

1           102.22 (1) If the employer or his or her insurer inexcusably delays in making  
2 the first payment that is due an injured employee for more than 30 days after the date  
3 on which the employee leaves work as a result of an injury and if the amount due is  
4 \$500 or more, the payments as to which the delay is found shall be increased by 10  
5 percent. If the employer or his or her insurer inexcusably delays in making the first  
6 payment that is due an injured employee for more than 14 days after the date on  
7 which the employee leaves work as a result of an injury, the payments as to which  
8 the delay is found may be increased by 10 percent. If the employer or his or her  
9 insurer inexcusably delays for any length of time in making any other payment that  
10 is due an injured employee, the payments as to which the delay is found may be  
11 increased by 10 percent. If the delay is chargeable to the employer and not to the  
12 insurer, s. 102.62 applies and the relative liability of the parties shall be fixed and  
13 discharged as provided in that section. The department ~~or the division~~ may also  
14 order the employer or insurance carrier to reimburse the employee for any finance  
15 charges, collection charges, or interest that the employee paid as a result of the  
16 inexcusable delay by the employer or insurance carrier.

17           **SECTION 1164.** 102.22 (2) of the statutes is amended to read:

18           102.22 (2) If any sum that the department ~~or the division~~ orders to be paid is  
19 not paid when due, that sum shall bear interest at the rate of 10 percent per year.  
20 The state is liable for interest on awards issued against it under this chapter. The  
21 ~~department or the division~~ has jurisdiction to issue an award for payment of interest  
22 under this subsection at any time within one year after the date of its order or, if the  
23 order is appealed, within one year after final court determination. Interest awarded  
24 under this subsection becomes due from the date the examiner's order becomes final  
25 or from the date of a decision by the commission, whichever is later.

1           **SECTION 1165.** 102.23 (2) of the statutes is amended to read:

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

6           **SECTION 1166.** 102.23 (3) of the statutes is amended to read:

7           102.23 (3) The record in any case shall be transmitted to the department ~~or the~~  
8 ~~division~~ within 5 days after expiration of the time for appeal from the order or  
9 judgment of the court, unless an appeal is taken from that order or judgment.

10          **SECTION 1167.** 102.23 (5) of the statutes is amended to read:

11          102.23 (5) When an action for review involves only the question of liability as  
12 between the employer and one or more insurance companies or as between several  
13 insurance companies, a party that has been ordered by the department, ~~the division,~~  
14 the commission, or a court to pay compensation is not relieved from paying  
15 compensation as ordered.

16          **SECTION 1168.** 102.24 (2) of the statutes is amended to read:

17          102.24 (2) After the commencement of an action to review any order or award  
18 of the commission, the parties may have the record remanded by the court for such  
19 time and under such condition as the parties may provide, for the purpose of having  
20 the department ~~or the division~~ act upon the question of approving or disapproving  
21 any settlement or compromise that the parties may desire to have so approved. If  
22 approved, the action shall be at an end and judgment may be entered upon the  
23 approval as upon an award. If not approved, the department ~~or the division~~ shall  
24 immediately return the record to the circuit court and the action shall proceed as if  
25 no remand had been made.

1           **SECTION 1169.** 102.25 (1) of the statutes is amended to read:

2           102.25 (1) Any party aggrieved by a judgment entered upon the review of any  
3 order or award may appeal the judgment within the period specified in s. 808.04 (1).  
4 A trial court may not require the commission or any party to the action to execute,  
5 serve, or file an undertaking under s. 808.07 or to serve, or secure approval of, a  
6 transcript of the notes of the stenographic reporter or the tape of the recording  
7 machine. The state is a party aggrieved under this subsection if a judgment is  
8 entered upon the review confirming any order or award against the state. At any  
9 time before the case is set down for hearing in the court of appeals or the supreme  
10 court, the parties may have the record remanded by the court to the department ~~or~~  
11 ~~the division~~ in the same manner and for the same purposes as provided for  
12 remanding from the circuit court to the department ~~or the division~~ under s. 102.24  
13 (2).

14           **SECTION 1170.** 102.26 (2) of the statutes is amended to read:

15           102.26 (2) Unless previously authorized by the department ~~or the division~~, no  
16 fee may be charged or received for the enforcement or collection of any claim for  
17 compensation nor may any contract for that enforcement or collection be enforceable  
18 when that fee, inclusive of all taxable attorney fees paid or agreed to be paid for that  
19 enforcement or collection, exceeds 20 percent of the amount at which the claim is  
20 compromised or of the amount awarded, adjudged, or collected, except that in cases  
21 of admitted liability in which there is no dispute as to the amount of compensation  
22 due and in which no hearing or appeal is necessary, the fee charged may not exceed  
23 10 percent, but not to exceed \$250, of the amount at which the claim is compromised  
24 or of the amount awarded, adjudged, or collected. The limitation as to fees shall  
25 apply to the combined charges of attorneys, solicitors, representatives, and adjusters

1 who knowingly combine their efforts toward the enforcement or collection of any  
2 compensation claim.

3 **SECTION 1171.** 102.26 (3) (b) 1. of the statutes is amended to read:

4 102.26 (3) (b) 1. Subject to sub. (2), upon application of any interested party,  
5 the department ~~or the division~~ may fix the fee of the claimant's attorney or  
6 representative and provide in the award for that fee to be paid directly to the attorney  
7 or representative.

8 **SECTION 1172.** 102.26 (3) (b) 3. of the statutes is amended to read:

9 102.26 (3) (b) 3. The claimant may request the insurer or self-insured employer  
10 to pay any compensation that is due the claimant by depositing the payment directly  
11 into an account maintained by the claimant at a financial institution. If the insurer  
12 or self-insured employer agrees to the request, the insurer or self-insured employer  
13 may deposit the payment by direct deposit, electronic funds transfer, or any other  
14 money transfer technique approved by the department ~~or the division~~. The claimant  
15 may revoke a request under this subdivision at any time by providing appropriate  
16 written notice to the insurer or self-insured employer.

17 **SECTION 1173.** 102.26 (4) of the statutes is amended to read:

18 102.26 (4) Any attorney or other person who charges or receives any fee in  
19 violation of this section may be required to forfeit double the amount retained by the  
20 attorney or other person, which forfeiture shall be collected by the state in an action  
21 in debt upon complaint of the department ~~or the division~~. Out of the sum recovered  
22 the court shall direct payment to the injured party of the amount of the overcharge.

23 **SECTION 1174.** 102.27 (2) (b) of the statutes is amended to read:

24 102.27 (2) (b) If a governmental unit provides public assistance under ch. 49  
25 to pay medical costs or living expenses related to a claim under this chapter and if

1 the governmental unit has given the parties to the claim written notice stating that  
2 the governmental unit provided the assistance and the cost of that assistance, the  
3 department ~~or the division~~ shall order the employer or insurance carrier owing  
4 compensation to reimburse that governmental unit for the amount of assistance the  
5 governmental unit provided or two-thirds of the amount of the award or payment  
6 remaining after deduction of attorney fees and any other fees or costs chargeable  
7 under ch. 102, whichever is less. The department shall comply with this paragraph  
8 when making payments under s. 102.81.

9 **SECTION 1175.** 102.28 (3) (c) of the statutes is amended to read:

10 102.28 (3) (c) An employee who has signed a waiver under par. (a) 1. and an  
11 affidavit under par. (a) 2., who sustains an injury that, but for that waiver, the  
12 employer would be liable for under s. 102.03, who at the time of the injury was a  
13 member of a religious sect whose authorized representative has filed an affidavit  
14 under par. (a) 3. and an agreement under par. (a) 4., and who as a result of the injury  
15 becomes dependent on the religious sect for financial and medical assistance, or the  
16 employee's dependent, may request a hearing under s. 102.17 (1) to determine if the  
17 religious sect has provided the employee and his or her dependents with a standard  
18 of living and medical treatment that are reasonable when compared to the general  
19 standard of living and medical treatment for members of the religious sect. If, after  
20 hearing, the ~~division~~ department determines that the religious sect has not provided  
21 that standard of living or medical treatment, or both, the ~~division~~ department may  
22 order the religious sect to provide alternative benefits to that employee or his or her  
23 dependent, or both, in an amount that is reasonable under the circumstances, but  
24 not in excess of the benefits that the employee or dependent could have received  
25 under this chapter but for the waiver under par. (a) 1.

## SECTION 1176

1       **SECTION 1176.** 102.28 (4) (c) of the statutes is amended to read:

2           102.28 (4) (c) After a hearing under par. (b), or without a hearing if one is not  
3 requested, the ~~division~~ department may issue an order to an employer to cease  
4 operations on a finding that the employer is an uninsured employer. ~~If no hearing~~  
5 ~~is requested, the department may issue such an order.~~

6       **SECTION 1177.** 102.29 (1) (b) (intro.) of the statutes is amended to read:

7           102.29 (1) (b) (intro.) If a party entitled to notice cannot be found, the  
8 department shall become the agent of that party for the giving of a notice as required  
9 in par. (a) and the notice, when given to the department, shall include an affidavit  
10 setting forth the facts, including the steps taken to locate that party. Each party shall  
11 have an equal voice in the prosecution of the claim, and any disputes arising shall  
12 be passed upon by the court before whom the case is pending, and if no action is  
13 pending, then by a court of record or by the department ~~or the division~~. If notice is  
14 given as provided in par. (a), the liability of the tort-feasor shall be determined as  
15 to all parties having a right to make claim and, irrespective of whether or not all  
16 parties join in prosecuting the claim, the proceeds of the claim shall be divided as  
17 follows:

18       **SECTION 1178.** 102.29 (1) (c) of the statutes is amended to read:

19           102.29 (1) (c) If both the employee or the employee's personal representative  
20 or other person entitled to bring action, and the employer, compensation insurer, or  
21 department, join in the pressing of said claim and are represented by counsel, the  
22 attorney fees allowed as a part of the costs of collection shall be, unless otherwise  
23 agreed upon, divided between the attorneys for those parties as directed by the court  
24 or by the department ~~or the division~~.

25       **SECTION 1179.** 102.29 (1) (d) of the statutes is amended to read:

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

5           **SECTION 1180.** 102.30 (7) (a) of the statutes is amended to read:

6           102.30 (7) (a) The department ~~or the division~~ may order direct reimbursement  
7 out of the proceeds payable under this chapter for payments made under a  
8 nonindustrial insurance policy covering the same disability and expenses  
9 compensable under s. 102.42 when the claimant consents or when it is established  
10 that the payments under the nonindustrial insurance policy were improper. No  
11 attorney fee is due with respect to that reimbursement.

12           **SECTION 1181.** 102.32 (1m) (intro.) of the statutes is amended to read:

13           102.32 (1m) (intro.) In any case in which compensation payments for an injury  
14 have extended or will extend over 6 months or more after the date of the injury or in  
15 any case in which death benefits are payable, any party in interest may, in the  
16 discretion of the department ~~or the division~~, be discharged from, or compelled to  
17 guarantee, future compensation payments by doing any of the following:

18           **SECTION 1182.** 102.32 (1m) (a) of the statutes is amended to read:

19           102.32 (1m) (a) Depositing the present value of the total unpaid compensation  
20 upon a 5 percent interest discount basis with a credit union, savings bank, savings  
21 and loan association, bank, or trust company designated by the department ~~or the~~  
22 ~~division~~.

23           **SECTION 1183.** 102.32 (1m) (c) of the statutes is amended to read:

24           102.32 (1m) (c) Making payment in gross upon a 5 percent interest discount  
25 basis to be approved by the department ~~or the division~~.

1           **SECTION 1184.** 102.32 (1m) (d) of the statutes is amended to read:

2           102.32 **(1m)** (d) In cases in which the time for making payments or the amounts  
3 of payments cannot be definitely determined, furnishing a bond, or other security,  
4 satisfactory to the department ~~or the division~~ for the payment of compensation as  
5 may be due or become due. The acceptance of the bond, or other security, and the form  
6 and sufficiency of the bond or other security, shall be subject to the approval of the  
7 department ~~or the division~~. If the employer or insurer is unable or fails to  
8 immediately procure the bond, the employer or insurer, in lieu of procuring the bond,  
9 shall deposit with a credit union, savings bank, savings and loan association, bank,  
10 or trust company designated by the department ~~or the division~~ the maximum  
11 amount that may reasonably become payable in those cases, to be determined by the  
12 department ~~or the division~~ at amounts consistent with the extent of the injuries and  
13 the law. The bonds and deposits may be reduced only to satisfy claims and may be  
14 withdrawn only after the claims which they are to guarantee are fully satisfied or  
15 liquidated under par. (a), (b), or (c).

16           **SECTION 1185.** 102.32 (5) of the statutes is amended to read:

17           102.32 **(5)** Any insured employer may, in the discretion of the department ~~or~~  
18 ~~the division~~, compel the insurer to discharge, or to guarantee payment of, the  
19 employer's liabilities in any case described in sub. (1m) and by that discharge or  
20 guarantee release the employer from liability for compensation in that case, except  
21 that if for any reason a bond furnished or deposit made under sub. (1m) (d) does not  
22 fully protect the beneficiary of the bond or deposit, the compensation insurer or  
23 insured employer, as the case may be, shall still be liable to that beneficiary.

24           **SECTION 1186.** 102.32 (6m) of the statutes is amended to read:



1           102.32 (6m) The department ~~or the division~~ may direct an advance on a  
2 payment of unaccrued compensation for permanent disability or death benefits if the  
3 department ~~or the division~~ determines that the advance payment is in the best  
4 interest of the injured employee or the employee's dependents. In directing the  
5 advance, the department ~~or the division~~ shall give the employer or the employer's  
6 insurer an interest credit against its liability. The credit shall be computed at 5  
7 percent. An injured employee or dependent may receive no more than 3 advance  
8 payments per calendar year.

9           **SECTION 1187.** 102.32 (7) of the statutes is amended to read:

10           102.32 (7) No lump sum settlement shall be allowed in any case of permanent  
11 total disability upon an estimated life expectancy, except upon consent of all parties,  
12 after hearing and finding by the ~~division~~ department that the interests of the injured  
13 employee will be conserved by the lump sum settlement.

14           **SECTION 1188.** 102.33 (1) of the statutes is amended to read:

15           102.33 (1) The department ~~and the division~~ shall print and furnish free to any  
16 employer or employee any blank forms that are necessary to facilitate efficient  
17 administration of this chapter. The department ~~and the division~~ shall keep any  
18 record books or records that are necessary for the proper and efficient administration  
19 of this chapter.

20           **SECTION 1189.** 102.33 (2) (a) of the statutes is amended to read:

21           102.33 (2) (a) Except as provided in pars. (b) and (c), the records of the  
22 department, ~~the division,~~ and the commission, related to the administration of this  
23 chapter are subject to inspection and copying under s. 19.35 (1).

24           **SECTION 1190.** 102.33 (2) (b) (intro.) of the statutes is amended to read:

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

14           **SECTION 1191.** 102.33 (2) (b) 1. of the statutes is amended to read:

15           102.33 (2) (b) 1. The requester is the employee who is the subject of the record  
16 or an attorney or authorized agent of that employee. An attorney or authorized agent  
17 of an employee who is the subject of a record shall provide a written authorization  
18 for inspection and copying from the employee if requested by the department, ~~the~~  
19 ~~division,~~ or the commission.

20           **SECTION 1192.** 102.33 (2) (b) 2. of the statutes is amended to read:

21           102.33 (2) (b) 2. The record that is requested contains confidential information  
22 concerning a worker's compensation claim and the requester is an insurance carrier  
23 or employer that is a party to any worker's compensation claim involving the same  
24 employee or an attorney or authorized agent of that insurance carrier or employer,  
25 except that the department, ~~the division,~~ or the commission is not required to do a

1 random search of its records and may require the requester to provide the  
2 approximate date of the injury and any other relevant information that would assist  
3 the department, ~~the division,~~ or the commission in finding the record requested. An  
4 attorney or authorized agent of an insurance carrier or employer that is a party to  
5 an employee's worker's compensation claim shall provide a written authorization for  
6 inspection and copying from the insurance carrier or employer if requested by the  
7 department, ~~the division,~~ or the commission.

8 **SECTION 1193.** 102.33 (2) (b) 4. of the statutes is amended to read:

9 102.33 (2) (b) 4. A court of competent jurisdiction in this state orders the  
10 department, ~~the division,~~ or the commission to release the record.

11 **SECTION 1194.** 102.33 (2) (c) of the statutes is amended to read:

12 102.33 (2) (c) A record maintained by the department, ~~the division,~~ or the  
13 commission that contains employer or insurer information obtained from the  
14 Wisconsin compensation rating bureau under s. 102.31 (8) or 626.32 (1) (a) is  
15 confidential and not open to public inspection or copying under s. 19.35 (1) unless the  
16 Wisconsin compensation rating bureau authorizes public inspection or copying of  
17 that information.

18 **SECTION 1195.** 102.33 (2) (d) 2. of the statutes is amended to read:

19 102.33 (2) (d) 2. The department, ~~the division,~~ or the commission may release  
20 information that is confidential under par. (b) to a government unit, an institution  
21 of higher education, or a nonprofit research organization for purposes of research and  
22 may release information that is confidential under par. (c) to those persons for that  
23 purpose if the Wisconsin compensation rating bureau authorizes that release. A  
24 government unit, institution of higher education, or nonprofit research organization  
25 may not permit inspection or disclosure of any information released to it under this

1 subdivision that is confidential under par. (b) unless the department, ~~the division,~~  
2 or the commission authorizes that inspection or disclosure and may not permit  
3 inspection or disclosure of any information released to it under this subdivision that  
4 is confidential under par. (c) unless the department, ~~the division,~~ or the commission,  
5 and the Wisconsin compensation rating bureau, authorize the inspection or  
6 disclosure. A government unit, institution of higher education, or nonprofit research  
7 organization that obtains any confidential information under this subdivision for  
8 purposes of research shall provide the results of that research free of charge to the  
9 person that released or authorized the release of that information.

10 **SECTION 1196.** 102.35 (3) of the statutes is amended to read:

11 102.35 (3) Any employer who without reasonable cause refuses to rehire an  
12 employee who is injured in the course of employment, when suitable employment is  
13 available within the employee's physical and mental limitations, upon order of the  
14 department ~~or the division,~~ has exclusive liability to pay to the employee, in addition  
15 to other benefits, the wages lost during the period of such refusal, not exceeding one  
16 year's wages. In determining the availability of suitable employment the  
17 continuance in business of the employer shall be considered and any written rules  
18 promulgated by the employer with respect to seniority or the provisions of any  
19 collective bargaining agreement with respect to seniority shall govern.

20 **SECTION 1197.** 102.42 (1m) of the statutes is amended to read:

21 102.42 (1m) LIABILITY FOR UNNECESSARY TREATMENT. If an employee who has  
22 sustained a compensable injury undertakes in good faith invasive treatment that is  
23 generally medically acceptable, but that is unnecessary, the employer shall pay  
24 disability indemnity for all disability incurred as a result of that treatment. An  
25 employer is not liable for disability indemnity for any disability incurred as a result

1 of any unnecessary treatment undertaken in good faith that is noninvasive or not  
2 medically acceptable. This subsection applies to all findings that an employee has  
3 sustained a compensable injury, whether the finding results from a hearing, the  
4 default of a party, or a compromise or stipulation confirmed by the department ~~or the~~  
5 division.

6 **SECTION 1198.** 102.42 (6) of the statutes is amended to read:

7 102.42 (6) TREATMENT REJECTED BY EMPLOYEE. Unless the employee has elected  
8 Christian Science treatment in lieu of medical, surgical, dental, or hospital  
9 treatment, no compensation shall be payable for the death or disability of an  
10 employee, if the death is caused, or insofar as the disability may be aggravated,  
11 caused, or continued by an unreasonable refusal or neglect to submit to or follow any  
12 competent and reasonable medical, surgical, or dental treatment or, in the case of  
13 tuberculosis, by refusal or neglect to submit to or follow hospital or medical  
14 treatment when found by the department ~~or the division~~ to be necessary. The right  
15 to compensation accruing during a period of refusal or neglect to submit to or follow  
16 hospital or medical treatment when found by the department ~~or the division~~ to be  
17 necessary in the case of tuberculosis shall be barred, irrespective of whether  
18 disability was aggravated, caused, or continued by that refusal or neglect.

19 **SECTION 1199.** 102.42 (8) of the statutes is amended to read:

20 102.42 (8) AWARD TO STATE EMPLOYEE. Whenever the department ~~or the division~~  
21 makes an award on behalf of a state employee, the department ~~or the division~~ shall  
22 file duplicate copies of the award with the subunit of the department of  
23 administration responsible for risk management. Upon receipt of the copies of the  
24 award, the department of administration shall promptly issue a voucher in payment  
25 of the award from the proper appropriation under s. 20.865 (1) (fm), (kr) or (ur), and

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1 shall transmit one copy of the voucher and the award to the officer, department, or  
2 agency by whom the affected employee is employed.

3 **SECTION 1200.** 102.425 (4m) (a) of the statutes is amended to read:

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

10 **SECTION 1201.** 102.425 (4m) (b) of the statutes is amended to read:

11 102.425 (4m) (b) An employer or insurer that disputes the reasonableness of  
12 the amount charged for a prescription drug dispensed under sub. (2) for outpatient  
13 use by an injured employee or the department ~~or division~~ under sub. (4) (b) or s.  
14 102.16 (1m) (c) or 102.18 (1) (bg) 3. shall provide, within 30 days after receiving a  
15 completed bill for the prescription drug, reasonable written notice to the pharmacist  
16 or practitioner that the charge is being disputed. After receiving reasonable written  
17 notice under this paragraph or under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18 (1)  
18 (bg) 3. that a prescription drug charge is being disputed, a pharmacist or practitioner  
19 may not collect the disputed charge from, or bring an action for collection of the  
20 disputed charge against, the employee who received the prescription drug.

21 **SECTION 1202.** 102.43 (5) (b) of the statutes is amended to read:

22 102.43 (5) (b) Except as provided in s. 102.61 (1g), temporary disability shall  
23 also include such period as the employee may be receiving instruction under s. 102.61  
24 (1) or (1m). Temporary disability on account of receiving instruction under s. 102.61  
25 (1) or (1m), and not otherwise resulting from the injury, shall not be in excess of 80

1 weeks. That 80-week limitation does not apply to temporary disability benefits  
2 under this section, the cost of tuition, fees, books, travel, or maintenance under s.  
3 102.61 (1), or the cost of private rehabilitation counseling or rehabilitative training  
4 under s. 102.61 (1m) if the department ~~or the division~~ determines that additional  
5 training is warranted. The necessity for additional training as authorized by the  
6 department ~~or the division~~ for any employee shall be subject to periodic review and  
7 reevaluation.

8 **SECTION 1203.** 102.43 (9) (e) of the statutes is amended to read:

9 102.43 (9) (e) The employee's employment with the employer has been  
10 suspended or terminated due to misconduct, as defined in s. 108.04 (5), by the  
11 employee connected with the employee's work or substantial fault, as defined for  
12 failing to notify his or her employer of absenteeism or tardiness that becomes  
13 excessive as provided in s. 108.04 (5g) (a), ~~by the employee connected with the~~  
14 ~~employee's work.~~

\*\*\*\*NOTE: Subsequent to 2013 Act 20, in 2015 Act 180, the substantial fault and  
misconduct standards were also incorporated into the worker's compensation law. I  
therefore modified this provision so that it instead references the older  
absenteeism/tardiness standard here as well. But if you'd like to instead keep substantial  
fault for purposes of worker's compensation, let me know.

15 **SECTION 1204.** 102.44 (2) of the statutes is amended to read:

16 102.44 (2) In case of permanent total disability, aggregate indemnity shall be  
17 weekly indemnity for the period that the employee may live. Total impairment for  
18 industrial use of both eyes, the loss of both arms at or near the shoulder, the loss of  
19 both legs at or near the hip, or the loss of one arm at the shoulder and one leg at the  
20 hip constitutes permanent total disability. This enumeration is not exclusive, but in  
21 other cases the ~~division~~ department shall find the facts.

22 **SECTION 1205.** 102.44 (6) (b) of the statutes is amended to read:

1           102.44 (6) (b) If during the period set forth in s. 102.17 (4) the employment  
2 relationship is terminated by the employer at the time of the injury or by the  
3 employee because his or her physical or mental limitations prevent his or her  
4 continuing in such employment, or if during that period a wage loss of 15 percent or  
5 more occurs, the ~~division~~ department may reopen any award and make a  
6 redetermination taking into account loss of earning capacity.

7           **SECTION 1206.** 102.475 (6) of the statutes is amended to read:

8           102.475 (6) **PROOF.** In administering this section the department ~~or the division~~  
9 may require reasonable proof of birth, marriage, domestic partnership under ch. 770,  
10 relationship, or dependency.

11           **SECTION 1207.** 102.48 (1) of the statutes is amended to read:

12           102.48 (1) An unestranged surviving parent or parents to whose support the  
13 deceased has contributed less than \$500 in the 52 weeks next preceding the injury  
14 causing death shall receive a death benefit of \$6,500. If the parents are not living  
15 together, the department ~~or the division~~ shall divide this sum in such proportion as  
16 the department ~~or division~~ considers to be just, considering their ages and other facts  
17 bearing on dependency.

18           **SECTION 1208.** 102.48 (2) of the statutes is amended to read:

19           102.48 (2) In all other cases the death benefit shall be such sum as the  
20 department ~~or the division~~ determines to represent fairly and justly the aid to  
21 support which the dependent might reasonably have anticipated from the deceased  
22 employee but for the injury. To establish anticipation of support and dependency, it  
23 shall not be essential that the deceased employee made any contribution to support.  
24 The aggregate benefits in that case shall not exceed twice the average annual  
25 earnings of the deceased or 4 times the contributions of the deceased to the support



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

8 **SECTION 1209.** 102.48 (3) of the statutes is amended to read:

9 102.48 (3) Except as otherwise provided, a death benefit, other than burial  
10 expenses, shall be paid in weekly installments corresponding in amount to  
11 two-thirds of the weekly earnings of the employee, until otherwise ordered by the  
12 department ~~or the division~~.

13 **SECTION 1210.** 102.49 (3) of the statutes is amended to read:

14 102.49 (3) If the employee leaves a spouse or domestic partner under ch. 770  
15 wholly dependent and also a child by a former marriage, domestic partnership under  
16 ch. 770, or adoption, likewise wholly dependent, aggregate benefits shall be the same  
17 in amount as if the child were the child of the surviving spouse or partner, and the  
18 entire benefit shall be apportioned to the dependents in the amounts that the  
19 department ~~or the division~~ determines to be just, considering the ages of the  
20 dependents and other factors bearing on dependency. The benefit awarded to the  
21 surviving spouse or partner shall not exceed 4 times the average annual earnings of  
22 the deceased employee.

23 **SECTION 1211.** 102.49 (6) of the statutes is amended to read:

24 102.49 (6) The department ~~or the division~~ may award the additional benefits  
25 payable under this section to the surviving parent of the child, to the child's guardian,

1 or to such other person, bank, or trust company for the child's use as may be found  
2 best calculated to conserve the interests of the child. If the child dies while benefits  
3 are still payable, there shall be paid the reasonable expense for burial, not exceeding  
4 \$1,500.

5 **SECTION 1212.** 102.51 (3) of the statutes is amended to read:

6 102.51 (3) DIVISION AMONG DEPENDENTS. If there is more than one person wholly  
7 or partially dependent on a deceased employee, the death benefit shall be divided  
8 between those dependents in such proportion as the department ~~or the division~~  
9 determines to be just, considering their ages and other facts bearing on their  
10 dependency.

11 **SECTION 1213.** 102.51 (4) of the statutes is amended to read:

12 102.51 (4) DEPENDENCY AS OF THE DATE OF DEATH. Questions as to who is a  
13 dependent and the extent of his or her dependency shall be determined as of the date  
14 of the death of the employee, and the dependent's right to any death benefit becomes  
15 fixed at that time, regardless of any subsequent change in conditions. The death  
16 benefit shall be directly recoverable by and payable to the dependents entitled to the  
17 death benefit or their legal guardians or trustees. In case of the death of a dependent  
18 whose right to a death benefit has become fixed, so much of the benefit as is unpaid  
19 is payable to the dependent's personal representatives in gross, unless the  
20 department ~~or the division~~ determines that the unpaid benefit shall be reassigned  
21 under sub. (6) and paid to any other dependent who is physically or mentally  
22 incapacitated or a minor. For purposes of this subsection, a child of the employee who  
23 is born after the death of the employee is considered to be a dependent as of the date  
24 of death.

25 **SECTION 1214.** 102.51 (6) of the statutes is amended to read:

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

7           **SECTION 1215.** 102.55 (3) of the statutes is amended to read:

8           102.55 (3) For all other injuries to the members of the body or its faculties that  
9 are specified in the schedule under s. 102.52 resulting in permanent disability,  
10 though the member is not actually severed or the faculty is not totally lost,  
11 compensation shall bear such relation to the compensation named in the schedule  
12 as the disability bears to the disability named in the schedule. Indemnity in those  
13 cases shall be determined by allowing weekly indemnity during the healing period  
14 resulting from the injury and the percentage of permanent disability resulting after  
15 the healing period as found by the department ~~or the division~~.

16           **SECTION 1216.** 102.555 (12) (a) of the statutes is amended to read:

17           102.555 (12) (a) An employer, ~~or the department, or the division~~ is not liable  
18 for the expense of any examination or test for hearing loss, any evaluation of such  
19 an exam or test, any medical treatment for improving or restoring hearing, or any  
20 hearing aid to relieve the effect of hearing loss unless it is determined that  
21 compensation for occupational deafness is payable under sub. (3), (4), or (11).

22           **SECTION 1217.** 102.56 (1) of the statutes is amended to read:

23           102.56 (1) Subject to sub. (2), if an employee is so permanently disfigured as  
24 to occasion potential wage loss due to the disfigurement, the department ~~or the~~  
25 ~~division~~ may allow such sum as the department ~~or the division~~ considers just as

1 compensation for the disfigurement, not exceeding the employee's average annual  
2 earnings. In determining the potential for wage loss due to the disfigurement and  
3 the sum awarded, the department ~~or the division~~ shall take into account the age,  
4 education, training, and previous experience and earnings of the employee, the  
5 employee's present occupation and earnings, and likelihood of future suitable  
6 occupational change. Consideration for disfigurement allowance is confined to those  
7 areas of the body that are exposed in the normal course of employment. The  
8 department ~~or the division~~ shall also take into account the appearance of the  
9 disfigurement, its location, and the likelihood of its exposure in occupations for which  
10 the employee is suited.

11 **SECTION 1218.** 102.56 (2) of the statutes is amended to read:

12 102.56 (2) If an employee who claims compensation under sub. (1) returns to  
13 work for the employer who employed the employee at the time of the injury, or is  
14 offered employment with that employer, at the same or a higher wage, the  
15 department ~~or the division~~ may not allow that compensation unless the employee  
16 suffers an actual wage loss due to the disfigurement.

17 **SECTION 1219.** 102.565 (1) of the statutes is amended to read:

18 102.565 (1) When, as a result of exposure in the course of employment over a  
19 period of time to toxic or hazardous substances or conditions, an employee  
20 performing work that is subject to this chapter develops any clinically observable  
21 abnormality or condition that, on competent medical opinion, predisposes or renders  
22 the employee in any manner differentially susceptible to disability to such an extent  
23 that it is inadvisable for the employee to continue employment involving that  
24 exposure, is discharged from or ceases to continue the employment, and suffers wage  
25 loss by reason of that discharge from, or cessation of, employment, the department

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

12 **SECTION 1220.** 102.565 (2) of the statutes is amended to read:

13 102.565 (2) Upon application of any employer or employee, the department ~~or~~  
14 ~~the division~~ may direct any employee of the employer or an employee who, in the  
15 course of his or her employment, has been exposed to toxic or hazardous substances  
16 or conditions to submit to examination by one or more physicians appointed by the  
17 department ~~or the division~~ to determine whether the employee has developed any  
18 abnormality or condition under sub. (1), and the degree of that abnormality or  
19 condition. The cost of the medical examination shall be borne by the person making  
20 application. The physician conducting the examination shall submit the results of  
21 the examination to the department ~~or the division~~, which shall submit copies of the  
22 reports to the employer and employee, who shall have an opportunity to rebut the  
23 reports if a request to submit a rebuttal is made to the department ~~or the division~~  
24 within 10 days after the department ~~or the division~~ mails the report to the parties.

1 The department ~~or the division~~ shall make its findings as to whether it is inadvisable  
2 for the employee to continue in his or her employment.

3 **SECTION 1221.** 102.565 (3) of the statutes is amended to read:

4 102.565 (3) If, after direction by the commission, ~~or~~ any member of the  
5 commission, the department, ~~the division~~, or an examiner, an employee refuses to  
6 submit to an examination or in any way obstructs the examination, the employee's  
7 right to compensation under this section shall be barred.

8 **SECTION 1222.** 102.61 (1g) (c) of the statutes is amended to read:

9 102.61 (1g) (c) On receiving notice that he or she is eligible to receive vocational  
10 rehabilitation services under 29 USC 701 to 797a, an employee shall provide the  
11 employer with a written report from a physician, chiropractor, psychologist, or  
12 podiatrist stating the employee's permanent work restrictions. Within 60 days after  
13 receiving that report, the employer shall provide to the employee in writing an offer  
14 of suitable employment, a statement that the employer has no suitable employment  
15 for the employee, or a report from a physician, chiropractor, psychologist, or  
16 podiatrist showing that the permanent work restrictions provided by the employee's  
17 practitioner are in dispute and documentation showing that the difference in work  
18 restrictions would materially affect either the employer's ability to provide suitable  
19 employment or a vocational rehabilitation counselor's ability to recommend a  
20 rehabilitative training program. If the employer and employee cannot resolve the  
21 dispute within 30 days after the employee receives the employer's report and  
22 documentation, the employer or employee may request a hearing before the ~~division~~  
23 department to determine the employee's work restrictions. Within 30 days after the  
24 ~~division~~ department determines the employee's work restrictions, the employer shall

1 provide to the employee in writing an offer of suitable employment or a statement  
2 that the employer has no suitable employment for the employee.

3 **SECTION 1223.** 102.61 (1m) (c) of the statutes is amended to read:

4 102.61 (1m) (c) The employer or insurance carrier shall pay the reasonable cost  
5 of any services provided for an employee by a private rehabilitation counselor under  
6 par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c)  
7 and by rule, if the private rehabilitation counselor determines that rehabilitative  
8 training is necessary, the reasonable cost of the rehabilitative training program  
9 recommended by that counselor, including the cost of tuition, fees, books,  
10 maintenance, and travel at the same rate as is provided for state officers and  
11 employees under s. 20.916 (8). Notwithstanding that the department or the division  
12 may authorize under s. 102.43 (5) (b) a rehabilitative training program that lasts  
13 longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less  
14 is presumed to be reasonable.

15 **SECTION 1224.** 102.61 (2) of the statutes is amended to read:

16 102.61 (2) The ~~division~~ department, the commission, and the courts shall  
17 determine the rights and liabilities of the parties under this section in like manner  
18 and with like effect as the ~~division~~ department, the commission, and the courts  
19 determine other issues under this chapter. A determination under this subsection  
20 may include a determination based on the evidence regarding the cost or scope of the  
21 services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost  
22 or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

23 **SECTION 1225.** 102.62 of the statutes is amended to read:

24 **102.62 Primary and secondary liability; unchangeable.** In case of  
25 liability under s. 102.57 or 102.60, the liability of the employer shall be primary and

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

15 **SECTION 1226.** 102.64 (1) of the statutes is amended to read:

16 102.64 (1) Upon request of the department of administration, a representative  
17 of the department of justice shall represent the state in cases involving payment into  
18 or out of the state treasury under s. 20.865 (1) (fm), (kr), or (ur) or 102.29. The  
19 department of justice, after giving notice to the department of administration, may  
20 compromise the amount of those payments but such compromises shall be subject to  
21 review by the department ~~or the division~~. If the spouse or domestic partner under  
22 ch. 770 of the deceased employee compromises his or her claim for a primary death  
23 benefit, the claim of the children of the employee under s. 102.49 shall be  
24 compromised on the same proportional basis, subject to approval by the department  
25 ~~or the division~~. If the persons entitled to compensation on the basis of total



1 dependency under s. 102.51 (1) compromise their claim, payments under s. 102.49  
2 (5) (a) shall be compromised on the same proportional basis.

3 **SECTION 1227.** 102.64 (2) of the statutes is amended to read:

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

15 **SECTION 1228.** 102.65 (3) of the statutes is amended to read:

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

24 **SECTION 1229.** 102.66 (1) of the statutes is amended to read:

.....  
**SECTION 1229**

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

15           **SECTION 1230.** 102.75 (1) of the statutes is amended to read:

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

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

6 **SECTION 1231.** 103.005 (12) (a) of the statutes is amended to read:

7 103.005 (12) (a) If any employer, employee, owner, or other person violates chs.  
8 103 to 106, or fails or refuses to perform any duty required under chs. 103 to 106,  
9 within the time prescribed by the department, for which no penalty has been  
10 specifically provided, or fails, neglects or refuses to obey any lawful order given or  
11 made by the department or any judgment or decree made by any court in connection  
12 with chs. 103 to 106, for each such violation, failure or refusal, the employer,  
13 employee, owner or other person shall forfeit not less than \$10 nor more than \$100  
14 for each offense. This paragraph does not apply to any person that fails to provide  
15 any information to the department to assist the department in determining  
16 prevailing wage rates or prevailing hours of labor under s. 103.49 (3) (a) or (am) or  
17 103.50 (3) or (4).

18 **SECTION 1232.** 103.007 of the statutes is repealed.

19 **SECTION 1233.** 103.10 (1) (a) (intro.) of the statutes is renumbered 103.10 (1)  
20 (a) and amended to read:

21 103.10 (1) (a) "Child" means a natural, adopted, or foster child, a stepchild, or  
22 a legal ward to whom any of the following applies:

23 **SECTION 1234.** 103.10 (1) (a) 1. of the statutes is repealed.

24 **SECTION 1235.** 103.10 (1) (a) 2. of the statutes is repealed.

25 **SECTION 1236.** 103.10 (1) (ap) of the statutes is created to read:

1 103.10 (1) (ap) "Covered active duty" means any of the following:

2 1. In the case of a member of a regular component of the U.S. armed forces, duty  
3 during the deployment of the member with the U.S. armed forces to a foreign country.

4 2. In the case of a member of a reserve component of the U.S. armed forces, duty  
5 during the deployment of the member with the U.S. armed forces to a foreign country  
6 under a call or order to active duty under a provision of law specified in 10 USC 101  
7 (a) (13) (B).

8 SECTION 1237. 103.10 (1) (b) of the statutes is amended to read:

9 103.10 (1) (b) Except as provided in ~~sub. (1m) (b) 2.~~ and s. 452.38, "employee"  
10 means an individual employed in this state by an employer, except the employer's  
11 ~~parent, child, spouse, domestic partner, or child parent, grandparent, grandchild, or~~  
12 sibling.

\*\*\*NOTE: This is reconciled s. 103.10 (1) (b). This SECTION has been affected by  
drafts with the following LRB numbers: -1775/P2 and -2039/P2

13 SECTION 1238. 103.10 (1) (c) of the statutes is amended to read:

14 103.10 (1) (c) ~~Except as provided in sub. (1m) (b) 3., "employer"~~ "Employer"  
15 means a person engaging in any activity, enterprise or business in this state  
16 employing at least ~~50~~ 25 individuals on a permanent basis. "Employer" includes the  
17 state and any office, department, independent agency, authority, institution,  
18 ~~association, society or other body in state government created or authorized to be~~  
19 created by the constitution or any law, including the legislature and the courts.

\*\*\*NOTE: This is reconciled s. 103.10 (1) (c). This SECTION has been affected by  
drafts with the following LRB numbers: -1775/p2 and -2039/p1.

20 SECTION 1239. 103.10 (1) (dm) of the statutes is created to read:

21 103.10 (1) (dm) "Grandchild" means the child of a child.

22 SECTION 1240. 103.10 (1) (dp) of the statutes is created to read:

1 103.10 (1) (dp) "Grandparent" means the parent of a parent.

2 **SECTION 1241.** 103.10 (1) (gm) of the statutes is created to read:

3 103.10 (1) (gm) "Sibling" means a brother, sister, half brother, half sister,  
4 stepbrother, or stepsister, whether by blood, marriage, or adoption.

5 **SECTION 1242.** 103.10 (1m) of the statutes is repealed.

\*\*\*NOTE: This is reconciled s. 103.10 (1m). This SECTION has been affected by  
drafts with the following LRB numbers: -1775/p2 and -2039/p1.

6 **SECTION 1243.** 103.10 (3) (a) 1. of the statutes is amended to read:

7 103.10 (3) (a) 1. In a 12-month period no employee may take more than 6 weeks  
8 of family leave under par. (b) 1. and, 2., 4., and 5.

9 **SECTION 1244.** 103.10 (3) (b) 3. of the statutes is amended to read:

10 103.10 (3) (b) 3. To care for the employee's child, spouse, domestic partner, ~~or~~  
11 parent, grandparent, grandchild, or sibling, if the child, spouse, domestic partner, ~~or~~  
12 parent, grandparent, grandchild, or sibling has a serious health condition.

13 **SECTION 1245.** 103.10 (3) (b) 4. of the statutes is created to read:

14 103.10 (3) (b) 4. Because of any qualifying exigency, as determined by the  
15 department by rule, arising out of the fact that the spouse, child, domestic partner,  
16 parent, grandparent, grandchild, or sibling of the employee is on covered active duty  
17 or has been notified of an impending call or order to covered active duty.

18 **SECTION 1246.** 103.10 (3) (b) 5. of the statutes is created to read:

19 103.10 (3) (b) 5. Because a child care center, child care provider, or school that  
20 the employee's child attends is experiencing an unforeseen or unexpected  
21 short-term closure.

22 **SECTION 1247.** 103.10 (6) (b) (intro.) of the statutes is amended to read:

1           103.10 (6) (b) (intro.) If an employee intends to take family leave because of the  
2 planned medical treatment or supervision of a child, spouse, domestic partner, or  
3 parent, grandparent, grandchild, or sibling or intends to take medical leave because  
4 of the planned medical treatment or supervision of the employee, the employee shall  
5 do all of the following:

6           **SECTION 1248.** 103.10 (6) (b) 1. of the statutes is amended to read:

7           103.10 (6) (b) 1. Make a reasonable effort to schedule the medical treatment  
8 or supervision so that it does not unduly disrupt the employer's operations, subject  
9 to the approval of the health care provider of the child, spouse, domestic partner,  
10 parent, grandparent, grandchild, sibling, or employee.

11           **SECTION 1249.** 103.10 (6) (c) of the statutes is created to read:

12           103.10 (6) (c) If the employee intends to take leave under sub. (3) (b) 4. that is  
13 foreseeable because the spouse, child, domestic partner, parent, grandparent,  
14 grandchild, or sibling of the employee is on covered active duty or has been notified  
15 of an impending call or order to covered active duty, the employee shall provide notice  
16 of that intention to the employer in a reasonable and practicable manner.

17           **SECTION 1250.** 103.10 (7) (a) of the statutes is amended to read:

18           103.10 (7) (a) If an employee requests family leave for a reason described in sub.  
19 (3) (b) 3. or requests medical leave, the employer may require the employee to provide  
20 certification, as described in par. (b), issued by the health care provider or Christian  
21 Science practitioner of the child, spouse, domestic partner, parent, grandparent,  
22 grandchild, sibling, or employee, whichever is appropriate.

23           **SECTION 1251.** 103.10 (7) (b) (intro.) of the statutes is amended to read:

24           103.10 (7) (b) (intro.) No employer may require certification under par. (a)  
25 stating more than the following:

1           **SECTION 1252.** 103.10 (7) (b) 1. of the statutes is amended to read:

2           103.10 (7) (b) 1. That the child, spouse, domestic partner, parent, grandparent,  
3           grandchild, sibling, or employee has a serious health condition.

4           **SECTION 1253.** 103.10 (7) (d) of the statutes is created to read:

5           103.10 (7) (d) If an employee requests leave under sub. (3) (b) 4., the employer  
6           may require the employee to provide certification that the spouse, child, domestic  
7           partner, parent, grandparent, grandchild, or sibling of the employee is on covered  
8           active duty or has been notified of an impending call or order to covered active duty  
9           issued at such time and in such manner as the department may prescribe by rule,  
10          and the employee shall provide a copy of that certification to the employer in a timely  
11          manner.

12          **SECTION 1254.** 103.10 (7) (e) of the statutes is created to read:

13          103.10 (7) (e) If an employee requests leave under sub. (3) (b) 5., the employer  
14          may require the employee to provide certification that the child care center, child  
15          care provider, or school that the employee's child attends is experiencing an  
16          unforeseen or unexpected short-term closure. The department may prescribe by  
17          rule the form and content of the certification.

18          **SECTION 1255.** 103.10 (12) (c) of the statutes is amended to read:

19          103.10 (12) (c) If 2 or more health care providers disagree about any of the  
20          information required to be certified under sub. (7) (b), the department may appoint  
21          another health care provider to examine the child, spouse, domestic partner, parent,  
22          grandparent, grandchild, sibling, or employee and render an opinion as soon as  
23          possible. The department shall promptly notify the employee and the employer of  
24          the appointment. The employer and the employee shall each pay 50 percent of the  
25          cost of the examination and opinion.

1           **SECTION 1256.** 103.10 (14) (a) of the statutes is renumbered 103.10 (14).

2           **SECTION 1257.** 103.10 (14) (b) of the statutes is repealed.

3           **SECTION 1258.** 103.12 of the statutes is repealed.

          \*\*\*\*NOTE: This is reconciled s. 103.12. This section has been affected by drafts with  
the following LRB numbers: -2039/p1 and -2044/p2.

4           **SECTION 1259.** 103.145 of the statutes is created to read:

5           **103.145           Employer drug policies; medical use of**  
6 **tetrahydrocannabinols. (1)** In this section:

7           (a) "Medication with tetrahydrocannabinols" has the meaning given in s.  
8 961.01 (14g).

9           (b) "Usable cannabis" has the meaning given in s. 961.01 (21f).

10          **(2)** No employer is required to permit or accommodate the use, consumption,  
11 possession, transfer, display, transportation, sale, or cultivation of medication with  
12 tetrahydrocannabinols or usable cannabis in the workplace, and any employer may  
13 have a policy restricting the use of marijuana by its employees.

14          **SECTION 1260.** 103.36 of the statutes is repealed.

15          **SECTION 1261.** 103.49 of the statutes is created to read:

16          **103.49 Wage rate on state work. (1) DEFINITIONS.** In this section:

17          (a) "Area" means the county in which a proposed project of public works that  
18 is subject to this section is located or, if the department determines that there is  
19 insufficient wage data in that county, "area" means those counties that are  
20 contiguous to that county or, if the department determines that there is insufficient  
21 wage data in those counties, "area" means those counties that are contiguous to those  
22 counties or, if the department determines that there is insufficient wage data in those  
23 counties, "area" means the entire state or, if the department is requested to review



1 a determination under sub. (3) (c), “area” means the city, village, or town in which  
2 a proposed project of public works that is subject to this section is located.

3 (am) “Bona fide economic benefit” means an economic benefit for which an  
4 employer makes irrevocable contributions to a trust or fund created under 29 USC  
5 186 (c) or to any other bona fide plan, trust, program, or fund no less often than  
6 quarterly or, if an employer makes annual contributions to such a bona fide plan,  
7 trust, program, or fund, for which the employer irrevocably escrows moneys at least  
8 quarterly based on the employer’s expected annual contribution.

9 (b) “Hourly basic rate of pay” means the hourly wage paid to any employee,  
10 excluding any contributions or payments for health insurance benefits, vacation  
11 benefits, pension benefits, and any other bona fide economic benefits, whether paid  
12 directly or indirectly.

13 (bg) “Insufficient wage data” means less than 500 hours of work performed in  
14 a particular trade or occupation on projects that are similar to a proposed project of  
15 public works that is subject to this section.

16 (bj) “Minor service or maintenance work” means a project of public works that  
17 is limited to minor crack filling, chip or slurry sealing, or other minor pavement  
18 patching, not including overlays, that has a projected life span of no longer than 5  
19 years; cleaning of drainage or sewer ditches or structures; or any other limited, minor  
20 work on public facilities or equipment that is routinely performed to prevent  
21 breakdown or deterioration.

22 (br) “Multiple-trade project of public works” means a project of public works  
23 in which no single trade accounts for 85 percent or more of the total labor cost of the  
24 project.

1 (c) "Prevailing hours of labor" for any trade or occupation in any area means  
2 10 hours per day and 40 hours per week and may not include any hours worked on  
3 a Saturday or Sunday or on any of the following holidays:

4 1. January 1.

5 2. The last Monday in May.

6 3. July 4.

7 4. The first Monday in September.

8 5. The 4th Thursday in November.

9 6. December 25.

10 7. The day before if January 1, July 4, or December 25 falls on a Saturday.

11 8. The day following if January 1, July 4, or December 25 falls on a Sunday.

12 (d) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or  
13 occupation engaged in the erection, construction, remodeling, repairing, or  
14 demolition of any project of public works in any area means the hourly basic rate of  
15 pay, plus the hourly contribution for health insurance benefits, vacation benefits,  
16 pension benefits, and any other bona fide economic benefit, paid directly or indirectly  
17 for a majority of the hours worked in the trade or occupation on projects in the area.

18 2. If there is no rate at which a majority of the hours worked in the trade or  
19 occupation on projects in the area is paid, "prevailing wage rate" for any trade or  
20 occupation engaged in the erection, construction, remodeling, repairing, or  
21 demolition of any project of public works in any area means the average hourly basic  
22 rate of pay, weighted by the number of hours worked, plus the average hourly  
23 contribution, weighted by the number of hours worked, for health insurance benefits,  
24 vacation benefits, pension benefits, and any other bona fide economic benefit, paid  
25 directly or indirectly for all hours worked at the hourly basic rate of pay of the

1 highest-paid 51 percent of hours worked in that trade or occupation on projects in  
2 that area.

3 (em) "Single-trade project of public works" means a project of public works in  
4 which a single trade accounts for 85 percent or more of the total labor cost of the  
5 project.

6 (f) "State agency" means any office, department, independent agency,  
7 institution of higher education, association, society, or other body in state  
8 government created or authorized to be created by the constitution or any law,  
9 including the legislature and the courts. "State agency" also includes the University  
10 of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System  
11 Authority, and the Wisconsin Aerospace Authority.

12 (fm) "Supply and installation contract" means a contract under which the  
13 material is installed by the supplier, the material is installed by means of simple  
14 fasteners or connectors such as screws or nuts and bolts, and no other work is  
15 performed on the site of the project of public works, and the total labor cost to install  
16 the material does not exceed 20 percent of the total cost of the contract.

17 (g) "Truck driver" includes an owner-operator of a truck.

18 **(1m) APPLICABILITY.** Subject to sub. (3g), this section applies to any project of  
19 public works erected, constructed, repaired, remodeled, or demolished for the state  
20 or a state agency, including all of the following:

21 (a) A project erected, constructed, repaired, remodeled, or demolished by one  
22 state agency for another state agency under any contract or under any statute  
23 specifically authorizing cooperation between state agencies.

24 (b) A project in which the completed facility is leased, purchased, lease  
25 purchased, or otherwise acquired by, or dedicated to, the state in lieu of the state or

1 a state agency contracting for the erection, construction, repair, remodeling, or  
2 demolition of the facility.

3 (c) A sanitary sewer or water main project in which the completed sanitary  
4 sewer or water main is acquired by, or dedicated to, the state for ownership or  
5 maintenance by the state.

6 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. Any contract made for the  
7 erection, construction, remodeling, repairing, or demolition of any project of public  
8 works to which the state or any state agency is a party shall contain a stipulation that  
9 no individual performing the work described in sub. (2m) may be allowed to work a  
10 greater number of hours per day or per week than the prevailing hours of labor,  
11 except that any such individual may be allowed or required to work more than such  
12 prevailing hours of labor per day and per week if he or she is paid for all hours worked  
13 in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly  
14 basic rate of pay; nor may he or she be paid less than the prevailing wage rate  
15 determined under sub. (3) in the same or most similar trade or occupation in the area  
16 in which the project of public works is situated. The notice published for the purpose  
17 of securing bids for the project must contain a reference to the prevailing wage rates  
18 determined under sub. (3) and the prevailing hours of labor. Except as otherwise  
19 provided in this subsection, if any contract or subcontract for a project of public works  
20 that is subject to this section is entered into, the prevailing wage rates determined  
21 under sub. (3) and the prevailing hours of labor shall be physically incorporated into  
22 and made a part of the contract or subcontract. For a minor subcontract, as  
23 determined by the department, the department shall prescribe by rule the method  
24 of notifying the minor subcontractor of the prevailing wage rates and prevailing  
25 hours of labor applicable to the minor subcontract. The prevailing wage rates and

1 prevailing hours of labor applicable to a contract or subcontract may not be changed  
2 during the time that the contract or subcontract is in force.

3 **(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), any person subject to this  
4 section shall pay all of the following employees the prevailing wage rate determined  
5 under sub. (3) and may not allow such employees to work a greater number of hours  
6 per day or per week than the prevailing hours of labor, unless the person pays for all  
7 hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times  
8 the employees' hourly basic rate of pay:

9 1. All laborers, workers, mechanics, and truck drivers employed on the site of  
10 a project of public works that is subject to this section.

11 2. All laborers, workers, mechanics, and truck drivers employed in the  
12 manufacturing or furnishing of materials, articles, supplies, or equipment on the site  
13 of a project of public works that is subject to this section or from a facility dedicated  
14 exclusively, or nearly so, to a project of public works that is subject to this section by  
15 a contractor, subcontractor, agent, or other person performing any work on the site  
16 of the project.

17 (b) A laborer, worker, mechanic, or truck driver who is employed to process,  
18 manufacture, pick up, or deliver materials or products from a commercial  
19 establishment that has a fixed place of business from which the establishment  
20 supplies processed or manufactured materials or products or from a facility that is  
21 not dedicated exclusively, or nearly so, to a project of public works that is subject to  
22 this section is not entitled to receive the prevailing wage rate determined under sub.  
23 (3) or to receive at least 1.5 times his or her hourly basic rate of pay for all hours  
24 worked in excess of the prevailing hours of labor unless any of the following applies:

1           1. The laborer, worker, mechanic, or truck driver is employed to go to the source  
2 of mineral aggregate such as sand, gravel, or stone and deliver that mineral  
3 aggregate to the site of a project of public works that is subject to this section by  
4 depositing the material directly in final place, from the transporting vehicle or  
5 through spreaders from the transporting vehicle.

6           2. The laborer, worker, mechanic, or truck driver is employed to go to the site  
7 of a project that is subject to this section, pick up excavated material or spoil from  
8 the site of the project of public works, and transport that excavated material or spoil  
9 away from the site of the project.

10           (c) A person that is subject to this section shall pay a truck driver who is an  
11 owner-operator of a truck separately for his or her work and for the use of his or her  
12 truck.

13           **(3) INVESTIGATION; DETERMINATION.** (a) Before a state agency issues a request  
14 for bids for any work to which this section applies, the state agency having the  
15 authority to prescribe the specifications shall apply to the department to determine  
16 the prevailing wage rate for each trade or occupation required in the work under  
17 contemplation in the area in which the work is to be done. The department shall  
18 conduct investigations and hold public hearings as necessary to define the trades or  
19 occupations that are commonly employed on projects that are subject to this section  
20 and to inform itself of the prevailing wage rates in all areas of the state for those  
21 trades or occupations, in order to determine the prevailing wage rate for each trade  
22 or occupation. The department shall issue its determination within 30 days after  
23 receiving the request and shall file the determination with the requesting state  
24 agency. A state agency that has contracted for a project of public works subject to this  
25 section shall post the prevailing wage rates determined by the department, the

1 prevailing hours of labor, and the provisions of subs. (2) and (6m) in at least one  
2 conspicuous place on the site of the project that is easily accessible by employees  
3 working on the project.

4 (am) The department shall, by January 1 of each year, compile the prevailing  
5 wage rates for each trade or occupation in each area. The compilation shall, in  
6 addition to the current prevailing wage rates, include future prevailing wage rates  
7 when those prevailing wage rates can be determined for any trade or occupation in  
8 any area and shall specify the effective date of those future prevailing wage rates.  
9 If a project of public works extends into more than one area, the department shall  
10 determine only one standard of prevailing wage rates for the entire project.

11 (ar) In determining prevailing wage rates under par. (a) or (am), the  
12 department may not use data from projects that are subject to this section, s. 66.0903,  
13 103.50, or 229.8275, or 40 USC 3142 unless the department determines that there  
14 is insufficient wage data in the area to determine those prevailing wage rates, in  
15 which case the department may use data from projects that are subject to this  
16 section, s. 66.0903, 103.50, or 229.8275, or 40 USC 3142. In determining prevailing  
17 wage rates under par. (a) or (am), the department may not use data from any  
18 construction work performed by a state agency or a local governmental unit, as  
19 defined in s. 66.0903 (1) (d).

20 (b) Any person may request a recalculation of any portion of an initial  
21 determination within 30 days after the initial determination date if the person  
22 submits evidence with the request showing that the prevailing wage rate for any  
23 given trade or occupation included in the initial determination does not represent the  
24 prevailing wage rate for that trade or occupation in the area. The evidence shall  
25 include wage rate information reflecting work performed by individuals working in

1 the contested trade or occupation in the area during the current survey period. The  
2 department shall affirm or modify the initial determination within 15 days after the  
3 date on which the department receives the request for recalculation.

4 (c) In addition to the recalculation under par. (b), the state agency that  
5 requested the determination under this subsection may request a review of any  
6 portion of a determination within 30 days after the date of issuance of the  
7 determination if the state agency submits evidence with the request showing that  
8 the prevailing wage rate for any given trade or occupation included in the  
9 determination does not represent the prevailing wage rate for that trade or  
10 occupation in the city, village, or town in which the proposed project of public works  
11 is located. That evidence shall include wage rate information for the contested trade  
12 or occupation on at least 3 similar projects located in the city, village, or town where  
13 the proposed project of public works is located on which some work has been  
14 performed during the current survey period and that were considered by the  
15 department in issuing its most recent compilation under par. (am). The department  
16 shall affirm or modify the determination within 15 days after the date on which the  
17 department receives the request for review.

18 **(3g) NONAPPLICABILITY.** This section does not apply to any of the following:

19 (a) A single-trade project of public works for which the estimated project cost  
20 of completion is less than \$48,000 or a multiple-trade project of public works for  
21 which the estimated project cost of completion is less than \$100,000.

22 (b) Work performed on a project of public works for which the state or the state  
23 agency contracting for the project is not required to compensate any contractor,  
24 subcontractor, contractor's or subcontractor's agent, or individual for performing the  
25 work.



1 (c) Minor service or maintenance work, warranty work, or work under a supply  
2 and installation contract.

3 (f) A public highway, street, or bridge project.

4 (g) A project of public works involving the erection, construction, repair,  
5 remodeling, or demolition of a residential property containing 2 dwelling units or  
6 less.

7 (h) A road, street, bridge, sanitary sewer, or water main project that is a part  
8 of a development in which not less than 90 percent of the lots contain or will contain  
9 2 dwelling units or less, as determined by the local governmental unit at the time of  
10 approval of the development, and that, on completion, is acquired by, or dedicated to,  
11 the state for ownership or maintenance by the state.

12 **(4r) COMPLIANCE.** (a) When the department finds that a state agency has not  
13 requested a determination under sub. (3) (a) or that a state agency, contractor, or  
14 subcontractor has not physically incorporated a determination into a contract or  
15 subcontract as required under sub. (2) or has not notified a minor subcontractor of  
16 a determination in the manner prescribed by the department by rule promulgated  
17 under sub. (2), the department shall notify the state agency, contractor or  
18 subcontractor of the noncompliance and shall file the determination with the state  
19 agency, contractor, or subcontractor within 30 days after the notice.

20 (b) Upon completion of a project of public works and before receiving final  
21 payment for his or her work on the project, each agent or subcontractor shall furnish  
22 the contractor with an affidavit stating that the agent or subcontractor has complied  
23 fully with the requirements of this section. A contractor may not authorize final  
24 payment until the affidavit is filed in proper form and order.

1 (c) Upon completion of a project of public works and before receiving final  
2 payment for his or her work on the project, each contractor shall file with the state  
3 agency authorizing the work an affidavit stating that the contractor has complied  
4 fully with the requirements of this section and that the contractor has received an  
5 affidavit under par. (b) from each of the contractor's agents and subcontractors. A  
6 state agency may not authorize a final payment until the affidavit is filed in proper  
7 form and order. If a state agency authorizes a final payment before an affidavit is  
8 filed in proper form and order or if the department determines, based on the greater  
9 weight of the credible evidence, that any person performing the work specified in sub.  
10 (2m) has been or may have been paid less than the prevailing wage rate or less than  
11 1.5 times the hourly basic rate of pay for all hours worked in excess of the prevailing  
12 hours of labor and requests that the state agency withhold all or part of the final  
13 payment, but the state agency fails to do so, the state agency is liable for all back  
14 wages payable up to the amount of the final payment.

15 (5) RECORDS; INSPECTION; ENFORCEMENT. (a) Each contractor, subcontractor, or  
16 contractor's or subcontractor's agent that performs work on a project of public works  
17 that is subject to this section shall keep full and accurate records clearly indicating  
18 the name and trade or occupation of every individual performing the work described  
19 in sub. (2m) and an accurate record of the number of hours worked by each of those  
20 individuals and the actual wages paid for the hours worked.

21 (b) The department shall enforce this section. The department may demand  
22 and examine, and every contractor, subcontractor, and contractor's and  
23 subcontractor's agent shall keep, and furnish upon request by the department,  
24 copies of payrolls and other records and information relating to the wages paid to  
25 individuals performing the work described in sub. (2m) for work to which this section

1 applies. The department may inspect records in the manner provided in this chapter.  
2 Every contractor, subcontractor, or agent performing work on a project of public  
3 works that is subject to this section is subject to the requirements of this chapter  
4 relating to the examination of records. Section 111.322 (2m) applies to discharge and  
5 other discriminatory acts arising in connection with any proceeding under this  
6 section.

7 (c) If requested by any person, the department shall inspect the payroll records  
8 of any contractor, subcontractor, or agent performing work on a project of public  
9 works that is subject to this section as provided in this paragraph to ensure  
10 compliance with this section. On receipt of such a request, the department shall  
11 request that the contractor, subcontractor, or agent submit to the department a  
12 certified record of the information specified in par. (a), other than personally  
13 identifiable information relating to an employee of the contractor, subcontractor, or  
14 agent, for no longer than a 4-week period. The department may request a contractor,  
15 subcontractor, or agent to submit those records no more than once per calendar  
16 quarter for each project of public works on which the contractor, subcontractor, or  
17 agent is performing work. The department may not charge a requester a fee for  
18 obtaining that information. Certified records submitted to the department under  
19 this paragraph are open for public inspection and copying under s. 19.35 (1).

20 **(6m)** LIABILITY AND PENALTIES. (ag) 1. A contractor, subcontractor, or  
21 contractor's or subcontractor's agent who fails to pay the prevailing wage rate  
22 determined by the department under sub. (3) or who pays less than 1.5 times the  
23 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor  
24 is liable to any affected employee in the amount of his or her unpaid wages or his or

1 her unpaid overtime compensation and in an additional amount as liquidated  
2 damages as provided in subd. 2. or 3., whichever is applicable.

3 2. If the department determines upon inspection under sub. (5) (b) or (c) that  
4 a contractor, subcontractor, or contractor's or subcontractor's agent has failed to pay  
5 the prevailing wage rate determined by the department under sub. (3) or has paid  
6 less than 1.5 times the hourly basic rate of pay for all hours worked in excess of the  
7 prevailing hours of labor, the department shall order the contractor to pay to any  
8 affected employee the amount of his or her unpaid wages or his or her unpaid  
9 overtime compensation and an additional amount equal to 100 percent of the amount  
10 of those unpaid wages or that unpaid overtime compensation as liquidated damages  
11 within a period specified by the department in the order.

12 3. In addition to or in lieu of recovering the liability specified in subd. 1. as  
13 provided in subd. 2., any employee for and on behalf of that employee and other  
14 employees similarly situated may commence an action to recover that liability in any  
15 court of competent jurisdiction. If the court finds that a contractor, subcontractor,  
16 or contractor's or subcontractor's agent has failed to pay the prevailing wage rate  
17 determined by the department under sub. (3) or has paid less than 1.5 times the  
18 hourly basic rate of pay for all hours worked in excess of the prevailing hours of labor,  
19 the court shall order the contractor, subcontractor, or agent to pay to any affected  
20 employee the amount of his or her unpaid wages or his or her unpaid overtime  
21 compensation and an additional amount equal to 100 percent of the amount of those  
22 unpaid wages or that unpaid overtime compensation as liquidated damages.

23 5. No employee may be a party plaintiff to an action under subd. 3. unless the  
24 employee consents in writing to become a party and the consent is filed in the court  
25 in which the action is brought. Notwithstanding s. 814.04 (1), the court shall, in

1 addition to any judgment awarded to the plaintiff, allow reasonable attorney fees  
2 and costs to be paid by the defendant.

3 (am) Except as provided in pars. (b), (d), and (f), any contractor, subcontractor,  
4 or contractor's or subcontractor's agent who violates this section may be fined not  
5 more than \$200 or imprisoned for not more than 6 months or both. Each day that  
6 a violation continues is a separate offense.

7 (b) Whoever induces an individual who seeks to be or is employed on any project  
8 of public works that is subject to this section to give up, waive, or return any part of  
9 the wages to which the individual is entitled under the contract governing the  
10 project, or who reduces the hourly basic rate of pay normally paid to an individual  
11 for work on a project that is not subject to this section during a week in which the  
12 individual works both on a project of public works that is subject to this section and  
13 on a project that is not subject to this section, by threat not to employ, by threat of  
14 dismissal from employment, or by any other means is guilty of an offense under s.  
15 946.15 (1).

16 (c) Any individual who is employed on a project of public works that is subject  
17 to this section who knowingly allows a contractor, subcontractor, or contractor's or  
18 subcontractor's agent to pay him or her less than the prevailing wage rate set forth  
19 in the contract governing the project, who gives up, waives, or returns any part of the  
20 compensation to which he or she is entitled under the contract, or who gives up,  
21 waives, or returns any part of the compensation to which he or she is normally  
22 entitled for work on a project that is not subject to this section during a week in which  
23 the individual works both on a project of public works that is subject to this section  
24 and on a project that is not subject to this section, is guilty of an offense under s.  
25 946.15 (2).

.....  
**SECTION 1261**

1 (d) Whoever induces any individual who seeks to be or is employed on any  
2 project of public works that is subject to this section to allow any part of the wages  
3 to which the individual is entitled under the contract governing the project to be  
4 deducted from the individual's pay is guilty of an offense under s. 946.15 (3), unless  
5 the deduction would be allowed under 29 CFR 3.5 or 3.6 from an individual who is  
6 working on a project that is subject to 40 USC 3142.

7 (e) Any individual who is employed on a project of public works that is subject  
8 to this section who knowingly allows any part of the wages to which he or she is  
9 entitled under the contract governing the project to be deducted from his or her pay  
10 is guilty of an offense under s. 946.15 (4), unless the deduction would be allowed  
11 under 29 CFR 3.5 or 3.6 from an individual who is working on a project that is subject  
12 to 40 USC 3142.

13 (f) Paragraph (am) does not apply to any person who fails to provide any  
14 information to the department to assist the department in determining prevailing  
15 wage rates under sub. (3) (a) or (am).

16 **(7) DEPARTMENT.** (a) Except as provided under pars. (b) and (c), the department  
17 shall distribute to all state agencies a list of all persons that the department has  
18 found to have failed to pay the prevailing wage rate determined under sub. (3) or has  
19 found to have paid less than 1.5 times the hourly basic rate of pay for all hours worked  
20 in excess of the prevailing hours of labor at any time in the preceding 3 years. The  
21 department shall include with any name the address of the person and shall specify  
22 when the person failed to pay the prevailing wage rate and when the person paid less  
23 than 1.5 times the hourly basic rate of pay for all hours worked in excess of the  
24 prevailing hours of labor. A state agency may not award any contract to the person  
25 unless otherwise recommended by the department or unless 3 years have elapsed

1 from the date the department issued its findings or date of final determination by a  
2 court of competent jurisdiction, whichever is later.

3 (b) The department may not include in a notification under par. (a) the name  
4 of any person on the basis of having subcontracted a contract for a project of public  
5 works to a person that the department has found to have failed to pay the prevailing  
6 wage rate determined under sub. (3) or has found to have paid less than 1.5 times  
7 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of  
8 labor.

9 (c) This subsection does not apply to any contractor, subcontractor, or agent  
10 who in good faith commits a minor violation of this section, as determined on a  
11 case-by-case basis through administrative hearings with all rights to due process  
12 afforded to all parties or who has not exhausted or waived all appeals.

13 (d) Any person submitting a bid on a project of public works that is subject to  
14 this section shall, on the date the person submits the bid, identify any construction  
15 business in which the person, or a shareholder, officer, or partner of the person if the  
16 person is a business, owns or has owned at least a 25 percent interest on the date the  
17 person submits the bid or at any other time within 3 years preceding the date the  
18 person submits the bid, if the business has been found to have failed to pay the  
19 prevailing wage rate determined under sub. (3) or to have paid less than 1.5 times  
20 the hourly basic rate of pay for all hours worked in excess of the prevailing hours of  
21 labor.

22 (e) The department shall promulgate rules to administer this subsection.

23 **SECTION 1262.** 103.50 of the statutes is created to read:

24 **103.50 Highway contracts. (1) DEFINITIONS.** In this section:

1 (a) "Area" means the county in which a proposed project that is subject to this  
2 section is located or, if the department determines that there is insufficient wage  
3 data in that county, "area" means those counties that are contiguous to that county  
4 or, if the department determines that there is insufficient wage data in those  
5 counties, "area" means those counties that are contiguous to those counties or, if the  
6 department determines that there is insufficient wage data in those counties, "area"  
7 means the entire state.

8 (b) "Hourly basic rate of pay" has the meaning given in s. 103.49 (1) (b).

9 (bg) "Insufficient wage data" has the meaning given in s. 103.49 (1) (bg).

10 (c) "Prevailing hours of labor" has the meaning given in s. 103.49 (1) (c).

11 (d) 1. Except as provided in subd. 2., "prevailing wage rate" for any trade or  
12 occupation in any area means the hourly basic rate of pay, plus the hourly  
13 contribution for health insurance benefits, vacation benefits, pension benefits, and  
14 any other bona fide economic benefit, paid directly or indirectly, for a majority of the  
15 hours worked in the trade or occupation in the area.

16 2. If there is no rate at which a majority of the hours worked in the trade or  
17 occupation in the area is paid, "prevailing wage rate" means the average hourly basic  
18 rate of pay, weighted by the number of hours worked, plus the average hourly  
19 contribution, weighted by the number of hours worked, for health insurance benefits,  
20 vacation benefits, pension benefits, and any other bona fide economic benefit, paid  
21 directly or indirectly for all hours worked at the hourly basic rate of pay of the  
22 highest-paid 51 percent of hours worked in that trade or occupation in that area.

23 (e) "Truck driver" has the meaning given in s. 103.49 (1) (g).

24 **(2) PREVAILING WAGE RATES AND HOURS OF LABOR.** No contractor, subcontractor,  
25 agent, or other person performing any work on a project under a contract based on



1 bids as provided in s. 84.06 (2) to which the state is a party for the construction or  
2 improvement of any highway may do any of the following:

3 (a) Pay an individual performing the work described in sub. (2m) less than the  
4 prevailing wage rate in the area in which the work is to be done determined under  
5 sub. (3).

6 (b) Allow an individual performing the work described in sub. (2m) to work a  
7 greater number of hours per day or per week than the prevailing hours of labor,  
8 unless the contractor, subcontractor, or contractor or subcontractor's agent pays the  
9 individual for all hours worked in excess of the prevailing hours of labor at a rate of  
10 at least 1.5 times the individual's hourly basic rate of pay.

11 **(2g) NONAPPLICABILITY.** This section does not apply to a single-trade project of  
12 public works, as defined in s. 103.49 (1) (em), for which the estimated project cost of  
13 completion is less than \$48,000 or a multiple-trade project of public works, as  
14 defined in s. 103.49 (1) (br), for which the estimated project cost of completion is less  
15 than \$100,000.

16 **(2m) COVERED EMPLOYEES.** (a) Subject to par. (b), any person subject to this  
17 section shall pay all of the following employees the prevailing wage rate determined  
18 under sub. (3) and may not allow such employees to work a greater number of hours  
19 per day or per week than the prevailing hours of labor, unless the person pays for all  
20 hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times  
21 the employees' hourly basic rate of pay:

22 1. All laborers, workers, mechanics, and truck drivers employed on the site of  
23 a project that is subject to this section.

24 2. All laborers, workers, mechanics, and truck drivers employed in the  
25 manufacturing or furnishing of materials, articles, supplies, or equipment on the site

1 of a project that is subject to this section or from a facility dedicated exclusively, or  
2 nearly so, to a project that is subject to this section by a contractor, subcontractor,  
3 agent, or other person performing any work on the site of the project.

4 (b) A laborer, worker, mechanic, or truck driver who is employed to process,  
5 manufacture, pick up, or deliver materials or products from a commercial  
6 establishment that has a fixed place of business from which the establishment  
7 supplies processed or manufactured materials or products or from a facility that is  
8 not dedicated exclusively, or nearly so, to a project that is subject to this section is not  
9 entitled to receive the prevailing wage rate determined under sub. (3) or to receive  
10 at least 1.5 times his or her hourly basic rate of pay for all hours worked in excess  
11 of the prevailing hours of labor unless any of the following applies:

12 1. The laborer, worker, mechanic, or truck driver is employed to go to the source  
13 of mineral aggregate such as sand, gravel, or stone and deliver that mineral  
14 aggregate to the site of a project that is subject to this section by depositing the  
15 material directly in final place, from the transporting vehicle or through spreaders  
16 from the transporting vehicle.

17 2. The laborer, worker, mechanic, or truck driver is employed to go to the site  
18 of a project that is subject to this section, pick up excavated material or spoil from  
19 the site of the project, and transport that excavated material or spoil away from the  
20 site of the project and return to the site of the project.

21 (c) A contractor, subcontractor, agent, or other person performing work on a  
22 project subject to this section shall pay a truck driver who is an owner-operator of  
23 a truck separately for his or her work and for the use of his or her truck.

24 (3) INVESTIGATIONS; DETERMINATIONS. The department shall conduct  
25 investigations and hold public hearings necessary to define the trades or occupations