

Stephanie Bloomingdale
Wisconsin State AFL-CIO
In support of SB 536
January 14, 2016

Good morning/afternoon Mr. Chairman and members of the Committee. My name is Stephanie Bloomingdale.

I appear before you today in my capacity as Chairwoman of the Worker's Compensation Advisory Council and in my capacity as the Secretary-Treasurer of the Wisconsin State AFL-CIO to urge support of SB 536, a bill designed to protect injured workers and safeguard Wisconsin's respected Worker's Compensation Act.

I. WISCONSIN'S WORKER'S COMPENSATION SYSTEM

Wisconsin was a pioneer when it came to protecting employees who were injured during the course of their employment. Wisconsin became the first state in the nation to enact a comprehensive worker's compensation law. This law, the Workmen's Compensation Act of 1911, created a system whereby injured workers receive prompt treatment, benefits for lost wages, and an incentive to return to work after they have healed from the effects of their injuries. For over a century, this system has provided employers, insurers and injured employees a stable environment with minimal litigation.

Every citizen can be proud of this State's strong worker's compensation system. It is fair to all affected parties, and is admired throughout the country for its stability and efficiency. Research has proven that:

- Wisconsin's injured workers heal faster; they return to the workforce on average three weeks faster than injured workers in other states.
- Wisconsin's system has lower costs, according to a 16 state study of worker injury claims by the non-partisan Worker's Compensation Research Institute.
- Wisconsin's injured workers are able to navigate the system effectively, resulting in less litigation, which is beneficial for workers and employers alike.
- Wisconsin's worker's compensation premiums are stable and low; they have risen at a pace less than inflation over the past six years.
- Wisconsin's worker's compensation system is completely funded by worker's compensation premiums and does not take in one penny of taxpayer dollars.

II. WISCONSIN'S WORKER'S COMPENSATION ADVISORY COUNCIL

I respectfully submit to you today that the historic stability of Wisconsin's worker's compensation system is the result of the proven process involved in enacting changes to the Worker's Compensation Act. Almost 50 years ago, the Legislature, with the purpose of insulating the worker's compensation system from partisan politics, and to ensure proper representation of all parties affected by the worker's compensation system, created the Worker's Compensation Advisory Council (the "Council"). The composition of the Council fairly represents the interests of all stakeholders in the worker's compensation system. The task of the Council is to advise the Legislature on policy matters concerning the development and administration of Wisconsin's worker's compensation law. Because legislators confidently trust in the Council process, the Legislature has historically accepted the recommendations of the Council.

One of the most important and enduring principles of the Council is maintaining the overall stability of the worker's compensation system without regard to partisan changes in the legislative or executive branches of government. The diversity of perspectives and interests of the participants in the Council process guarantees that every issue relating to continually improving Wisconsin's worker's compensation system is fairly and fully considered. Without the efforts of the Council, Wisconsin's worker's compensation system would be subject to the whim of partisan politics and would "yo-yo" with each election. As the political pendulum swings from one party to the other, instability is introduced into the system. That instability creates uncertainty and risk. That uncertainty and risk drives employer's worker's compensation premiums higher. Those costs are in turn passed on to consumers in the form of higher prices, and impacts job creation and expansion.

The efforts of the Council provide stability for the entire system and a vehicle to make reasoned changes to continually improve our worker's compensation system. The Labor and Management teams work toward the common goal of recommending changes that benefit the entire system: workers, employers and insurers. The Council process involves expert study, balanced discussion, and thoughtfully negotiated changes to the system. The product of the Council's negotiations is then drafted into an Agreed-Upon Bill that is brought to the Legislature.

This legislative session was no different – I can tell you the Council held public hearings around the State in December 2014 and then got to work on studying and vetting proposals in January 2015. We continued to meet and negotiate through the next nine months and arrived at an Agreement in October. The Agreement was quickly sent to the Legislative Reference Bureau for drafting. I would like to thank Chairman Nass and Representative Spiros for taking the lead as author of this Agreed-Upon Bill.

III. SB 536

SB 536 provides long overdue increases to the benefits required to adequately compensate employees who have sustained permanent injuries during the course of their employment. Historically, permanent partial disability rates have been increased by the legislature on an annual basis to keep pace with increases in the cost of living. Because of challenges associated with enacting the last Agreed Bill, permanent partial disability benefits for injured workers have not increased since January, 2013. In an effort to bring permanent partial disability benefits current, SB 536 increases the maximum weekly permanent partial disability rate \$20.00 in 2016, and an additional \$20.00 in 2017. With a similar intent, supplemental benefits will be extended 2 years to include workers injured before January 1, 2003, and increases the maximum supplemental benefit rate.

I'm happy to report that Labor's proposal to add a position at the Department of Justice to investigate and prosecute all sources of fraud in the Worker's Compensation System was included in this Agreed-Upon Bill. This Department of Justice position will be charged with investigating and prosecuting fraud committed by injured workers, insurance carriers, medical and health care providers, and employers. It is critical to ensure that all fraud, waste, or abuse is eliminated from the Worker's Compensation system.

SB 536 reduces the Statute of Limitations for traumatic injuries from 12 years to 6 years. Reducing the Statute of Limitations below 6 years has the potential for causing a wide range of negative impacts to injured workers and health care providers, alike. By way of example, reducing the Statute of Limitations will have the probable effect of shifting future medical costs onto taxpayers, or worse, preventing injured workers from obtaining necessary medical care.

SB 536 provides Administrative Law Judges the authority to issue prospective orders for vocational retraining benefits for future courses of instruction or training. Section 102.18 already allows an Administrative Law Judge the authority to order an employer or insurer to pay for future medical expense that arises from a work-related injury. However, the statutes do not currently allow for an order requiring an employer or insurer to pay vocational retraining benefits until an injured worker has actually enrolled and was attending classes. Unfortunately, many injured workers who have lost their former employment have no other source of income and do not have the financial ability to go to school on their own. As such, these injured workers cannot enroll in or begin school unless the workers compensation insurance carrier is ordered to pay for prospective schooling. SB 536 remedies that inequity.

SB 536 reinstates Section 102.43(5)(c), which sunsetted on April 30, 2014. That statutory provision allowed an injured worker to earn part-time wages up to 24 hours during a period of vocational retraining without placing their temporary total disability benefit in jeopardy. Because the provision had a positive impact during its trial period it was decided to remove the sunset and reinstate the statutory section.

IV. Conclusion

In conclusion, I strongly urge you to support SB 536. The proposed changes to the Worker's Compensation Act contained within this Bill are the product of thoughtful study and intense negotiation participated in by all affected parties, and represent improvements that will keep Wisconsin's Worker's Compensation System stronger and more efficient than any other state in the Nation.

January 14, 2016

To: Senate Committee on Labor & Government Reform

From: Jeffrey J Beiriger
Association/Management Services

Re: Senate Bill 536
Worker's Compensation

My name is Jeff Beiriger and I am President of Association/Management Services. My company provides executive management and government relations services for associations in Wisconsin and Minnesota. My clients include a number of construction trades association – plumbing, HVAC, roofing – as well as a human resource managers' association in Southeastern Wisconsin.

I wanted to share a little about what I do and who I represent so that you would understand my relationship to Worker's Compensation and the Advisory Council. It was some years ago now that my clients wanted to learn more about rising Worker's Compensation rates and how we could control them in Wisconsin. I attended meetings of the Wisconsin Compensation Rating Bureau and the Worker's Compensation Advisory Council as a way to learn more about the workers of the system in our state.

After attending meetings of the WCAC for a year or more, I was asked if I would be interested in filling a vacancy left by a Management representative on the Council and, specifically, to fill a spot as a representative of small businesses. Twenty-one years later, I continue to serve on the Council and, in recent years, I have served as the Chairperson of the Management Caucus.

Over the years, I've watched the political pendulum swing back and forth, but during that time, the Council has remained true to its purpose. We are charged with the responsibility of providing recommendations to the legislature on matters related to Worker's Compensation. As part of that, we have historically prepared a set of recommendations each session, unanimously approved by the Council's voting members, and delivered them to committees in the legislature for consideration. With rare exception, the Council's recommendations have been adopted by the committees and each chamber and signed into law by the Governor.

Two years ago, we recommended a bill that did not make it through the legislative process before the end of the session. The fee schedule and certain benefit changes met with some resistance, slowing down the process and dooming the proposal to die. Which brings us to this year....

Make no mistake, the members of the Council continue to be concerned about the rate of increase in medical costs. That, more than anything else, is driving rates in Wisconsin. What has mitigated the impact – among other things - is a reduction in the number of claims with disability benefits, more aggressive return-to-work practices, and modest increases in disability benefits. Still, the Council decided to take a different approach.

For its part, Management spent several months working with medical providers on an alternative to the fee schedule proposed in the 2013-2014 session. When we could not reach an agreement with the

medical providers, we were left with the option of pursuing the same schedule as we did in 2013-2014 or looking at other approaches. After several additional months, it was clear that the other approaches would not be ready for this session.

I tell you all of this as background because I want Committee members to understand how hard the each of the caucuses and the Council as a whole works to reach an understanding on the changes needed to the WC system in our state. The process can last as much as 18 months because the Council is very deliberate in its analysis and its actions. For more than 100 years, that's been a good thing.

Because of the experience level of Council members – some as practitioners, some as consultants, some as negotiators, and some as lobbyists – we see WC issues with a 360-degree perspective. I know that the Management Caucus has experience with the Worker's Compensation system here and in other states. All of us agree that while our system can be improved, there are some states that we would not want to look to for their counsel. And where we might look to another state, it's important to understand that not everything is as it appears at the surface. Some ideas won't work in the larger context of our system and some might have unintended effects.

As I mentioned, we are cognizant of our growing medical costs, but that is one of only several issues that the Council could address this time around. When the bill failed to move through the legislative process in 2013-2014, there were other elements of the Agreed Bill that were overshadowed by the discussion surrounding health care cost containment. What we heard from employers around the State was that we needed to revisit those items again.

- While we continued to explore medical cost containment options, we developed proposals on the items recommended to us by employers. Most of those items are included in the Agreed Bill (SB 536) before you today. Let me call out a few of them....
- We asked for a reduction in the Statute of Limitation for Worker's Compensation claims and the bill cuts the Statute of Limitations in half.
- We asked to have apportionment applied to cases where a disability may not be related completely to work. That is, where an injury is work-related, that portion of the disability attributed to the injury will be covered, but that portion attributed to a pre-existing injury, for instance, would not be covered.
- We asked that there be a reevaluation of certain disability ratings where advances in medical treatments might result in an employee with better range of motion than they had pre-injury. For instance, a knee or hip replacement can see workers with 100 percent range of motion where pre-injury, because of age and other factors, they may have only had 80 percent. If there's no permanent disability, there should be no benefits paid.
- We asked that there be a pharmacy fee schedule to hold down the cost of medications prescribed under the WC systems.
- We asked that there be a maximum rate of reimbursement paid for electronic medical reports and that final medical reports, which are important for reaching settlements and for other reasons, be provided timely and at a reasonable cost.

- We asked that there be a means to withhold indemnity benefits where the violation of an employer's drug/alcohol policy has a causal effect on the worker's injury.
- We asked that employers be given a better option for dealing with employees who are on light-duty, transitional work and who are discharged for cause. Current law would have the injured worker returned to a status where they are eligible to receive disability benefits, even though they were terminated for cause. The proposal before you would deny wage replacement benefits in those instances where an employee is terminated for cause under the theory that the system should not replace wages where there would otherwise be no wages because employment has ended.

Additionally, we addressed several concerns raised through public testimony and communication with LIRC, the Self-Insured Employers Council, DWD, and others, including members of the legislature. Fraud was an issue raised by legislators in 2013-2014 and we have reintroduced language in this bill to address specific concerns regarding fraud, whether perpetrated by an employee, employer, provider, or anyone else involved in the system.

More than 100 years ago, when Wisconsin's Worker's Compensation law was first passed, it was clear that this would be an area of the law that would require constant consideration, not for political purposes necessarily, but because the law affects so many people in our state.

We had an issue brought to our attention about newspaper delivery this year, though it was too late in the process to address the issue in the bill before you. We know that we have new issues ahead of us because of the changing nature of work, with more people working more than one job and fewer employers offering full-time work. And just like it has for 100 years, the Council will review these situations and provide its best ideas for your consideration.

I wish I could tell you that SB 536 solved every problem today and every problem in the future. It doesn't. What I can tell you is that it reflects the best effort of the Council and reflects a substantial move forward for the system. As a caucus, Management did not want to risk all of the reforms mentioned above by including items in this year's proposal that we know need to be addressed but either the ideas or the will is not there to pass them at this time.

Let me be more specific. In my time on the Council, I think this is the best package of reforms that Management has negotiated. In exchange, we provided what we believe are responsible increases in benefits. What seems to be overshadowing this accomplishment are questions about what we didn't do. Why didn't we do more?

Given the opportunity, we will. But SB 536 – the Agreed Bill – is a bill that is good for Wisconsin and a bill that we hope all of you can support.

I am happy to answer any questions you may have.

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WISCONSIN MANUFACTURERS & COMMERCE

TO: Members, Senate Committee on Labor and Government Reform
FROM: Chris Reader, Director of Health & Human Resources Policy
DATE: January 14, 2016
RE: Worker's Compensation Advisory Council Agreed Bill, SB 536

Thank you for holding this public hearing on Senate Bill (SB) 536, which is the product of this session's labor-management negotiations at the Worker's Compensation Advisory Council (WCAC). My name is Chris Reader, and I am the Director of Health & Human Resources Policy at Wisconsin Manufacturers and Commerce (WMC), the largest business trade association in Wisconsin. With me today is James Buchen. James serves as WMC's representative on the management team of the WCAC.

On behalf of our 3,800 member employers, WMC supports SB 536. While no side gets everything they want in a negotiation, we do believe SB 536 is a strong reform package that includes positive reforms to the worker's compensation system. I will highlight just a few of the items within the comprehensive bill that we believe makes it a good reform package.

Apportionment of permanent disability

SB 536 clarifies that an employer is only liable for the percentage of a permanent disability that was caused while an employee was working for that employer.

Misconduct or substantial fault

SB 536 states that an employer is not liable for temporary disability benefits if an injured worker, while in their healing period, is terminated for misconduct or something that the employee is substantially at fault for, as defined in ch. 108.

Violations of employer drug or alcohol policy

Under SB 536, a worker injured at work because they violated the employer's drug or alcohol policy will no longer receive indemnity payments for that injury.

Traumatic injuries statute of limitations

Wisconsin currently has a 12 year statute of limitations, which is the longest in the nation. The next closest is 6 years, and most states are at 3 years or less. SB 536 reduces our statute of limitations for traumatic injuries to 6 years.

Minimum permanent partial disability ratings

Minimum permanent partial disability ratings are currently set by DWD administrative rule. This provision recognizes that advancements in medical technology should mean better results for surgeries in 2016 than those 20 years ago. Under this provision the minimum ppd ratings would be evaluated by physicians based on current medical outcomes.

Fraud investigation and prosecution

SB 536 allows DWD to seek help from the Department of Justice for fraud investigations. If a basis of fraud is found, SB 536 allows DWD to refer the case to either the local district attorney or the Department of Justice for prosecution.

Because of these and other positive reforms contained within SB 536, WMC supports the package and encourages you to support it as well.

In addition to what is in SB 536, I would be remiss if I didn't also address briefly an important and necessary worker's compensation reform that did not make it through the negotiation process this session, that being addressing high medical costs within worker's compensation. According to the Worker's Compensation Research Institute (WCRI), an independent, not-for-profit research institute based in Massachusetts, Wisconsin continues to have higher than average medical costs for worker's compensation claims. In their latest report on Wisconsin, released last October, WCRI found that Wisconsin's medical costs are higher and grew faster than most other states. They attributed nearly 75% of growth in the cost per claim over the last decade to medical cost increases, and Wisconsin medical costs per claim are currently 46% higher than typical. Left unchecked, these high medical costs threaten to undermine the competitive and generally positive worker's compensation system that we have in Wisconsin today.

While SB 536 does not address medical cost containment, it is the #1 issue related to worker's compensation that our members bring to our attention. As this committee deliberates on SB 536 and future worker's compensation reform packages, I encourage you to also consider how Wisconsin should address the issue of high medical costs.

Thank you for your time today, and we'll be happy to answer any questions you may have.