



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1786/P1  
GMM:kjf:jf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to renumber and amend* 102.125, 102.18 (1) (b), 102.23 (1) (a), 102.28  
2           (2) (c), 102.28 (7) (b) and 102.44 (1) (c); *to amend* 20.445 (1) (ra), 101.654 (2) (b),  
3           102.01 (2) (d), 102.03 (1) (c) 3., 102.03 (4), 102.04 (1) (a), 102.04 (2m), 102.07 (1)  
4           (a), 102.07 (1) (b), 102.07 (3), 102.07 (7) (a), 102.07 (10), 102.12, 102.125 (title),  
5           102.13 (2) (b), 102.13 (2) (c), 102.16 (1m) (a), 102.17 (1) (a) 3., 102.17 (4), 102.18  
6           (1) (bg) 1., 102.18 (3), 102.18 (4) (b), 102.21, 102.23 (1) (c), 102.23 (1) (cm), 102.28  
7           (2) (a), 102.28 (2) (b) (title), 102.28 (2) (c) (title), 102.28 (2) (d), 102.28 (7) (a),  
8           102.29 (1) (b) 2., 102.31 (2) (b) 2., 102.315 (2), 102.425 (3) (b), 102.425 (4) (a),  
9           102.425 (4) (b), 102.425 (4m) (b), 102.43 (5) (c), 102.44 (1) (ag), 102.44 (1) (ag),  
10          102.44 (1) (am), 102.44 (1) (b), 102.44 (3), 102.58, 102.65 (4) (intro.), 102.75 (1),  
11          102.75 (1m), 102.75 (2), 102.75 (4), 102.81 (1) (a), 108.10 (4) and 165.60; and *to*  
12          **create** 102.03 (6), 102.125 (2), 102.127, 102.16 (2) (i), 102.28 (2) (bm), 102.28  
13          (2) (c) 2., 102.28 (7) (bm), 102.423, 102.425 (3) (am), 102.44 (1) (c) 2., 102.44 (1)  
14          (c) 3., 102.44 (5m) and 102.75 (1g) of the statutes; **relating to:** various changes

- 1 to the worker's compensation law, granting rule-making authority, and making  
2 an appropriation.
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***Analysis by the Legislative Reference Bureau***

This bill makes various changes to the worker's compensation law, as administered by the Department of Workforce Development (DWD).

**GENERAL COVERAGE**

***Employee misrepresentation of physical condition***

Under current law, an employee who is injured while performing services growing out of and incidental to his or her employment may recover worker's compensation for the injury.

This bill bars recovery of worker's compensation by an injured employee if: 1) the employee knowingly and willfully made a false representation as to his or her physical condition in an employment application; 2) the employer relied on the false representation and that reliance was a substantial factor in the employer's decision to hire the employee; and 3) there was a causal connection between the false representation and the injury.

***Worker's compensation denied by another state***

Under current law, an employee who, while working outside the territorial limits of this state, suffers an injury on account of which the employee would have been entitled to worker's compensation under the laws of this state had the injury occurred in this state is entitled to worker's compensation under the laws of this state if: 1) the employee's employment is principally localized in this state; 2) the employee is working under a contract of hire made in this state in employment that is not principally localized in any state; 3) the employee is working under a contract made in this state in employment principally localized in another state whose worker's compensation law is not applicable to the employee's employer; 4) the employee is working under a contract of hire made in this state in employment outside the United States; or 5) the employee is a Wisconsin law enforcement officer acting under a mutual aid agreement with a law enforcement agency of an adjacent state.

This bill provides that if an employee who suffers an injury outside the territorial limits of this state files a claim for compensation under the laws of another jurisdiction and that claim is denied on the merits by a final decision of that jurisdiction, the employee may not make a claim for compensation under the laws of this state for the same injury.

***Employee wellness programs, events, or activities***

Current law specifies that an employer is not liable for worker's compensation when an employee sustains an injury while engaging in a program, event, or activity designed to improve the employee's physical well-being, if participation in the program, event, or activity is voluntary and uncompensated.

This bill, in addition, requires the program, event, or activity to be outside the scope of the employee's employment duties

***Local governmental units***

Under current law, each county, city, town, village, school district, sewer district, drainage district, long-term care district, and other public or quasi-public corporation (municipality) is liable for worker's compensation when an employee in the service of the municipality, whether elected, appointed, or under a contract of hire, is injured while performing services growing out of and incidental to his or her employment.

This bill changes the term "municipality" to "local governmental unit" for purposes of the worker's compensation law and redefines that term to mean a political subdivision of this state; a special purpose district or taxing jurisdiction in this state; an instrumentality, corporation, combination, or subunit of any of the foregoing; or any other public or quasi-public corporation. Under current law, cities, villages, towns, and counties are political subdivisions of this state; special purpose districts include school districts, sewer districts, drainage districts, long-term care districts, and other districts created for special purposes; and taxing jurisdictions are entities, not including the state, that are authorized by law to levy property taxes.

**PAYMENT OF BENEFITS*****Decreased compensation; employee negligence***

Under current law, if an employee's injury is caused by the failure of the employee to use safety devices that are provided in accordance with any statute, rule, or order of DWD and that are adequately maintained, and the use of which is reasonably enforced by the employer, if injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, or if injury results from the intoxication of the employee by alcohol or use of a controlled substance, the amount of worker's compensation payable to the employee is reduced by 15 percent or by \$15,000, whichever is less.

This bill provides that if an employee's injury is caused by such a failure to use safety devices, failure to obey a safety rule, or intoxication *or by any other negligence attributable to the employee*, the amount of worker's compensation payable to the employee is reduced *in proportion to the amount of negligence attributable to the employee*.

***Reduction of benefits; amounts paid under another state's worker's compensation law***

Current law provides that when an injured employee is receiving disability benefits under the federal Social Security Act, the amount of worker's compensation payable to the injured employee is reduced so that the total amount of worker's compensation benefits and social security disability benefits does not exceed 80 percent of the employee's average current earnings. That reduction is allowed only as to social security disability benefit payments made after July 1, 1980, that reduction may not take into account social security payments made to dependents of the employee, and that reduction may not be made on temporary disability benefits payable during a period in which the employee is receiving vocational rehabilitation services.

This bill permits an employer or insurer to reduce the amount of benefits payable to an injured employee under the worker's compensation law of this state by the amount of benefits paid or payable to the injured employee under the worker's compensation law of any other state for the same injury. That reduction is allowed only as to payments made under the worker's compensation law of another state made after the effective date of the bill, that reduction may not take into account payments made under the worker's compensation law of another state to dependents of the employee, and that reduction may not be made on temporary disability benefits payable during a period in which the employee is receiving vocational rehabilitation services.

### ***Supplemental benefits***

Under current law, an injured employee who is receiving the maximum weekly benefit in effect at the time of the injury for permanent total disability or continuous temporary total disability resulting from an injury that occurred before January 1, 2001, is entitled to receive supplemental benefits in an amount that, when added to the employee's regular benefits, equals \$582. 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 makes an employee who is injured prior to January 1, 2003, eligible for those supplemental benefits beginning on the effective date of the bill and increases the maximum supplemental benefit amount for a week of disability occurring after the effective date of the bill to an amount that, when added to the employee's regular benefits, equals \$615.

The bill also terminates reimbursement from the WISB fund for supplemental benefits paid by employers or insurers beginning on the effective date of the bill. 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.

### ***Traumatic injuries***

Under current law, an application for worker's compensation that is not filed within 12 years from the date of the injury or from the date that worker's compensation, other than for treatment or burial expenses, was last paid, whichever is later, is barred by the statute of limitations, except that in certain cases of traumatic injury there is no statute of limitations. In cases in which there is no statute of limitations, benefits or treatment expenses for traumatic injury becoming due 12 years after the date of injury or the date that compensation was last paid,

whichever is later, are paid by DWD from the WISB fund if that date is before April 1, 2006.

This bill provides that an application for worker's compensation for a traumatic injury that is not filed within *nine* years from the date of injury or the date that worker's compensation, other than for treatment or burial expenses, was last paid, whichever is later, is barred by the statute of limitations. The bill also provides that for traumatic injuries for which there is no statute of limitations benefits or treatment expenses for traumatic injury becoming due *nine* years after the date of injury or the date that compensation was last paid, whichever is later, are paid by DWD from the WISB fund, if that date is before April 1, 2006.

### ***Vocational rehabilitation***

Under current law, an injured employee is entitled to receive compensation for temporary disability while the employee is receiving vocational rehabilitation services under the federal Rehabilitation Act of 1973. If, however, the injury causes only partial disability, the employee's weekly indemnity is the proportion of the weekly indemnity rate for total disability that the actual wage loss of the injured employee bears to the injured employee's average weekly wage at the time of injury, *except* that compensation for temporary disability on account of receiving vocational rehabilitation services shall not be reduced on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving those services and only hours worked in excess of 24 during that week shall be offset against the employee's average weekly wage in calculating compensation for temporary disability. That exception, however, does not apply after April 30, 2014. This bill extends that exception to April 30, 2018.

### ***Prescription drug treatment***

Under current law, an employer or insurer is liable for providing medicines as may be reasonably required to cure and relieve an injured employee from the effects of an injury sustained while performing services growing out of and incidental to employment. Current law, however, limits the liability of an employer or insurer for the cost of a prescription drug dispensed for outpatient use by an injured employee to the average wholesale price of the prescription drug as quoted in the Drug Topics Red Book (average wholesale price).

This bill provides that if a prescription drug dispensed for outpatient use by an injured employee is a repackaged prescription drug, the liability of the employer or insurer for the cost of the repackaged prescription drug is limited to the average wholesale price of the prescription drug set by the original manufacturer of the prescription drug, except that if the National Drug Code number of the prescription drug as packaged by the original manufacturer cannot be determined from the billing statement submitted to the employer or insurer, that liability is limited to the average wholesale price of the lowest-priced drug product equivalent. The bill also provides that an employer or insurer is not liable for the cost of a repackaged prescription drug dispensed more than seven days after an employee's date of injury. Those limitations of liability, however, do not apply to a repackaged prescription drug dispensed from a retail, mail-order, or institutional pharmacy.

## HEARINGS AND PROCEDURES

### ***Notice of injury***

Under current law, if an injured employee does not file an application for worker's compensation with DWD within two years after the date of injury or the date the employee knew or ought to have known of his or her disability and its relationship to employment, the injured employee's right to worker's compensation for the injury is barred, unless within that two-year period the employer knew or should have known of the injury.

This bill reduces that two-year period to one year.

### ***Health care records in electronic format***

Under current law, a physician, chiropractor, psychologist, podiatrist, dentist, physician assistant, advance practice nurse prescriber, hospital, or health service provider, upon request by an injured employee, employer, insurer, or DWD, must provide that person with any written material that is reasonably related to an injury for which the employee claims worker's compensation, upon payment of the actual cost of providing those materials, not to exceed the greater of 45 cents per page or \$7.50 per request, plus the actual costs of postage.

This bill permits that material to be provided in electronic format upon payment of \$26 per request.

### ***Final practitioner's report***

Under current law, if an injured employee has a period of temporary disability of more than three weeks or a permanent disability, has undergone surgery to treat an injury, other than surgery to correct a hernia, or sustains an eye injury requiring medical treatment on three or more occasions off the employer's premises, the employer or insurer must submit to DWD a final treating practitioner's report. Current law, however, prohibits DWD from requiring submission of that report when the employer or insurer denies the employee's claim for compensation and the employee does not contest that denial. This bill limits that prohibition to cases in which the employer or insurer denies the employee's claim for compensation *in its entirety*.

### ***Prospective vocational rehabilitation training orders***

Under current law, any party in interest may submit to DWD any controversy concerning worker's compensation and DWD, after hearing, must issue an order determining the rights of the parties regarding the controversy. Current law also permits DWD to issue interlocutory, *i.e.*, nonfinal, findings, orders, and awards, which may be enforced in the same manner as final awards. Current law specifically permits DWD to include in an interlocutory or final award or order an order directing the employer or insurer to pay for any future treatment that may be necessary to cure and relieve an injured employee from the effects of the employee's injury.

This bill permits DWD to include in an interlocutory or final award or order an order directing the employer or insurer to pay for a future course of instruction or other rehabilitation training services provided under a rehabilitation training program.

***Administrative review of a worker's compensation decision***

Under current law, a party to a worker's compensation proceeding may petition the Labor and Industry Review Commission (LIRC) for review of a DWD hearing examiner's decision awarding or denying worker's compensation (petition for review) if DWD or LIRC receives the petition for review within 21 days after DWD mailed a copy of the examiner's findings and order to the petitioner's last-known address. Currently, LIRC must dismiss a petition for review that is not timely filed unless the petitioner shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner's control. This bill requires a party to file a petition for review with LIRC, not DWD. The bill also requires LIRC to dismiss a petition for review that is not filed within those 21 days unless the petitioner shows that the petition was filed late for a reason that was beyond the petitioner's control.

Under current law, within 28 days after a decision of LIRC is mailed to the last-known address of each party to a worker's compensation proceeding, LIRC may, on its own motion, set aside the decision for further consideration. This bill permits LIRC to set aside a decision within 28 days after the date of the decision, not the date of its mailing.

***Judicial review of a worker's compensation decision***

Under current law, a party that is aggrieved by an order or award made by LIRC may commence an action against LIRC in circuit court for judicial review of the order or award (action for judicial review). Current law requires the adverse party to also be made a defendant in an action for judicial review. Recently, a concurring opinion in *Xcel Energy Services, Inc. v. LIRC*, 2013 WI 64, "unequivocally and firmly" recommended that the Council on Worker's Compensation propose legislative revisions to clarify who must be included as a party in an action for judicial review. *Id.* at p. 71. That concurring opinion further proposed that LIRC consider adopting the practice of providing information with its order or award instructing the parties as to who is to be named as an adverse party in an action for judicial review. *Id.* at p. 73.

This bill requires LIRC to identify in an order or award the persons that must be made parties to an action for judicial review. The bill also requires the summons and complaint in the action to name those persons as defendants. In addition, the bill permits the circuit court to join as a party to the action any other person determined necessary for the proper resolution of the action, unless joinder of the person would unduly delay the resolution of the action.

**PROGRAM ADMINISTRATION*****Health service fee schedule***

Under current law, if a health service provider, injured employee, insurer, or employer submits to DWD a dispute over the reasonableness of a health service fee charged by the health service provider for services provided to the injured employee, DWD must determine the reasonableness of the disputed fee by comparing the disputed fee to the mean fee for the procedure for which the disputed fee was charged, as shown by data from a database certified by DWD.

This bill requires DWD to establish a schedule of the maximum fees that an employer or insurer may be required to pay for health services provided to an injured employee who claims worker's compensation benefits. When that schedule is established, the health service fee dispute resolution process under current law no longer applies and instead the liability of an employer or insurer for a health service included in the fee schedule is limited to the maximum fee allowed under the schedule for that health service as of the date on which the health service was provided, any fee agreed to by the contract between the employer or insurer and health care provider for the health service as of that date, or the health care provider's actual fee for the health service as of that date, whichever is less.

The bill requires DWD, in determining the maximum fees for health services provided to an injured employee, to benchmark those fees to the reimbursement rates for those services provided under Medicare and to apply an initial conversion factor of up to 200 percent of those rates in determining reimbursement levels for those services. For services not specifically addressed under Medicare, the bill requires DWD to benchmark the maximum fee for those services by giving consideration to the average payments made by insured and self-insured group health plans in this state, and the average copayment, coinsurance, and deductible payments made by persons covered under those plans, for those services and to apply an initial conversion factor as determined by DWD in determining reimbursement levels for those services. In addition, the bill requires DWD, no less often than every two years, to evaluate the fee schedule and determine if any revisions to that schedule are warranted.

#### ***Investigation and prosecution of fraudulent activity***

Under current law, if an insurer or self-insured employer has evidence that a worker's compensation claim is false or fraudulent and if the insurer or self-insurer is satisfied that reporting the claim will not impede its ability to defend the claim, the insurer or self-insured employer must report the claim to DWD. DWD may then require the insurer or self-insured employer to investigate the claim and report the results of the investigation to DWD. If, based on the investigation, DWD has a reasonable basis to believe that criminal insurance fraud has occurred, DWD must refer the matter to the district attorney for prosecution.

This bill permits DWD to request the Department of Justice (DOJ) to assist DWD in an investigation of a false or fraudulent worker's compensation claim of any other suspected fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to worker's compensation. If, based on the investigation, DWD has a reasonable basis to believe that theft, forgery, fraud, or any other criminal violation has occurred, DWD must refer the matter to the district attorney or DOJ for prosecution.

#### ***Self-insured employers***

***Election by governmental employer to self-insure.*** Under current law, every employer that is subject to the worker's compensation law must carry worker's compensation insurance from an insurer that is authorized to do business in this state (duty to insure), except that DWD may exempt an employer from the duty to insure if the employer shows that it can self-insure its worker's compensation



liability and if the employer agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD. DWD rules, however, permit the state or a local governmental unit to self-insure without further order of DWD.

This bill codifies those DWD rules into the statutes. Specifically, the bill permits the state or a local governmental unit that has independent taxing authority (governmental employer) to elect to self-insure its worker's compensation liability without further order of DWD if the governmental employer agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD. Under the bill, a local governmental unit that elects to self-insure its liability for the payment of worker's compensation must notify DWD of that election in writing before commencing to self-insure that liability, must notify DWD of its intent to continue to self-insure that liability every three years after that initial notice, and must notify DWD of its intent to withdraw that election not less than 30 days before the effective date of that withdrawal.

***Revocation of governmental employer election to self-insure.*** Current law permits DWD, after seeking the advice of the Self-Insurer's Council, to revoke an exemption from the duty to insure if DWD finds that the employer's financial condition is inadequate to pay its employees' claims for compensation, that the employer has received an excessive number of claims for compensation, or that the employer has failed to discharge faithfully its obligations according to the agreement contained in the application for exemption.

This bill permits DWD to revoke an election by a governmental employer to self-insure its liability for worker's compensation, without seeking the advice of the Self-Insurer's Council, if DWD finds that the governmental employer's financial condition is inadequate to pay its employees' claims for compensation, that the governmental employer has received an excessive number of claims for compensation, or that the governmental employer has failed to discharge faithfully its obligations under the worker's compensation law and the rules of DWD. Under the bill, once such an election is revoked, the governmental employer whose election is revoked may not elect to self-insure its liability for the payment of worker's compensation unless at least three calendar years have elapsed since the revocation and DWD finds that the governmental employer's financial condition is adequate to pay its employees' claims for compensation, that the governmental employer has not received an excessive number of claims for compensation, and that the governmental employer has faithfully discharged its obligations under the worker's compensation law and the rules of DWD.

***Self-insured employer assessments.*** Current law establishes a self-insured employers liability fund, consisting of assessments paid into the fund by self-insured employers, that is used to pay the worker's compensation liability of current or former self-insured employers that cannot pay that liability. Under current law, on issuance of an order exempting an employer from the duty to insure, the exempt employer must pay into the fund an amount that is equal to the amount assessed upon each other exempt employer (initial assessment). Subsequent assessments, however, are prorated on the basis of the gross payroll for this state of the exempt

employer, as reported to DWD for the previous calendar year for purposes of unemployment insurance.

This bill requires an initial assessment, as well as subsequent assessments, for the self-insurer's fund to be prorated on the basis of the gross payroll for this state of the exempt employer, as reported to DWD for the previous calendar year for purposes of unemployment insurance.

The bill also removes governmental employers from the coverage of the self-insurer's fund. Specifically, the bill prohibits DWD from: 1) requiring a governmental employer that elects to self-insure its liability for the payment of worker's compensation to pay into the self-insurer's fund; and 2) making payments from that fund for the liability under the worker's compensation law of such an employer, whether currently or formerly exempt from the duty to insure.

***Study of light-duty programs***

Under current law, temporary disability benefits are payable for loss of earnings during a period when an injured employee could return to a restricted type of work during the employee's healing period, unless suitable employment that is within the physical and mental limitations of the employee is furnished to the employee by the employee's employer or by some other employer. Currently, if the employee's employer or some other employer makes a good faith offer of suitable employment that is within the physical and mental limitations of the employee and if the employee refuses without reasonable cause to accept the offer, the employee is considered to have returned to work as of the date of the offer at the earnings the employee would have received but for the refusal.

This bill requires the secretary of workforce development to create a committee to study ways and means of encouraging employers to provide, and injured employees to participate in, light-duty programs under which injured employees who can return to restricted types of work during their healing periods are furnished with suitable employment that is within the physical and mental limitations of those employees. The study must include an examination of the types of physical and mental limitations that do not preclude a return to work during the healing period and the types of work that are suitable for injured employees who have those limitations. The committee must include representatives of employers, employees, worker's compensation insurers authorized to do business in this state, and DWD. Upon completion of the study, the committee must report its findings, conclusions, and recommendations to DWD and the Council on Worker's Compensation, after which the committee ceases to exist.

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

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

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

1           20.445 (1) (ra) *Worker's compensation operations fund; administration.* From  
2 the worker's compensation operations fund, the amounts in the schedule for the  
3 administration of the worker's compensation program by the department, for  
4 assistance to the department of justice in investigating and prosecuting fraudulent  
5 activity related to worker's compensation, and for transfer to the appropriation  
6 accounts under par. (rp) and sub. (2) (ra). All moneys received under ss. 102.28 (2)  
7 (b) and 102.75 shall be credited to this appropriation account. From this  
8 appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for  
9 payment of expenses for travel and research by the council on worker's  
10 compensation, the amount in the schedule under par. (rp) shall be transferred to the  
11 appropriation account under par. (rp), and the amount in the schedule under sub. (2)  
12 (ra) shall be transferred to the appropriation account under sub. (2) (ra).

13           **SECTION 2.** 101.654 (2) (b) of the statutes is amended to read:

14           101.654 (2) (b) If the applicant is required under s. 102.28 (2) (a) to have in force  
15 a policy of worker's compensation insurance or if the applicant is self-insured in  
16 accordance with s. 102.28 (2) (b) or (bm), that the applicant has in force a policy of  
17 worker's compensation insurance issued by an insurer authorized to do business in  
18 this state or is self-insured in accordance with s. 102.28 (2) (b) or (bm).

19           **SECTION 3.** 102.01 (2) (d) of the statutes is amended to read:

20           102.01 (2) (d) ~~"Municipality" includes a county, city, town, village, school~~  
21 ~~district, sewer district, drainage district and long-term care district and~~ "Local  
22 governmental unit" means a political subdivision of this state; a special purpose  
23 district or taxing jurisdiction, as defined in s. 70.114 (1) (f), in this state; an  
24 instrumentality, corporation, combination, or subunit of any of the foregoing; or any  
25 other public or quasi-public corporations corporation.

1           **SECTION 4.** 102.03 (1) (c) 3. of the statutes is amended to read:

2           102.03 (1) (c) 3. An employee is not performing service growing out of and  
3 incidental to his or her employment while going to or from employment in a private  
4 or group or employer-sponsored car pool, van pool, commuter bus service, or other  
5 ride-sharing program in which the employee participates voluntarily and the sole  
6 purpose of which is the mass transportation of employees to and from employment.  
7 An employee is not performing service growing out of and incidental to employment  
8 while engaging in a program, event, or activity designed to improve the physical  
9 well-being of the employee, whether or not the program, event, or activity is located  
10 on the employer's premises, if participation in the program, event, or activity is  
11 voluntary and, the employee receives no compensation for participation, and the  
12 program, event, or activity is outside the scope of the employee's employment.

13           **SECTION 5.** 102.03 (4) of the statutes is amended to read:

14           102.03 (4) The right to compensation and the amount of the compensation shall  
15 in all cases be determined in accordance with the provisions of law in effect as of the  
16 date of the injury except as to employees whose rate of compensation is changed as  
17 provided in ss. 102.43 (7) or 102.44 (1) or (5) or, before May 1, 2014 2018, as provided  
18 in s. 102.43 (5) (c) and employees who are eligible to receive private rehabilitative  
19 counseling and rehabilitative training under s. 102.61 (1m) and except as provided  
20 in s. 102.555 (12) (b).

21           **SECTION 6.** 102.03 (6) of the statutes is created to read:

22           102.03 (6) If an employee who suffers an injury outside the territorial limits  
23 of this state files a claim for compensation under the laws of another jurisdiction and  
24 that claim is denied on the merits by a final decision of that jurisdiction, the employee

1 may not make a claim for compensation under the laws of this state for the same  
2 injury.

3 **SECTION 7.** 102.04 (1) (a) of the statutes is amended to read:

4 102.04 (1) (a) The state, and each county, city, town, village, school district,  
5 sewer district, drainage district, long-term care district and other public or  
6 quasi-public corporations therein local governmental unit in this state.

7 **SECTION 8.** 102.04 (2m) of the statutes is amended to read:

8 102.04 (2m) A temporary help agency is the employer of an employee whom  
9 the temporary help agency has placed with or leased to another employer that  
10 compensates the temporary help agency for the employee's services. A temporary  
11 help agency is liable under s. 102.03 for all compensation and other payments  
12 payable under this chapter to or with respect to that employee, including any  
13 payments required under s. 102.16 (3), 102.18 (1) (b) 3. or (bp), 102.22 (1), 102.35 (3),  
14 102.57, or 102.60. Except as permitted under s. 102.29, a temporary help agency may  
15 not seek or receive reimbursement from another employer for any payments made  
16 as a result of that liability.

17 **SECTION 9.** 102.07 (1) (a) of the statutes is amended to read:

18 102.07 (1) (a) Every person, including all officials, in the service of the state,  
19 or of any ~~municipality therein~~ local governmental unit in this state, whether elected  
20 or under any appointment, or contract of hire, express or implied, and whether a  
21 resident of the state or employed or injured within or without the state. The state  
22 ~~and or any municipality~~ local governmental unit may require a bond from a  
23 contractor to protect the state or ~~municipality~~ local governmental unit against  
24 compensation to employees of ~~such~~ the contractor or ~~to~~ employees of a subcontractor  
25 under the contractor. This paragraph does not apply beginning on the first day of the

1 first July beginning after the day that the secretary files the certificate under s.  
2 102.80 (3) (a), except that if the secretary files the certificate under s. 102.80 (3) (ag)  
3 this paragraph does apply to claims for compensation filed on or after the date  
4 specified in that certificate.

5 **SECTION 10.** 102.07 (1) (b) of the statutes is amended to read:

6 102.07 (1) (b) Every person, including all officials, in the service of the state,  
7 or of any ~~municipality therein~~ local governmental unit in this state, whether elected  
8 or under any appointment, or contract of hire, express or implied, and whether a  
9 resident of the state or employed or injured within or without the state. This  
10 paragraph first applies on the first day of the first July beginning after the day that  
11 the secretary files the certificate under s. 102.80 (3) (a), except that if the secretary  
12 files the certificate under s. 102.80 (3) (ag) this paragraph does apply to claims for  
13 compensation filed on or after the date specified in that certificate.

14 **SECTION 11.** 102.07 (3) of the statutes is amended to read:

15 102.07 (3) Nothing ~~herein contained shall prevent municipalities in this~~  
16 chapter prevents a local governmental unit from paying teachers, police officers, fire  
17 fighters and other employees a teacher, police officer, fire fighter, or any other  
18 employee his or her full salaries salary during a period of disability, nor interfere  
19 interferes with any pension funds fund, nor prevent prevents payment to teachers,  
20 police officers or fire fighters therefrom a teacher, police officer, fire fighter, or any  
21 other employee from a pension fund.

22 **SECTION 12.** 102.07 (7) (a) of the statutes is amended to read:

23 102.07 (7) (a) Every member of a volunteer fire company or fire department  
24 organized under ch. 213, a legally organized rescue squad, or a legally organized  
25 diving team is considered to be an employee of that company, department, squad, or

1 team. Every member of a company, department, squad, or team described in this  
2 paragraph, while serving as an auxiliary police officer at an emergency, is also  
3 considered to be an employee of that company, department, squad, or team. If a  
4 company, department, squad, or team described in this paragraph has not insured  
5 its liability for compensation to its employees, the ~~municipality or county~~ political  
6 subdivision within which that company, department, squad, or team was organized  
7 shall be liable for that compensation.

8 **SECTION 13.** 102.07 (10) of the statutes is amended to read:

9 102.07 (10) Further to effectuate the policy of the state that the benefits of this  
10 chapter shall extend and be granted to employees in the service of the state, or of any  
11 ~~municipality therein~~ local governmental unit in this state, on the same basis, in the  
12 same manner, under the same conditions, and with like right of recovery as in the  
13 case of employees of persons, firms, or private corporations, any question whether  
14 any person is an employee under this chapter shall be governed by and determined  
15 under the same standards, considerations, and rules of decision in all cases under  
16 subs. (1) to (9). Any ~~statutes, ordinances, or administrative regulations which~~  
17 statute, ordinance, or rule that may be otherwise applicable to the classes of  
18 employees enumerated in sub. (1) shall not be controlling in deciding whether any  
19 person is an employee for the purposes of this chapter.

20 **SECTION 14.** 102.12 of the statutes is amended to read:

21 **102.12 Notice of injury, exception, laches.** No claim for compensation may  
22 be maintained unless, within 30 days after the occurrence of the injury or within 30  
23 days after the employee knew or ought to have known the nature of his or her  
24 disability and its relation to the employment, whichever is later, actual notice was  
25 received by the employer or by an officer, manager or designated representative of

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

16 **SECTION 15.** 102.125 (title) of the statutes is amended to read:

17 **102.125 (title) ~~Fraudulent claims~~ Fraud reporting and, investigation,**  
18 **and prosecution.**

19 **SECTION 16.** 102.125 of the statutes is renumbered 102.125 (1) and amended  
20 to read:

21 **102.125 (1) FRAUDULENT CLAIMS REPORTING AND INVESTIGATION.** If an insurer or  
22 self-insured employer has evidence that a claim is false or fraudulent in violation of  
23 s. 943.395 and if the insurer or self-insured employer is satisfied that reporting the  
24 claim to the department will not impede its ability to defend the claim, the insurer  
25 or self-insured employer shall report the claim to the department. The department



1 may require an insurer or self-insured employer to investigate an allegedly false or  
2 fraudulent claim and may provide the insurer or self-insured employer with any  
3 records of the department relating to that claim. An insurer or self-insured  
4 employer that investigates a claim under this section subsection shall report on the  
5 results of that investigation to the department.

6 **(3) PROSECUTION.** If based on the an investigation under sub. (1) or (2) the  
7 department has a reasonable basis to believe that a violation of s. 943.20, 943.38,  
8 943.39, 943.392, 943.395, 943.40, or any other criminal law has occurred, the  
9 department shall refer the results of the investigation to the department of justice  
10 or to the district attorney of the county in which the alleged violation occurred for  
11 prosecution.

12 **SECTION 17.** 102.125 (2) of the statutes is created to read:

13 102.125 (2) ASSISTANCE BY DEPARTMENT OF JUSTICE. The department of workforce  
14 development may request the department of justice to assist the department of  
15 workforce development in an investigation under sub. (1) or in the investigation of  
16 any other suspected fraudulent activity on the part of an employer, employee,  
17 insurer, health care provider, or other person related to worker's compensation.

18 **SECTION 18.** 102.127 of the statutes is created to read:

19 **102.127 False representations on employment applications.** A false  
20 representation as to an employee's physical condition made by the employee in an  
21 employment application bars the recovery of all compensation payable under this  
22 chapter for an injury to the employee if all of the following apply:

23 (1) The employee knowingly and willfully made the false representation.

24 (2) The employer relied on the false representation and that reliance was a  
25 substantial factor in the employer's decision to hire the employee.

1           (3) There was a causal connection between the false representation and the  
2 injury.

3           **SECTION 19.** 102.13 (2) (b) of the statutes is amended to read:

4           102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist,  
5 physician assistant, advanced practice nurse prescriber, hospital, or health service  
6 provider shall furnish a legible, certified duplicate of the written material requested  
7 under par. (a) in paper format upon payment of the actual costs of preparing the  
8 certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request,  
9 plus the actual costs of postage, or shall furnish a legible, certified duplicate of that  
10 material in electronic format upon payment of \$26 per request. Any person who  
11 refuses to provide certified duplicates of written material in the person's custody that  
12 is requested under par. (a) shall be liable for reasonable and necessary costs and,  
13 notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the  
14 requester's right to the duplicates under par. (a).

15           **SECTION 20.** 102.13 (2) (c) of the statutes is amended to read:

16           102.13 (2) (c) Except as provided in this paragraph, if an injured employee has  
17 a period of temporary disability that exceeds 3 weeks or a permanent disability, if the  
18 injured employee has undergone surgery to treat his or her injury, other than surgery  
19 to correct a hernia, or if the injured employee sustained an eye injury requiring  
20 medical treatment on 3 or more occasions off the employer's premises, the  
21 department may by rule require the insurer or self-insured employer to submit to  
22 the department a final report of the employee's treating practitioner. The  
23 department may not require an insurer or self-insured employer to submit to the  
24 department a final report of an employee's treating practitioner when the insurer or  
25 self-insured employer denies the employee's claim for compensation in its entirety

1 and the employee does not contest that denial. A treating practitioner may charge  
2 a reasonable fee for the completion of the final report, but may not require  
3 prepayment of that fee. ~~An~~ Subject to s. 102.16 (2) (i), an insurer or self-insured  
4 employer that disputes the reasonableness of a fee charged for the completion of a  
5 treatment practitioner's final report may submit that dispute to the department for  
6 resolution under s. 102.16 (2).

7 **SECTION 21.** 102.16 (1m) (a) of the statutes is amended to read:

8 102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise  
9 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
10 employer is liable under this chapter for any health services provided to an injured  
11 employee by a health service provider, but disputes the reasonableness of the fee  
12 charged by the health service provider, the department may include in its order  
13 confirming the compromise or stipulation a determination as to the reasonableness  
14 of the fee or the department may notify, or direct the insurer or self-insured employer  
15 to notify, the health service provider under sub. (2) (b) that the reasonableness of the  
16 fee is in dispute. The department shall deny payment of a health service fee that the  
17 department determines under this paragraph to be unreasonable. A health service  
18 provider and an insurer or self-insured employer that are parties to a fee dispute  
19 under this paragraph are bound by the department's determination under this  
20 paragraph on the reasonableness of the disputed fee, unless that determination is  
21 set aside, reversed, or modified by the department under sub. (2) (f) or is set aside  
22 on judicial review as provided in sub. (2) (f). This paragraph does not apply to a  
23 health service provided to an injured employee beginning on the date on which the  
24 notice under s. 102.423 (1) (d) is published in the Wisconsin Administrative Register.

25 **SECTION 22.** 102.16 (2) (i) of the statutes is created to read:

1           102.16 (2) (i) This subsection does not apply to a health service provided to an  
2           injured employee beginning on the date on which the notice under s. 102.423 (1) (d)  
3           is published in the Wisconsin Administrative Register.

4           **SECTION 23.** 102.17 (1) (a) 3. of the statutes is amended to read:

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

10          **SECTION 24.** 102.17 (4) of the statutes is amended to read:

11          102.17 (4) Except as provided in this subsection and s. 102.555 (12) (b), in the  
12          case of occupational disease, the right of an employee, the employee's legal  
13          representative, or a dependent to proceed under this section shall not extend beyond  
14          12 years after the date of the injury or death or after the date that compensation,  
15          other than for treatment or burial expenses, was last paid, or would have been last  
16          payable if no advancement were made, whichever date is latest, and in the case of  
17          traumatic injury, that right shall not extend beyond 9 years after that date. In the  
18          case of occupational disease; a traumatic injury resulting in the loss or total  
19          impairment of a hand or any part of the rest of the arm proximal to the hand or of  
20          a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any  
21          permanent brain injury; or a traumatic injury causing the need for an artificial  
22          spinal disc or a total or partial knee or hip replacement, there shall be no statute of  
23          limitations, except that benefits or treatment expense for an occupational disease  
24          becoming due 12 years after the date of injury or death or last payment of  
25          compensation, other than for treatment or burial expenses, shall be paid from the

1 work injury supplemental benefit fund under s. 102.65 and in the manner provided  
2 in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming  
3 due ~~12~~ 9 years after that date shall be paid from that fund and in that manner if the  
4 date of injury or death or last payment of compensation, other than for treatment or  
5 burial expenses, is before April 1, 2006. Payment of wages by the employer during  
6 disability or absence from work to obtain treatment shall be considered payment of  
7 compensation for the purpose of this section if the employer knew of the employee's  
8 condition and its alleged relation to the employment.

9 **SECTION 25.** 102.18 (1) (b) of the statutes is renumbered 102.18 (1) (b) 1. and  
10 amended to read:

11 102.18 (1) (b) 1. Within 90 days after the final hearing and close of the record,  
12 the department shall make and file its findings upon the ultimate facts involved in  
13 the controversy; and its order, which shall state its determination as to the rights of  
14 the parties. Pending the final determination of any controversy before it, the  
15 department may in its discretion after any hearing make interlocutory findings,  
16 orders, and awards, which may be enforced in the same manner as final awards.

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

22 3. If the department finds that the employer or insurer has not paid any amount  
23 that the employer or insurer was directed to pay in any interlocutory order or award  
24 and that the nonpayment was not in good faith, the department may include in its

1 final award a penalty not exceeding ~~25%~~ 25 percent of each amount that was not paid  
2 as directed.

3 4. When there is a finding that the employee is in fact suffering from an  
4 occupational disease caused by the employment of the employer against whom the  
5 application is filed, a final award dismissing the application upon the ground that  
6 the applicant has suffered no disability from the disease shall not bar any claim the  
7 employee may ~~thereafter~~ have after the date of the award for disability sustained  
8 after ~~the~~ that date of ~~the~~ award.

9 **SECTION 26.** 102.18 (1) (bg) 1. of the statutes is amended to read:

10 102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer or  
11 self-insured employer is liable under this chapter for any health services provided  
12 to an injured employee by a health service provider, but that the reasonableness of  
13 the fee charged by the health service provider is in dispute, the department may  
14 include in its order under par. (b) a determination as to the reasonableness of the fee  
15 or the department may notify, or direct the insurer or self-insured employer to notify,  
16 the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee  
17 is in dispute. The department shall deny payment of a health service fee that the  
18 department determines under this subdivision to be unreasonable. An insurer or  
19 self-insured employer and a health service provider that are parties to a fee dispute  
20 under this subdivision are bound by the department's determination under this  
21 subdivision on the reasonableness of the disputed fee, unless that determination is  
22 set aside, reversed, or modified by the department under sub. (3) or by the  
23 commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23.  
24 This subdivision does not apply to a health service provided to an injured employee

1 beginning on the date on which the notice under s. 102.423 (1) (d) is published in the  
2 Wisconsin Administrative Register.

3 **SECTION 27.** 102.18 (3) of the statutes is amended to read:

4 102.18 (3) A party in interest may petition the commission for review of an  
5 examiner's decision awarding or denying compensation if the ~~department or~~  
6 commission receives the petition within 21 days after the department mailed a copy  
7 of the examiner's findings and order to the party's last-known address. The  
8 commission shall dismiss a petition ~~which~~ that is not timely filed within those 21  
9 days unless the petitioner shows probable good cause that the petition was filed late  
10 for a reason for failure to timely file that was beyond the petitioner's control. If no  
11 petition is filed within those 21 days ~~from the date that a copy of the findings or order~~  
12 ~~of the examiner is mailed to the last-known address of the parties in interest, the~~  
13 findings or order shall be considered final unless set aside, reversed, or modified by  
14 the examiner within that time. If the findings or order are set aside by the examiner,  
15 the status shall be the same as prior to the setting aside of the findings or order set  
16 aside. If the findings or order are reversed or modified by the examiner, the time for  
17 filing a petition commences with on the date that notice of the reversal or  
18 modification is mailed to the last-known address of the parties in interest. The  
19 commission shall either affirm, reverse, set aside, or modify the findings or order in  
20 whole or in part, or direct the taking of additional evidence. ~~This~~ The commission's  
21 action shall be based on a review of the evidence submitted.

22 **SECTION 28.** 102.18 (4) (b) of the statutes is amended to read:

23 102.18 (4) (b) Within 28 days after the date of a decision of the commission is  
24 ~~mailed to the last-known address of each party in interest, the commission may, on~~  
25 its own motion, set aside the decision for further consideration.

1           **SECTION 29.** 102.21 of the statutes is amended to read:

2           **102.21 Payment of awards by municipalities.** ~~Whenever~~ When an award  
3 is made by the department under this chapter or s. 66.191, 1981 stats., against any  
4 ~~municipality~~ local governmental unit, the person in whose favor it ~~the award~~ is made  
5 shall file a certified copy ~~thereof of the award~~ with the ~~municipal~~ clerk of the local  
6 governmental unit. Within 20 days ~~thereafter, unless an appeal is taken, such~~ after  
7 the filing of the award, the clerk shall draw an order on the ~~municipal~~ treasurer of  
8 the local governmental unit for the payment of the award, unless an appeal is taken.  
9 If upon appeal such ~~the~~ award is affirmed in whole or in part, the order for payment  
10 shall be drawn within 10 days after a certified copy of such ~~the~~ judgment on appeal  
11 is filed with the proper clerk. If more than one payment is provided for in the award  
12 or judgment, orders shall be drawn as the payments become due. No statute relating  
13 to the filing of claims against, ~~and~~ or the auditing, allowing ~~and, or~~ payment of claims  
14 by ~~municipalities, local governmental units~~ shall apply to the payment of an award  
15 or judgment under this section.

16           **SECTION 30.** 102.23 (1) (a) of the statutes is renumbered 102.23 (1) (a) 1. and  
17 amended to read:

18           102.23 (1) (a) 1. The findings of fact made by the commission acting within its  
19 powers shall, in the absence of fraud, be conclusive. The order or award granting or  
20 denying compensation, either interlocutory or final, whether judgment has been  
21 rendered on it or not, is subject to review only as provided in this section and not  
22 under ch. 227 or s. 801.02. The commission shall identify in the order or award the  
23 persons that must be made parties to an action for the review of the order or award.

24           2. Within 30 days after the date of an order or award made by the commission  
25 ~~either originally or after the filing of a petition for review with the department under~~



1 s. 102.18, any party aggrieved ~~thereby~~ by the order or award may commence an  
2 action in circuit court for the review of the order or award by serving a complaint as  
3 provided in par. (b) and filing the summons and complaint with the clerk of the circuit  
4 court ~~commence, in circuit court, an action against the commission for the review of~~  
5 ~~the order or award, in which action the adverse party shall also be made a defendant.~~  
6 The summons and complaint shall name the party commencing the action as the  
7 plaintiff and shall name as defendants the commission and all persons identified by  
8 the commission under subd. 1. If the circuit court determines that any other person  
9 is necessary for the proper resolution of the action, the circuit court may join that  
10 person as a party to the action, unless joinder of the person would unduly delay the  
11 resolution of the action. If the circuit court is satisfied that a party in interest has  
12 been prejudiced because of an exceptional delay in the receipt of a copy of any finding  
13 or order, it the circuit court may extend the time in within which an action may be  
14 commenced by an additional 30 days.

15 3. The proceedings shall be in the circuit court of the county where the plaintiff  
16 resides, except that if the plaintiff is a state agency, the proceedings shall be in the  
17 circuit court of the county where the defendant resides. The proceedings may be  
18 brought in any circuit court if all parties stipulate and that court agrees.

19 **SECTION 31.** 102.23 (1) (c) of the statutes is amended to read:

20 102.23 (1) (c) ~~Except as provided in par. (em), the~~ The commission shall serve  
21 its answer within 20 days after the service of the complaint, ~~and, within the like time,~~  
22 ~~the adverse party.~~ Except as provided in par. (cm), any other defendant may serve  
23 an answer to the complaint within 20 days after the service of the complaint, which  
24 answer may, by way of counterclaim or cross complaint, ask for the review of the  
25 order or award referred to in the complaint, with the same effect as if the party

1 defendant had commenced a separate action for the review thereof of the order or  
2 award.

3 **SECTION 32.** 102.23 (1) (cm) of the statutes is amended to read:

4 102.23 (1) (cm) If ~~an adverse party to the proceeding~~ a defendant in an action  
5 brought under par. (a) is an insurance company, the insurance company may serve  
6 an answer to the complaint within 45 days after the service of the complaint.

7 **SECTION 33.** 102.28 (2) (a) of the statutes is amended to read:

8 102.28 (2) (a) *Duty to insure payment for compensation.* Unless exempted by  
9 ~~the department~~ under par. (b) or (bm) or sub. (3), every employer, as described in s.  
10 102.04 (1), shall insure payment for that compensation under this chapter in an  
11 insurer authorized to do business in this state. A joint venture may elect to be an  
12 employer under this chapter and obtain insurance for payment of compensation. If  
13 a joint venture that is subject to this chapter only because the joint venture elected  
14 to be an employer under this chapter is dissolved and cancels or terminates its  
15 contract for the insurance of compensation under this chapter, that joint venture is  
16 deemed to have effected withdrawal, which shall be effective on the day after the  
17 contract is canceled or terminated.

18 **SECTION 34.** 102.28 (2) (b) (title) of the statutes is amended to read:

19 102.28 (2) (b) (title) *Exemption from duty to insure; employers generally.*

20 **SECTION 35.** 102.28 (2) (bm) of the statutes is created to read:

21 102.28 (2) (bm) *Exemption from duty to insure; governmental employers.* 1.  
22 Subject to subds. 2. to 4., if the state or a local governmental unit that has  
23 independent taxing authority is not partially insured or fully insured for its liability  
24 for the payment of compensation under this chapter, or to the extent that the state  
25 or a local governmental unit that has independent taxing authority is not partially

1 insured for that liability under one or more contracts issued with the consent of the  
2 department under s. 102.31 (1) (b), and if the state or local governmental unit agrees  
3 to report faithfully all compensable injuries and to comply with this chapter and all  
4 rules of the department, the state or local governmental unit may elect to self-insure  
5 that liability without further order of the department.

6 2. Notwithstanding the absence of an order of exemption from the duty to  
7 insure under par. (a), the state or a local governmental unit that elects to self-insure  
8 as provided in subd. 1. is exempt from that duty. Notwithstanding that exemption,  
9 if the state or a local governmental unit that elects to self-insure as provided in subd.  
10 1. desires partial insurance or divided insurance, the state or local governmental  
11 unit shall obtain the consent of the department under s. 102.31 (1) (b) to the issuance  
12 of a contract providing such insurance.

13 3. a. A local governmental unit that elects to self-insure its liability for the  
14 payment of compensation under this chapter shall notify the department of that  
15 election in writing before commencing to self-insure that liability and shall notify  
16 the department of its intent to continue to self-insure that liability every 3 years  
17 after that initial notice. A local government unit that wishes to withdraw that  
18 election shall notify the department of that withdrawal not less than 30 days before  
19 the effective date of that withdrawal.

20 b. A notice under subd. 3. a. shall be accompanied by a resolution adopted by  
21 the governing body of the local governmental unit and signed by the elected or  
22 appointed chief executive of the local governmental unit stating that the governing  
23 body intends and agrees to self-insure the liability of the local governmental unit for  
24 the payment of compensation under this chapter and that the local government unit

1 agrees to report faithfully all compensable injuries and to comply with this chapter  
2 and all rules of the department.

3 4. An election to self-insure under subd. 1. is subject to revocation under par.  
4 (c) 2. Once such an election is revoked, the employer whose election is revoked may  
5 not elect to self-insure its liability for the payment of compensation under this  
6 chapter unless at least 3 calendar years have elapsed since the revocation and the  
7 department finds that the employer's financial condition is adequate to pay its  
8 employees' claims for compensation, that the employer has not received an excessive  
9 number of claims for compensation, and that the employer has faithfully discharged  
10 its obligations under this chapter and the rules of the department.

11 **SECTION 36.** 102.28 (2) (c) (title) of the statutes is amended to read:

12 102.28 (2) (c) (title) *Revocation of exemption or election.*

13 **SECTION 37.** 102.28 (2) (c) of the statutes is renumbered 102.28 (2) (c) 1. and  
14 amended to read:

15 102.28 (2) (c) 1. The department, after seeking the advice of the self-insurers  
16 council, may revoke an exemption granted to an employer under par. (b), upon giving  
17 the employer 10 days' written notice, if the department finds that the employer's  
18 financial condition is inadequate to pay its employees' claims for compensation, that  
19 the employer has received an excessive number of claims for compensation, or that  
20 the employer has failed to discharge faithfully its obligations according to the  
21 agreement contained in the application for exemption. ~~The employer may, within~~

22 3. Within 10 days after receipt of the a notice of revocation, under subd. 1. or  
23 2., the employer may request in writing a review of the revocation by the secretary  
24 or the secretary's designee and the secretary or the secretary's designee shall review  
25 the revocation within 30 days after receipt of the request for review. If the employer

1 is aggrieved by the determination of the secretary or the secretary's designee, the  
2 employer may, within 10 days after receipt of notice of that determination, request  
3 a hearing under s. 102.17. If the secretary or the secretary's designee determines  
4 that the employer's exemption or election should be revoked, the employer shall  
5 obtain insurance coverage as required under par. (a) immediately upon receipt of  
6 notice of that determination and, notwithstanding the pendency of proceedings  
7 under ss. 102.17 to 102.25, shall keep that coverage in force until another exemption  
8 under par. (b) is granted or another election under par. (bm) is made.

9 **SECTION 38.** 102.28 (2) (c) 2. of the statutes is created to read:

10 102.28 (2) (c) 2. The department may revoke an election made by an employer  
11 under par. (bm), upon giving the employer 10 days' written notice, if the department  
12 finds that the employer's financial condition is inadequate to pay its employees'  
13 claims for compensation, that the employer has received an excessive number of  
14 claims for compensation, or that the employer has failed to discharge faithfully its  
15 obligations under this chapter and the rules of the department.

16 **SECTION 39.** 102.28 (2) (d) of the statutes is amended to read:

17 102.28 (2) (d) *Effect of insuring with unauthorized insurer.* ~~An employer who~~  
18 ~~procures an exemption under par. (b) and thereafter~~ If an employer that is exempted  
19 under par. (b) or (bm) from the duty to insure under par. (a) enters into any agreement  
20 for excess insurance coverage with an insurer not authorized to do business in this  
21 state, the employer shall report that agreement to the department immediately. The  
22 placing of such coverage shall not by itself be grounds for revocation of the exemption.

23 **SECTION 40.** 102.28 (7) (a) of the statutes is amended to read:

24 102.28 (7) (a) If an employer who is currently or was formerly exempted by  
25 written order of the department under sub. (2) (b) is unable to pay an award,

1 judgment is rendered in accordance with s. 102.20 against that employer, and  
2 execution is levied and returned unsatisfied in whole or in part, payments for the  
3 employer's liability shall be made from the fund established under sub. (8). If a  
4 currently or formerly exempted employer files for bankruptcy and not less than 60  
5 days after that filing the department has reason to believe that compensation  
6 payments due are not being paid, the department in its discretion may make  
7 payment for the employer's liability from the fund established under sub. (8). The  
8 secretary of administration shall proceed to recover ~~such~~ those payments from the  
9 employer or the employer's receiver or trustee in bankruptcy, and may commence an  
10 action or proceeding or file a claim ~~therefor~~ for those payments. The attorney general  
11 shall appear on behalf of the secretary of administration in any such action or  
12 proceeding. All moneys recovered in any such action or proceeding shall be paid into  
13 the fund established under sub. (8).

14 **SECTION 41.** 102.28 (7) (b) of the statutes is renumbered 102.28 (7) (b) 1. and  
15 amended to read:

16 102.28 (7) (b) 1. Each employer exempted by written order of the department  
17 under sub. (2) (b) shall pay into the fund established by sub. (8) ~~a sum equal to that~~  
18 ~~assessed against each of the other such exempt employers upon the issuance of an~~  
19 ~~initial order. The order~~ an initial assessment based on orders of the department as  
20 provided in subd. 2. An order of the department requiring exempt employers to pay  
21 into that fund shall provide for ~~a sum~~ an amount that is sufficient to secure  
22 estimated payments of the an insolvent exempt employer due for the period up to the  
23 date of the order and for one year following the date of the order and to pay the  
24 estimated cost of insurance carrier or insurance service organization services under  
25 par. (c). Payments ordered to be made to the fund shall be paid to the department

1 within 30 days after the date of the order. If additional moneys are required, further  
2 assessments shall be made based on orders of the department with as provided under  
3 subd. 2.

4 2. An initial or further assessment under subd. 1. shall be prorated on the basis  
5 of the gross payroll for this state of the exempt employer, as reported to the  
6 department for the previous calendar year for unemployment insurance purposes  
7 under ch. 108. If the or, if an exempt employer is not covered under ch. 108, then the  
8 department shall determine on the basis of the comparable gross payroll for the  
9 exempt employer as determined by the department. If payment of any assessment  
10 made under this subsection subd. 1. is not made within 30 days of after the date of  
11 the order of the department, the attorney general may appear on behalf of the state  
12 to collect the assessment.

13 **SECTION 42.** 102.28 (7) (bm) of the statutes is created to read:

14 102.28 (7) (bm) The department may not do any of the following:

15 1. Require an employer that elects under sub. (2) (bm) to self-insure its liability  
16 for the payment of compensation under this chapter to pay into the fund established  
17 under sub. (8).

18 2. Make any payments from the fund established under sub. (8) for the liability  
19 under this chapter of an employer that elects under sub. (2) (bm) to self-insure its  
20 liability for the payment of compensation under this chapter, whether currently or  
21 formerly exempt from the duty to insure under sub. (2) (a).

22 **SECTION 43.** 102.29 (1) (b) 2. of the statutes is amended to read:

23 102.29 (1) (b) 2. Out of the balance remaining after the deduction and payment  
24 specified in subd. 1., the employer, the insurance carrier, or, if applicable, the  
25 uninsured employers fund or the work injury supplemental benefit fund shall be

1 reimbursed for all payments made by the employer, insurance carrier, or  
2 department, or which the employer, insurance carrier, or department may be  
3 obligated to make in the future, under this chapter, except that the employer,  
4 insurance carrier, or department shall not be reimbursed for any payments made or  
5 to be made under s. 102.18 (1) (b) 3. or (bp), 102.22, 102.35 (3), 102.57, or 102.60.

6 **SECTION 44.** 102.31 (2) (b) 2. of the statutes is amended to read:

7 102.31 (2) (b) 2. Regardless of whether the notices required under par. (a) have  
8 been given, a cancellation or termination is effective upon the effective date of  
9 replacement insurance coverage obtained by the employer ~~or~~, of an order under s.  
10 102.28 (2) (b) exempting the employer from carrying the duty to carry insurance  
11 under s. 102.28 (2) (a), or of an election by an employer under s. 102.28 (2) (bm) to  
12 self-insure its liability for the payment of compensation under this chapter.

13 **SECTION 45.** 102.315 (2) of the statutes is amended to read:

14 102.315 (2) **EMPLOYEE LEASING COMPANY LIABLE.** An employee leasing company  
15 is liable under s. 102.03 for all compensation payable under this chapter to a leased  
16 employee, including any payments required under s. 102.16 (3), 102.18 (1) (b) 3. or  
17 (bp), 102.22 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29,  
18 an employee leasing company may not seek or receive reimbursement from another  
19 employer for any payments made as a result of that liability. An employee leasing  
20 company is not liable under s. 102.03 for any compensation payable under this  
21 chapter to an employee of a client who is not a leased employee.

22 **SECTION 46.** 102.423 of the statutes is created to read:

23 **102.423 Health service fee and treatment utilization schedules. (1)**

24 **HEALTH SERVICE FEE SCHEDULE.** (a) By July 1, 2016, the department shall establish  
25 a schedule of the maximum fees that an employer or insurer may be required to pay



1 for health services provided to an injured employee who claims benefits under this  
2 chapter. The health service fee schedule shall have all of the following attributes:

3 1. The health service fee schedule shall be based on the Medicare fee schedules  
4 specified in par. (b) 1., 2., and 3., except that for services not specifically addressed  
5 under those schedules, the health care fee schedule shall be based on the fee schedule  
6 developed by the department under par. (b) 4., and for durable medical equipment,  
7 the reimbursement rate shall be as provided in par. (b) 5.

8 2. The health service fee schedule shall use Medicare coding and  
9 reimbursement rules, except that for a surgical procedure, the health service fee  
10 schedule shall use the current procedural terminology code, as defined in s. 632.726  
11 (1), for that procedure.

12 3. The health service fee schedule shall be comprehensive in scope, shall  
13 address the fees of physicians and surgeons, hospitals, and ambulatory surgical  
14 centers, and shall address fees for ancillary services provided by other health care  
15 facilities and providers.

16 (b) In establishing the initial health care fee schedule, the department shall  
17 determine the maximum fees permitted under par. (a) as follows:

18 1. For the services of a physician, the department shall benchmark the  
19 maximum fee for those services to the reimbursement rates for those services  
20 provided in the Medicare physicians fee schedule for this state that is in effect on  
21 January 1, 2016, and shall apply an initial conversion factor of up to 200 percent of  
22 the Medicare base reimbursement rates for those services in determining  
23 reimbursement levels for those services.

24 2. For inpatient and outpatient hospital services and for the services of an  
25 ambulatory surgical center, the department shall benchmark the maximum fee for

1 those services to the reimbursement rates for those services provided by the  
2 Medicare inpatient prospective payment system, outpatient prospective payment  
3 system, and ambulatory surgical center payment system, respectively, and shall  
4 apply an initial conversion factor of up to 200 percent of the Medicare base  
5 reimbursement rates for those services in determining reimbursement levels for  
6 those services.

7 3. For ancillary services provided by health care facilities and providers other  
8 than the facilities and providers specified in subds. 1. and 2., the department shall  
9 benchmark the maximum fee for those services to the reimbursement rates for those  
10 services provided in the applicable Medicare fee schedule for this state that is in  
11 effect on January 1, 2016, and shall apply an initial conversion factor of up to 200  
12 percent of the Medicare base reimbursement rates for those services in determining  
13 reimbursement levels for those services.

14 4. For services not specifically addressed under any Medicare fee schedule, the  
15 department shall benchmark the maximum fee for those services by giving  
16 consideration to the factors specified in this subdivision and shall apply an initial  
17 conversion factor as determined by the department in determining reimbursement  
18 levels for those services. In developing the fee schedule under this subdivision, the  
19 department shall give consideration to the average payment made by group health  
20 benefit plans, as defined in s. 632.745 (9), group health plans, as defined in s. 632.745  
21 (10), and self-insured health plans, as defined in s. 632.745 (24), in this state and the  
22 average copayment, coinsurance, and deductible payment made by persons covered  
23 under those plans, for each health service included in the schedule based on health  
24 service payment data obtained from the Wisconsin Health Information  
25 Organization, the Workers Compensation Research Institute, health insurers and

1 health plan sponsors, the group health insurance plan under subch. IV of ch. 40, and  
2 other sources determined by the department to be credible.

3 5. For durable medical equipment, the department shall provide that  
4 reimbursement shall be limited to the amount of reimbursement provided under  
5 Medicare. No fee schedule under this paragraph may authorize separate  
6 reimbursement for implantable hardware or outliers.

7 (c) No less often than every 2 years, the department shall evaluate the fee  
8 schedule established under par. (a) and determine if any revisions to that schedule  
9 are warranted. Any revisions to the schedule shall be made in accordance with the  
10 attributes specified in par. (a) 1. to 3. and the requirements and considerations  
11 specified in par. (b) 1. to 5. The department may not implement any revisions under  
12 this paragraph unless the revisions are approved by the council on worker's  
13 compensation.

14 (d) When the fee schedule under par. (a) is established and whenever that  
15 schedule is revised under par. (c), the department shall notify the legislative  
16 reference bureau and the legislative reference bureau shall publish that notice in the  
17 Wisconsin Administrative Register. The department shall post a link to the fee  
18 schedule on the department's Internet site. Notwithstanding s. 227.10 (1), the fee  
19 schedule need not be promulgated as a rule.

20 (2) LIABILITY OF EMPLOYER OR INSURER. The liability of an employer or insurer  
21 for a health service included in the fee schedule established under sub. (1) (a) is  
22 limited to the maximum fee allowed under the schedule for that health service as of  
23 the date on which the health service was provided, any fee agreed to by contract  
24 between the employer or insurer and health care provider for that health service as  
25 of that date, or the health care provider's actual fee for the health service as of that

1 date, whichever is less. A health care provider that provides health services to an  
2 injured employee under this chapter may not collect, or bring an action to collect,  
3 from the injured employee any charge that is in excess of the liability of the employer  
4 or insurer under this subsection. This subsection first applies to a health service  
5 provided to an injured employee on the date on which the notice under sub. (1) (d)  
6 is published in the Wisconsin Administrative Register.

7 (3) RULES. The department shall promulgate rules to implement this section.

8 **SECTION 47.** 102.425 (3) (am) of the statutes is created to read:

9 102.425 (3) (am) 1. Subject to subds. 2. and 3., if a prescription drug dispensed  
10 under sub. (2) (a) for outpatient use by an injured employee is a repackaged  
11 prescription drug, the liability of an employer or insurer for the cost of the  
12 repackaged prescription drug is limited to the average wholesale price, as  
13 determined under par. (a) 1., of the prescription drug set by the original  
14 manufacturer of the prescription drug, plus any dispensing fee that may be payable  
15 under par. (a) 2. and any taxes that may be applicable under par. (a) 3., except that  
16 if the national drug code number of the prescription drug as packaged by the original  
17 manufacturer of the prescription drug cannot be determined from the billing  
18 statement under par. (c), that liability is limited to the average wholesale price, as  
19 determined under par. (a) 1., of the lowest-priced drug product equivalent, plus any  
20 dispensing fee under par. (a) 2. and any taxes under par. (a) 3. that would be payable  
21 for the drug product equivalent.

22 2. An employer or insurer is not liable for the cost of a repackaged prescription  
23 drug dispensed from a retail, mail-order, or institutional pharmacy.

24 3. Subdivisions 1. and 2. do not apply to a repackaged prescription drug  
25 dispensed from a retail, mail-order, or institutional pharmacy.

1           **SECTION 48.** 102.425 (3) (b) of the statutes is amended to read:

2           102.425 (3) (b) In addition to the liability under par. (a) or (am), whichever is  
3           applicable, an employer or insurer is also liable for reimbursement to an injured  
4           employee for all out-of-pocket expenses incurred by the injured employee in  
5           obtaining the prescription drug dispensed.

6           **SECTION 49.** 102.425 (4) (a) of the statutes is amended to read:

7           102.425 (4) (a) Except as provided in par. (b), a pharmacist or practitioner who  
8           dispenses a prescription drug under sub. (2) to an injured employee may not collect,  
9           or bring an action to collect, from the injured employee any charge that is in excess  
10          of the liability of the injured employee under sub. (2) (c) 2. or the liability of the  
11          employer or insurer under sub. (3) (a) or (am), whichever is applicable.

12          **SECTION 50.** 102.425 (4) (b) of the statutes is amended to read:

13          102.425 (4) (b) If an employer or insurer denies or disputes liability for the cost  
14          of a drug prescribed to an injured employee under sub. (2), the pharmacist or  
15          practitioner who dispensed the drug may collect, or bring an action to collect, from  
16          the injured employee the cost of the prescription drug dispensed, subject to the  
17          limitations specified in sub. (3) (a) or (am), whichever is applicable. If an employer  
18          or insurer concedes liability for the cost of a drug prescribed to an injured employee  
19          under sub. (2), but disputes the reasonableness of the amount charged for the  
20          prescription drug, the employer or insurer shall provide notice under sub. (4m) (b)  
21          to the pharmacist or practitioner that the reasonableness of the amount charged is  
22          in dispute and the pharmacist or practitioner who dispensed the drug may not  
23          collect, or bring an action to collect, from the injured employee the cost of the  
24          prescription drug dispensed after receiving that notice.

25          **SECTION 51.** 102.425 (4m) (b) of the statutes is amended to read:

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

11          **SECTION 52.** 102.43 (5) (c) of the statutes is amended to read:

12          102.43 (5) (c) Compensation for temporary disability on account of receiving  
13          instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account  
14          of any wages earned for the first 24 hours worked by an employee during a week in  
15          which the employee is receiving that instruction. If an employee performs more than  
16          24 hours of work during a week in which the employee is receiving that instruction,  
17          all wages earned for hours worked in excess of 24 during that week shall be offset  
18          against the employee's average weekly wage in calculating compensation for  
19          temporary disability under sub. (2). An employee who is receiving compensation for  
20          temporary disability on account of receiving instruction under s. 102.61 (1) or (1m)  
21          shall report any wages earned during the period in which the employee is receiving  
22          that instruction to the insurance carrier or self-insured employer paying that  
23          compensation. This paragraph does not apply after April 30, ~~2014~~ 2018.

24          **SECTION 53.** 102.44 (1) (ag) of the statutes is amended to read:

1           102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
2       employee who is receiving compensation under this chapter for permanent total  
3       disability or continuous temporary total disability more than 24 months after the  
4       date of injury resulting from an injury that occurred prior to January 1, 2001 2003,  
5       shall receive supplemental benefits that shall be payable ~~in the first instance~~ by the  
6       employer or, subject to par. (c), by the employer's insurance carrier, or in the case of  
7       benefits payable to an employee under s. 102.66, shall be paid by the department out  
8       of the fund created under s. 102.65. Those supplemental benefits shall be paid only  
9       for weeks of disability occurring after January 1, ~~2003~~ 2005, and shall continue  
10      during the period of such total disability subsequent to that date.

11           **SECTION 54.** 102.44 (1) (ag) of the statutes, as affected by 2015 Wisconsin Act  
12      .... (this act), is amended to read:

13           102.44 (1) (ag) Notwithstanding any other provision of this chapter, every  
14      employee who is receiving compensation under this chapter for permanent total  
15      disability or continuous temporary total disability more than 24 months after the  
16      date of injury resulting from an injury that occurred prior to January 1, 2003, shall  
17      receive supplemental benefits that shall be payable by the employer or, ~~subject to par.~~  
18      ~~(e)~~, by the employer's insurance carrier, or in the case of benefits payable to an  
19      employee under s. 102.66, shall be paid by the department out of the fund created  
20      under s. 102.65. Those supplemental benefits shall be paid only for weeks of  
21      disability occurring after January 1, 2005, and shall continue during the period of  
22      such total disability subsequent to that date.

23           **SECTION 55.** 102.44 (1) (am) of the statutes is amended to read:

24           102.44 (1) (am) If the employee is receiving the maximum weekly benefits in  
25      effect at the time of the injury, the supplemental benefit for a week of disability

1 occurring after ~~May 1, 2010~~ the effective date of this paragraph .... [LRB inserts  
2 date], shall be an amount that, when added to the regular benefit established for the  
3 case, shall equal ~~\$582~~ \$615.

4 **SECTION 56.** 102.44 (1) (b) of the statutes is amended to read:

5 102.44 (1) (b) If the employee is receiving a weekly benefit that is less than the  
6 maximum benefit that was in effect on the date of the injury, the supplemental  
7 benefit for a week of disability occurring after ~~May 1, 2010~~ the effective date of this  
8 paragraph .... [LRB inserts date], shall be an amount sufficient to bring the total  
9 weekly benefits to the same proportion of ~~\$582~~ \$615 as the employee's weekly benefit  
10 bears to the maximum in effect on the date of injury.

11 **SECTION 57.** 102.44 (1) (c) of the statutes is renumbered 102.44 (1) (c) 1. and  
12 amended to read:

13 102.44 (1) (c) 1. ~~Subject to any certificate filed under s. 102.65 (4), an employer~~  
14 ~~or~~ An insurance carrier paying the supplemental benefits required under this  
15 subsection shall be entitled to reimbursement for each such case from the ~~fund~~  
16 ~~established by s. 102.65~~ worker's compensation operations fund, commencing one  
17 year after the date of the first payment of those benefits and annually thereafter  
18 while those payments continue. To receive reimbursement under this paragraph, an  
19 ~~employer or~~ insurance carrier must file a claim for that reimbursement with the  
20 department by no later than 12 months after the end of the year in which the  
21 supplemental benefits were paid and the claim must be approved by the department.

22 **SECTION 58.** 102.44 (1) (c) 2. of the statutes is created to read:

23 102.44 (1) (c) 2. After the expiration of the deadline for filing a claim under  
24 subd. 1., the department shall determine the total amount of all claims filed by that  
25 deadline and shall use that total to determine the amount to be collected under s.



1      102.75 (1g) from each licensed worker's compensation insurance carrier, deposited  
2      in the worker's compensation operations fund, and used to provide reimbursement  
3      to insurance carriers paying supplemental benefits under this subsection. The  
4      department shall pay a claim for reimbursement approved by the department by no  
5      later than 16 months after the end of the year in which the claim was received by the  
6      department.

7            **SECTION 59.** 102.44 (1) (c) 3. of the statutes is created to read:

8            102.44 (1) (c) 3. This paragraph does not apply to supplemental benefits paid  
9      for an injury that occurs on or after January 1, 2016.

10           **SECTION 60.** 102.44 (3) of the statutes is amended to read:

11           102.44 (3) For permanent partial disability not covered by ss. 102.52 to 102.56,  
12      the aggregate number of weeks of indemnity shall bear such relation to 1,000 weeks  
13      as the nature of the injury bears to one causing permanent total disability and. The  
14      weekly indemnity for such permanent partial disability shall be payable at the rate  
15      of two-thirds of the average weekly earnings of the employee, the earnings to be  
16      computed as provided in s. 102.11. ~~The weekly indemnity,~~ shall be in addition to  
17      compensation for the healing period, and shall be for the period that the employee  
18      may live, not to exceed 1,000 weeks.

19           **SECTION 61.** 102.44 (5m) of the statutes is created to read:

20           102.44 (5m) (a) Subject to pars. (b) to (f), an employer or insurer may reduce  
21      the amount of benefits payable under this chapter to an injured employee, including  
22      benefits paid in a lump sum under a compromise settlement under s. 102.16 (1), by  
23      the amount of benefits paid or payable to the injured employee under the worker's  
24      compensation law of any other state for the same injury, including benefits paid in

1 a lump sum under a compromise settlement under the worker's compensation law  
2 of that state.

3 (b) An employer or insurer that is liable to an injured employee for benefits  
4 payable under this chapter may request in writing that the injured employee report  
5 to the employer or insurer any benefits paid or payable to the injured employee under  
6 the worker's compensation law of any other state. If for reasons other than excusable  
7 neglect an employee fails to respond to a request under this paragraph within 30  
8 days after the date of the request, the employer or insurer may reduce the employee's  
9 weekly compensation benefits under this chapter by 75 percent until such time as  
10 the employee reports that information. On receipt of that information, the employer  
11 or insurer shall reimburse the employee for all compensation benefits otherwise  
12 payable during the period of the reduction.

13 (c) An employer or insurer that reduces the amount of benefits payable under  
14 this chapter as permitted under par. (a) shall report that reduction to the department  
15 and, on request of the department, shall furnish proof of the basis for that reduction  
16 that is satisfactory to the department.

17 (d) An employer or insurer may reduce the amount of benefits payable under  
18 this chapter as permitted under par. (a) only as to payments under the worker's  
19 compensation law of another state made on or after the effective date of this  
20 paragraph .... [LRB inserts date], and shall compute that reduction on the basis of  
21 payments made for temporary total, temporary partial, permanent total, and  
22 permanent partial disability.

23 (e) An employer or insurer may not reduce the amount of benefits payable  
24 under this chapter as otherwise permitted under par. (a) on account of payments

1 made under the worker's compensation law of another state to a dependent of the  
2 employee.

3 (f) An employer or insurer may not reduce the amount of temporary disability  
4 benefits payable under this chapter by the amount of temporary disability benefits  
5 payable under the worker's compensation laws of another state during a period in  
6 which an injured employee is receiving vocational rehabilitation services under s.  
7 102.61 (1) or (1m).

8 **SECTION 62.** 102.58 of the statutes is amended to read:

9 **102.58 Decreased compensation.** If injury is caused by the failure of the  
10 employee to use safety devices that are provided in accordance with any statute, rule,  
11 or order of the department and that are adequately maintained, and the use of which  
12 is reasonably enforced by the employer, if injury results from the employee's failure  
13 to obey any reasonable rule adopted and reasonably enforced by the employer for the  
14 safety of the employee and of which the employee has notice, or if injury results from  
15 the intoxication of the employee by alcohol beverages, as defined in s. 125.02 (1), or  
16 use of a controlled substance, as defined in s. 961.01 (4), or a controlled substance  
17 analog, as defined in s. 961.01 (4m), or if injury results from any other negligence  
18 attributable to the employee, the compensation and death benefit provided in this  
19 chapter shall be reduced 15% ~~but the total reduction may not exceed \$15,000 in~~  
20 proportion to the amount of negligence attributable to the employee.

21 **SECTION 63.** 102.65 (4) (intro.) of the statutes is amended to read:

22 102.65 (4) (intro.) The secretary shall monitor the cash balance in, and incurred  
23 losses to, the work injury supplemental benefit fund using generally accepted  
24 actuarial principles. If the secretary determines that the expected ultimate losses  
25 to the work injury supplemental benefit fund on known claims exceed 85 percent of

1 the cash balance in that fund, the secretary shall consult with the council on worker's  
2 compensation. If the secretary, after consulting with the council on worker's  
3 compensation, determines that there is a reasonable likelihood that the cash balance  
4 in the work injury supplemental benefit fund may become inadequate to fund all  
5 claims under ss. ~~102.44 (1) (e)~~, 102.49, 102.59, and 102.66, the secretary shall file  
6 with the secretary of administration a certificate attesting that the cash balance in  
7 that fund is likely to become inadequate to fund all claims under ss. ~~102.44 (1) (e)~~,  
8 102.49, 102.59, and 102.66 and specifying one of the following:

9 **SECTION 64.** 102.75 (1) of the statutes is amended to read:

10 102.75 (1) The department shall assess upon and collect from each licensed  
11 worker's compensation insurance carrier and from each employer exempted under  
12 s. 102.28 (2) ~~by special order or by rule, (b) or (bm) from the duty to carry insurance~~  
13 under s. 102.28 (2) (a) the proportion of total costs and expenses incurred by the  
14 council on worker's compensation for travel and research and by the department and  
15 the commission in the administration of this chapter for the current fiscal year, plus  
16 any deficiencies in collections and anticipated costs from the previous fiscal year,  
17 that the total indemnity paid or payable under this chapter by each such carrier and  
18 exempt employer in worker's compensation cases initially closed during the  
19 preceding calendar year, other than for increased, double, or treble compensation,  
20 bore to the total indemnity paid in cases closed the previous calendar year under this  
21 chapter by all carriers and exempt employers, other than for increased, double, or  
22 treble compensation. The council on worker's compensation and the commission  
23 shall annually certify any costs and expenses for worker's compensation activities  
24 to the department at such time as the secretary requires.

25 **SECTION 65.** 102.75 (1g) of the statutes is created to read:

1           102.75 (1g) The department shall collect from each licensed worker's  
2           compensation carrier the proportion of reimbursement approved by the department  
3           under s. 102.44 (1) (c) 1. for supplemental benefits paid in the year before the  
4           previous year that the total indemnity paid or payable under this chapter by the  
5           carrier in worker's compensation cases initially closed during the preceding calendar  
6           year, other than for increased, double, or treble compensation, bore to the total  
7           indemnity paid in cases closed the previous calendar year under this chapter by all  
8           carriers, other than for increased, double, or treble compensation. This subsection  
9           does not apply to claims for reimbursement under s. 102.44 (1) (c) 1. for supplemental  
10          benefits paid for injuries that occur on or after January 1, 2016.

11           **SECTION 66.** 102.75 (1m) of the statutes is amended to read:

12           102.75 (1m) The moneys collected under sub. ~~subs.~~ (1) and (1g) and under ss.  
13           102.28 (2) and 102.31 (7), together with all accrued interest, shall constitute a  
14           separate nonlapsible fund designated as the worker's compensation operations fund.  
15           Moneys in the fund may be expended only as provided in s. 20.445 (1) (ra), (rb), and  
16           (rp) and (2) (ra) and may not be used for any other purpose of the state.

17           **SECTION 67.** 102.75 (2) of the statutes is amended to read:

18           102.75 (2) The department shall require ~~that payments for costs and expenses~~  
19           ~~for each fiscal year shall be made on such dates as the department prescribes by each~~  
20           licensed worker's compensation insurance carrier and employer exempted under s.  
21           102.28 (2) (b) or (bm) from the duty to insure under s. 102.28 (2) (a) to make the  
22           payments required under sub. (1) for each fiscal year on such dates as the  
23           department prescribes. The department shall also require each licensed worker's  
24           compensation insurance carrier to make the payments required under sub. (1g) for  
25           each fiscal year on those dates. Each such payment shall be a sum equal to a

1 proportionate share of the annual costs and expenses assessed upon each carrier and  
2 employer as estimated by the department. Interest shall accrue on amounts not paid  
3 within 30 days after the date prescribed by the department under this subsection at  
4 the rate of 1 percent per month. All interest payments received under this subsection  
5 shall be deposited in the fund established under s. 102.65.

6 **SECTION 68.** 102.75 (4) of the statutes is amended to read:

7 102.75 (4) From the appropriation under s. 20.445 (1) (ra), the department  
8 shall allocate the amounts that it collects in application fees from employers  
9 applying for exemption under s. 102.28 (2) (b) and the annual amount that it collects  
10 from employers that have been exempted under s. 102.28 (2) (b) to fund the activities  
11 of the department under s. 102.28 (2) (b) and (c) with respect to those employers.

12 **SECTION 69.** 102.81 (1) (a) of the statutes is amended to read:

13 102.81 (1) (a) If an employee of an uninsured employer, other than an employee  
14 who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for  
15 which the uninsured employer is liable under s. 102.03, the department or the  
16 department's reinsurer shall pay to or on behalf of the injured employee or to the  
17 employee's dependents an amount equal to the compensation owed them by the  
18 uninsured employer under this chapter except penalties and interest due under ss.  
19 102.16 (3), 102.18 (1) (b) 3. and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60.

20 **SECTION 70.** 108.10 (4) of the statutes is amended to read:

21 108.10 (4) The department or the employing unit may commence action for the  
22 judicial review of a commission decision under this section, provided the department,  
23 or the employing unit, after exhausting the remedies provided under this section, has  
24 commenced such action within 30 days after such decision was mailed to the  
25 employing unit's last-known address. The scope of judicial review, and the manner

1       thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In  
2       an action commenced by an employing unit under this section, the department shall  
3       be ~~an adverse party~~ a defendant under s. 102.23 (1) (a) and shall be named as a party  
4       defendant in the summons and complaint commencing the action.

5               **SECTION 71.** 165.60 of the statutes is amended to read:

6               **165.60 Law enforcement.** The department of justice is authorized to enforce  
7       ss. 101.123 (2), (2m), and (8), 175.60 (17) (e), 944.30 (1m), 944.31, 944.33, 944.34,  
8       945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and, with respect to a false  
9       statement submitted or made under s. 175.60 (7) (b) or (15) (b) 2. or as described  
10      under s. 175.60 (17) (c), to enforce s. 946.32, is authorized to assist the department  
11      of workforce development in the investigation and prosecution of suspected  
12      fraudulent activity related to worker's compensation as provided in s. 102.125, and  
13      is invested with the powers conferred by law upon sheriffs and municipal police  
14      officers in the performance of those duties. This section does not deprive or relieve  
15      sheriffs, constables, and other local police officers of the power and duty to enforce  
16      those sections, and those officers shall likewise enforce those sections.

17              **SECTION 72. Nonstatutory provisions.**

18              (1) **FRAUD INVESTIGATION AND PROSECUTION; DEPARTMENT OF JUSTICE POSITION**  
19      **AUTHORIZATION.** The authorized FTE positions for the department of justice are  
20      increased by 1.0 PR-S position, to be funded from the appropriation under section  
21      20.455 (2) (k) of the statutes, for the purpose of investigating and prosecuting  
22      fraudulent activity related to worker's compensation.

23              (2) **STUDY OF RESTRICTED WORK DURING EMPLOYEE HEALING PERIOD.** The secretary  
24      of workforce development shall create a committee under section 15.04 (1) (c) of the  
25      statutes to study ways and means of encouraging employers to provide, and injured

1 employees to participate in, light-duty programs under which injured employees  
2 who can return to restricted types of work during their healing periods are furnished  
3 with suitable employment that is within the physical and mental limitations of those  
4 employees. The study shall include an examination of the types of physical and  
5 mental limitations that do not preclude a return to work during the healing period  
6 and the types of work that are suitable for injured employees who have those  
7 limitations. The committee shall include representatives of employers, employees,  
8 worker's compensation insurers authorized to do business in this state, and the  
9 department of workforce development. Upon completion of the study, the committee  
10 shall report its findings, conclusions, and recommendations to the department of  
11 workforce development and the council on worker's compensation, after which the  
12 committee shall terminate its activities and cease to exist.

13 **SECTION 73. Initial applicability.**

14 (1) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS PAID. The renumbering and  
15 amendment of section 102.44 (1) (c) of the statutes and the creation of section 102.44  
16 (1) (c) 2. and 3. of the statutes first apply to supplemental benefits paid under section  
17 102.44 (1) (ag) of the statutes on the effective date of this subsection.

18 (2) JUDICIAL REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of  
19 sections 102.23 (1) (a), (c), and (cm) and 108.10 (4) of the statutes first applies to an  
20 action for the review of an order or award of the labor and industry review  
21 commission commenced in circuit court on the effective date of this subsection.

22 (3) ADMINISTRATIVE REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment  
23 of section 102.18 (3) and (4) (b) of the statutes first applies to a petition for the review  
24 of a decision of a department of workforce development hearing examiner filed with  
25 the labor and industry review commission on the effective date of this subsection.



1           **SECTION 74. Effective dates.** This act takes effect on the day after publication,  
2       except as follows:

(1) JUDICIAL REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of sections 102.23 (1) (a), (c), and (cm) and 108.10 (4) of the statutes and SECTION 73 (2) of this act take effect on January 1, 2016.

(2) ADMINISTRATIVE REVIEW OF WORKER'S COMPENSATION DECISIONS. The treatment of section 102.18 (3) and (4) (b) of the statutes and SECTION 73 (3) of this act take effect on January 1, 2016.

9 (3) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS. The treatment of section 102.44  
10 (1) (ag) of the statutes (by SECTION 54) takes effect on January 1, 2016.

11 (END)

