



2001 ASSEMBLY BILL 397

May 14, 2001 – Introduced by Representatives WALKER, LADWIG, AINSWORTH, ALBERS, J. FITZGERALD, GUNDERSON, HAHN, JESKEWITZ, M. LEHMAN, McCORMICK, D. MEYER, MUSSER, NASS, OLSEN, PLALE, STARZYK, TOWNSEND, URBAN and ZIEGELBAUER, cosponsored by Senators HUELSMAN, ROESSLER and SCHULTZ. Referred to Committee on Labor and Workforce Development.

1 **AN ACT to amend** 102.23 (1) (a), 102.23 (1) (e) 3. and 102.23 (6) of the statutes;
2 **relating to:** the standard of review that a court must use in reviewing a finding
3 of fact made by the labor and industry review commission in a worker's
4 compensation or an unemployment insurance case.

Analysis by the Legislative Reference Bureau

Under current law, a disputed worker's compensation or unemployment insurance claim is decided by a hearing examiner employed by the department of workforce development. A decision of a hearing examiner is subject to review by the labor and industry review commission (LIRC). A decision of LIRC, in turn, is subject to review by the courts. A finding of fact made by LIRC is conclusive and may be set aside by a court only if the finding is not supported by credible and substantial evidence (great deference standard of review). As such, a court may not set aside a finding of fact made by LIRC that is supported by credible and substantial evidence even if the finding is contrary to the great weight and clear preponderance of the evidence (clearly erroneous standard of review), *Goranson v. IHLR Dept.*, 94 Wis 2d 537, 554 (1980), which is the standard of review used by an appellate court in reviewing a finding of fact of a trial court. *Siker v. Siker*, 225 Wis. 2d 522, 527-28 (Ct. App. 1999). This bill permits a court, when reviewing a finding of fact made by LIRC in a worker's compensation or unemployment insurance case, to use the clearly erroneous standard of review instead of the great deference standard of review. As such, the bill permits a court to set aside a finding of fact made by LIRC that is

ASSEMBLY BILL 397

supported by credible and substantial evidence if the finding is contrary to the great weight and clear preponderance of the evidence.

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

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

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

2 102.23 (1) (a) The Subject to par. (e) 3. and sub. (6), the findings of fact made
3 by the commission acting within its powers shall, in the absence of fraud, be
4 conclusive. The order or award granting or denying compensation, either
5 interlocutory or final, whether judgment has been rendered on it or not, is subject to
6 review only as provided in this section and not under ch. 227 or s. 801.02. Within 30
7 days after the date of an order or award made by the commission, either originally
8 or after the filing of a petition for review with the department under s. 102.18, any
9 party aggrieved ~~thereby~~ by the order or award may by serving a complaint as
10 provided in par. (b) and filing the summons and complaint with the clerk of the circuit
11 court commence, in circuit court, an action against the commission for the review of
12 the order or award, in which action the adverse party shall also be made a defendant.
13 If the circuit court is satisfied that a party in interest has been prejudiced because
14 of an exceptional delay in the receipt of a copy of any finding or order, ~~it~~ the circuit
15 court may extend the time in which an action may be commenced by an additional
16 30 days. The proceedings shall be in the circuit court of the county where the plaintiff
17 resides, except that if the plaintiff is a state agency, the proceedings shall be in the
18 circuit court of the county where the defendant resides. The proceedings may be
19 brought in any circuit court if all parties stipulate and that court agrees.

20 **SECTION 2.** 102.23 (1) (e) 3. of the statutes is amended to read:

ASSEMBLY BILL 397

1 102.23 (1) (e) 3. That the findings of fact by the commission ~~do not support the~~
2 ~~order or award~~ are contrary to the great weight and clear preponderance of the
3 evidence.

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

5 102.23 (6) If the commission's order or award depends on any fact found by the
6 commission, the court ~~shall~~ may not substitute its judgment for that of the
7 commission as to the weight or credibility of the evidence on any finding of fact. The
8 court may, however, set aside the commission's order or award and remand the case
9 to the commission if the commission's order or award depends on any material and
10 controverted finding of fact that is ~~not supported by credible and substantial~~
11 evidence contrary to the great weight and clear preponderance of the evidence.

12 **SECTION 4. Initial applicability.**

13 (1) STANDARD OF REVIEW IN WORKER'S COMPENSATION AND UNEMPLOYMENT
14 INSURANCE CASES. This act first applies to an order or award made by the labor and
15 industry review commission on the effective date of this subsection.

16 (END)