



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0452/2
GMM:kjf:jf

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

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

EMPLOYMENT

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

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

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

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

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

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

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

SECTION 1. 20.445 (1) (ra) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9351. Initial applicability; Workforce Development.

(1) TRANSFER TO WORKER'S COMPENSATION UNINSURED EMPLOYERS FUND. The amendment of section 20.445 (1) (ra) of the statutes and the creation of 102.81 (1) (c) of the statutes first apply to claims paid from the uninsured employers fund in 2014.

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

SECTION 9451. Effective dates; Workforce Development.

(1) REIMBURSEMENT OF SUPPLEMENTAL WORKER'S COMPENSATION BENEFITS. The treatment of section 102.44 (1) (ag) (by SECTION 3) of the statutes takes effect on January 1, 2016.

(END)