarily related to worker's compensation matters, as determined by the
16 secretary of administration, shall become the assets and liabilities of the department
17 of workforce development.

18 (b) *Positions and employees.* On the effective date of this paragraph, all
19 positions and all incumbent employees holding those positions in the division of
20 hearings and appeals in the department of administration performing duties that
21 are primarily related to worker's compensation matters, as determined by the
22 secretary of administration, are transferred to the department of workforce
23 development.

24 (c) *Employee status.* Employees transferred under par. (b) have all the rights
25 and the same status under subch. V of ch. 111 and ch. 230 in the department of

1 workforce development that they enjoyed in the division of hearings and appeals in
2 the department of administration immediately before the transfer. Notwithstanding
3 s. 230.28 (4), no employee so transferred who has attained permanent status in class
4 is required to serve a probationary period.

5 (d) *Tangible personal property.* On the effective date of this paragraph, all
6 tangible personal property, including records, of the the division of hearings and
7 appeals in the department of administration that is primarily related to worker's
8 compensation matters, as determined by the secretary of administration, is
9 transferred to the department of workforce development.

10 (e) *Pending matters.* Any worker's compensation matter pending with the
11 division of hearings and appeals in the department of administration on the effective
12 date of this paragraph, as determined by the secretary of administration, is
13 transferred to the department of workforce development. All materials submitted
14 to or actions taken by the division of hearings and appeals in the department of
15 administration with respect to the pending matter are considered as having been
16 submitted to or taken by the department of workforce development.

17 (f) *Contracts.* All contracts entered into by the division of hearings and appeals
18 in the department of administration in effect on the effective date of this paragraph
19 that are primarily related to worker's compensation matters, as determined by the
20 secretary of administration, remain in effect and are transferred to the department
21 of workforce development. The department of workforce development shall carry out
22 any obligations under those contracts unless modified or rescinded by the
23 department of workforce development to the extent allowed under the contract.

24 (g) *Rules and orders.* All rules promulgated by the division of hearings and
25 appeals in the department of administration in effect on the effective date of this

1 paragraph that are primarily related to worker's compensation matters, as
2 determined by the secretary of administration, remain in effect until their specified
3 expiration dates or until amended or repealed by the department of workforce
4 development. All orders issued by the division of hearings and appeals in the
5 department of administration in effect on the effective date of this paragraph that
6 are primarily related to worker's compensation matters, as determined by the
7 secretary of administration, remain in effect until their specified expiration dates or
8 until modified or rescinded by the department of workforce development.

9 **SECTION 9450. Effective dates; Workforce Development.**

10 (1) TRANSFER OF WORKER'S COMPENSATION FUNCTIONS. The treatment of ss. 40.65
11 (2) (a) and (b) 3. and 4., 102.01 (2) (ad), (ar), and (dm), 102.04 (2r) (b), 102.07 (8) (c),
12 102.11 (1) (am) 1., 102.12, 102.13 (1) (c), (d) 2., and 3., and (f), (2) (a), (3), (4), and (5),
13 102.14 (title), (1), and (2), 102.15 (1) and (2), 102.16 (1), (1m) (a), (b), and (c), (2) (a)
14 and (b), (2m) (a) and (b), and (4), 102.17 (1) (a) 1., 2., 3., and 4., (b), (c) 1., (d) 1., 2.,
15 3., and 4., (e), (f) 1., (g), and (h), (2), (2m), (2s), (7) (b) and (c), and (8), 102.175 (2) and
16 (3) (c), 102.18 (1) (b) 1., 2., and 3., (bg) 1., 2., and 3., (bp), (bw), (c), and (e), (2), (3), (4)
17 (c) 3. and (d), (5), and (6), 102.195, 102.22 (1) and (2), 102.23 (2), (3), and (5), 102.24
18 (2), 102.25 (1), 102.26 (2), (3) (b) 1. and 3., and (4), 102.27 (2) (b), 102.28 (3) (c) and
19 (4) (c), 102.29 (1) (b) (intro.), (c), and (d), 102.30 (7) (a), 102.32 (1m) (intro.), (a), and
20 (c), and (d), (5), (6m), and (7), 102.33 (1), (2) (a), (b) (intro.), 1., 2., and 4., (c), and (d)
21 2., 102.35 (3), 102.42 (1m), (6), and (8), 102.425 (4m) (a) and (b), 102.43 (5) (b), 102.44
22 (2) and (6) (b), 102.475 (6), 102.48 (1), (2), and (3), 102.49 (3) and (6), 102.51 (3), (4),
23 and (6), 102.55 (3), 102.555 (12) (a), 102.56 (1) and (2), 102.565 (1), (2), and (3), 102.61
24 (1g) (c), (1m) (c), and (2), 102.62, 102.64 (1) and (2), 102.65 (3), 102.66 (1), 102.75 (1),

SECTION 9450

1 and 227.43 (1) (bm), (2) (am), (3) (bm), and (4) (bm) and SECTION 9150 (1) of this act
2 take effect on January 1, 2020.

3 (END)