

**2007 SENATE BILL 430**

January 30, 2008 – Introduced by Senators COGGS and GROTHMAN, cosponsored by Representatives HONADEL and NELSON. Referred to Committee on Labor, Elections and Urban Affairs.

1     **AN ACT** *to repeal* 102.31 (2m) and 102.65 (3); *to renumber and amend* 102.29  
2           (6), 102.32 (intro.), 102.32 (1), 102.32 (2), 102.32 (3), 102.32 (4) and 102.555 (1);  
3           **to amend** 102.03 (4), 102.11 (1) (intro.), 102.16 (1m) (a), 102.16 (1m) (b), 102.16  
4           (2) (a), 102.16 (2) (am), 102.16 (2m) (a), 102.16 (2m) (am), 102.16 (2m) (c), 102.16  
5           (2m) (g), 102.16 (3), 102.17 (4), 102.18 (1) (bg) 1., 102.18 (1) (bg) 2., 102.26 (2),  
6           102.32 (5), 102.32 (6m), 102.42 (1), 102.42 (4), 102.425 (3) (a) 1., 102.425 (4) (b),  
7           102.44 (1) (intro.), 102.44 (1) (a), 102.44 (1) (b), 102.64 (2), 102.80 (3) (ag), 102.83  
8           (1) (a) 1., 102.83 (1) (a) 2., 102.83 (1) (a) 3., 102.83 (1) (a) 4., 102.83 (1) (b), 102.83  
9           (2), 102.83 (3), 102.83 (4), 102.83 (8), 102.835 (2), 102.835 (4) (a), 102.835 (4) (c),  
10           102.835 (5) (a), 102.835 (7) (a), 102.835 (12), 102.835 (13) (a), 102.835 (13) (b),  
11           102.835 (13) (d), 102.835 (14), 102.835 (19), 626.35 (1), 631.37 (3) and 632.98;  
12           and **to create** 102.16 (1m) (c), 102.18 (1) (bg) 3., 102.29 (6) (a), 102.29 (6) (b) 2.,  
13           102.29 (6) (b) 3., 102.29 (6) (c), 102.29 (6m), 102.315, 102.425 (4m), 102.555 (1)

**SENATE BILL 430**

1 (c), 102.555 (12) and 102.835 (1) (ad) of the statutes; **relating to:** making  
2 various changes in the worker's compensation law.

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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 leasing companies.*** Under current law, a professional employer organization or an employee leasing organization that enters into an employee leasing agreement with a client must submit to DWD, within ten working days after the effective date of the agreement, a report disclosing the identity of the client, the effective date of the agreement, and such other information as DWD prescribes and an employee leasing organization that intends to terminate an employee leasing agreement must notify DWD of that termination no later than 30 days prior to the termination date of the agreement. Currently, when an employee leasing agreement is terminated, termination of the client's coverage under the worker's compensation insurance policy of the employee leasing organization is not effective until 30 days after the employee leasing organization has given notice of the termination of that agreement to DWD.

This bill eliminates those current requirements relating to employee leasing organizations. Instead the bill provides that a person that contracts to provide the nontemporary, ongoing employee workforce of a client under an employee leasing agreement (employee leasing company) is liable for any worker's compensation payable to the leased employee and may not seek or receive reimbursement from the client for any payments made as a result of that liability.

Subject to certain exceptions, the bill requires an employee leasing company to insure its worker's compensation liability by obtaining a contract of insurance under which the insurer issues separate worker's compensation policies to the employee leasing company for each of its clients that are insured by the insurer (multiple coordinated policy). A multiple coordinated policy must name both the employee leasing company and the client as named insureds and must designate either the employee leasing company or the client, but not both, as the first named insured. An insurer may issue a multiple coordinated policy for a client only if all of the employees of the client are leased employees and are covered under the policy, except that an insurer may issue a multiple coordinated policy for a client that has a workforce in which some of the employees are leased employees and some are not leased employees (divided workforce) if the client notifies DWD of its intent to have a plan under which two policies are issued to cover the employees of the client, one covering the leased employees of the client and the other covering the employees of the client who are not leased employees (divided workforce plan).

Under the bill, an employee leasing company may also insure its worker's compensation liability by obtaining a single policy in its name covering more than one client of the employee leasing company (master policy) that has been approved

**SENATE BILL 430**

by the commissioner of insurance (commissioner). The commissioner may approve the issuance of a master policy if the insurer shows that it has the technological capacity and operational capability to provide to the Wisconsin Compensation Rating Bureau (bureau) certain information at the client level, including unit statistical data, information concerning proof of coverage and cancellation termination, and nonrenewal of coverage, and any other information that the bureau may require. A master policy must also establish rules governing the issuance of an insurance policy covering the leased employees of a divided workforce and the cancellation, termination, and nonrenewal of policies.

Regardless of whether the commissioner has approved the issuance of a master policy, the bill permits an employee leasing company to insure its worker's compensation liability with respect to a group of clients, each of which has an unmodified annual premium that is equal to or less than the threshold below which employers are not experience rated under the standards and criteria of the bureau (small clients) by obtaining a master policy in the voluntary market (as opposed to under the state mandatory risk-sharing plan, which is a plan established or approved by the commissioner under which risks that are unable to obtain coverage in the voluntary market may obtain coverage) insuring that liability. An insurer may issue a master policy covering a group of small clients regardless of whether any of those small clients has a divided workforce. If at any time the unmodified annual premium of a small client that is covered under a master policy exceeds the threshold below which employers are not experience rated, the employee leasing company must notify the insurer and obtain coverage for the small client under a multiple coordinated policy or a master policy that has been approved by the commissioner.

In addition, the bill permits an insurer to issue a policy covering only the leased employees of a client that has a divided workforce if the client notifies DWD of its intent to have a divided workforce. Under the bill, a client that has a divided workforce must insure its employees who are not leased employees in the voluntary market and may not insure those employees under the state mandatory risk-sharing plan, unless the leased employees of the client are covered under that mandatory plan. A client that has a divided workforce must also agree to assume full responsibility to immediately pay any worker's compensation payable as may be required by DWD should a dispute arise between two or more insurers as to liability for an injury sustained while a divided workforce plan is in effect, pending final resolution of the dispute.

For a multiple coordinated policy in which an employee leasing company is the first named insured and for a master policy, the bill permits an insurer to obligate only the employee leasing company to pay premiums due for a client's coverage and prohibits an insurer from recovering any unpaid premiums due for that coverage from the client. The bill, however, does not prohibit an insurer from collecting premiums and charges due with respect to a client by means of list billing through the employee leasing company; requiring an employee leasing company to maintain a letter of credit or other form of security to ensure payment of premiums; issuing policies that have a common renewal date to all, or a class of all, clients of an employee leasing company; grouping together the clients of an employee leasing

**SENATE BILL 430**

company for the purpose of offering dividend eligibility and paying dividends to those clients; applying a discount to the premium charged with respect to a client; or applying a retrospective rating option for determining the premium charged with respect to a client.

Finally, the bill provides as follows with respect to the cancellation, termination, or nonrenewal of a multiple coordinated policy or a master policy:

1. That the insureds under the policy may cancel the policy during the policy period only if both the employee leasing company and the client agree to the cancellation, the cancellation is confirmed by the employee leasing company promptly providing written confirmation of the cancellation to the client in writing or by the client agreeing to the cancellation in writing, and the insurer provides written notice of the cancellation to DWD.

2. That the insurer may cancel, terminate, or nonrenew the policy by providing written notice of the cancellation, or nonrenewal to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period is not effective until 30 days after that notice is provided. Nonrenewal of a policy is not effective until 60 days after that notice is provided.

3. That, if an employee leasing company that is the first named insured on the policy terminates the employee leasing agreement with a client in its entirety, the insurer may cancel or terminate the policy during the policy period by providing written notice of the cancellation or termination to the insured employee leasing company, the insured client, and DWD. Cancellation or termination of a policy by an insurer during a policy period for reason of termination of an employee leasing agreement is not effective until 30 days after that notice is provided.

4. That, if an employee leasing agreement is terminated during the policy period of a policy in which the client is the first named insured, the insurer must cancel the employee leasing company's coverage by an endorsement to the policy, and coverage of the client under the policy continues, unless the policy providing continued coverage is cancelled for failure of the client to pay premiums or for other grounds stated in the policy.

***Third-party liability.*** Under current law, worker's compensation is the exclusive remedy for an employee who is injured while performing services growing out of and incidental to his or her employment, except that, subject to certain exceptions, an injured employee may claim worker's compensation from his or her employer and bring an action in tort against a third party for damages by reason of the injury. Current law, provides, however, that an employee of a temporary help agency who makes a claim for worker's compensation may not make a claim or bring an action in tort against any employer who compensates the temporary help agency for the employee's services.

Recently, in *Warr v. QPS Companies, Inc.*, 2007 WI App 14, 298 Wis. 2d 440, the court of appeals held that the exclusive remedy provision of the worker's compensation law did not bar an employee of a temporary help agency who was injured by the conduct of an employee of another temporary help agency who was

**SENATE BILL 430**

placed with the same employer from bringing an action in tort against the temporary agency employing the latter employee.

This bill narrows the definition of “temporary help agency” for purposes of third-party liability under the worker’s compensation law. Specifically, under current law, a temporary help agency is defined as an employer who places its employee with or leases its employees to another employer who controls the employee’s work activities and compensates the first employer for the employee’s services, regardless of the duration of the services. This bill defines a temporary help agency for purposes of third-party liability under the worker’s compensation law as an employer that is *primarily engaged in the business* of placing or leasing its employees under those conditions.

In addition, the bill prohibits an employee of a temporary help agency, as defined in the bill, who makes a claim for worker’s compensation against the temporary help agency from making a claim or bringing an action in tort against any other temporary help agency, as defined in the bill, that is compensated for another employee’s services by the same employer that compensates the temporary help agency for the employee’s services or against any employee of the compensating employer or of that other temporary help agency. Similarly, the bill also prohibits an employee who makes a claim for worker’s compensation against an employer that compensates a temporary help agency, as defined in the bill, for another’s employee’s services from making a claim or bringing an action in tort against the temporary help agency or against any employee of the temporary help agency.

Similarly, the bill prohibits a leased employee of an employee leasing company who makes a claim for worker’s compensation against the employee leasing company from making a claim or bringing an action in tort against the client that accepted the services of the leased employee, against any other employee leasing company that provides the services of another leased employee to the client, or against any employee of the client or of that other employee leasing company. The bill similarly prohibits an employee who makes a claim for worker’s compensation against a client of an employee leasing company from making a claim or bringing an action in tort against an employee leasing company that provides the services of a leased employee to the client or against any leased employee of that employee leasing company.

***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 laws, 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 American Druggist Blue Book or the Drug Topics Red Book, whichever is less. This bill limits the liability of an employer or insurer for the cost of such a prescription drug to the average wholesale price of the prescription drug, as quoted in the Drug Topics Red Book.

Currently, if an employer denies or disputes liability for the cost of a drug prescribed to an injured employee, the pharmacist or other person licensed to prescribe and administer drugs (practitioner) who dispensed the drug may collect

**SENATE BILL 430**

from the injured employee the cost of the prescription drug dispensed. This bill creates a procedure for resolving disputes between a pharmacist or practitioner and an employer or insurer over the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee.

Specifically, the bill requires an employer or insurer that disputes the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee to provide, within 30 days after receiving a completed bill for the prescription drug, notice to the pharmacist or practitioner that the charge is being disputed. After receiving that notice, the pharmacist or practitioner may not collect the cost of the prescription drug from the injured employee and must file the dispute with DWD within six months after receiving the notice. The bill requires DWD to deny payment of a prescription drug charge that DWD determines to be unreasonable and specifies that the parties to a dispute over the reasonableness of a prescription drug charge are bound by DWD's determination unless the determination is set aside on judicial review.

Similarly, the bill also permits DWD to determine the reasonableness of the amount charged for a prescription drug dispensed for outpatient use by an injured employee in all of the following situations:

1. When confirming a compromise or stipulation in which an insurer or self-insured employer concedes liability for the cost of the prescription drug, but disputes the reasonableness of the amount charged for the prescription drug.
2. When finding after hearing that an insurer or self-insured employer is liable for the cost of the prescription drug, but that the reasonableness of the amount charged for the prescription drug is in dispute.

***Christian Science treatment.*** Under current law, an employer is liable for providing Christian Science treatment, in lieu of medical treatment, as may be reasonably required to cure and relieve an injured employee who elects that treatment from the effects of an injury growing out of and incidental to employment, unless the employer files a written notice with DWD electing not to be liable for providing that treatment. This bill eliminates the right of an employer to elect not to be liable for providing Christian Science treatment at the option of an injured employee. The bill also provides that the liability of an employer for the cost of Christian Science treatment for an injured employee is limited to the usual and customary charge for that treatment.

**MAXIMUM COMPENSATION AMOUNTS**

***Maximum weekly compensation for permanent partial disability.*** Under current law, permanent partial disability benefits are subject to maximum weekly compensation rates specified by statute. Currently, the maximum weekly compensation rate for permanent partial disability is \$262. This bill increases that maximum weekly compensation rate to \$272 for injuries occurring before January 1, 2009, and to \$282 for injuries occurring on or after that date.

***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, 1987, is entitled to receive supplemental

**SENATE BILL 430**

benefits in an amount that, when added to the employee's regular benefits, equals \$338. This bill makes an employee who is injured prior to January 1, 1993, eligible for those supplemental benefits beginning on the effective date of the bill. The bill also 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 \$450.

**WORK INJURY SUPPLEMENTAL BENEFIT FUND**

***Illegally employed minors.*** Current law requires an employer to pay into the state treasury for deposit in the work injury supplemental benefit (WISB) fund, which is a fund that is used to pay compensation when an otherwise meritorious claim is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy, \$20,000 when an injury results in death or in the loss of or total impairment of a hand, arm, foot, leg, or eye (death or disability payments), up to \$7,500 when a minor is injured while working without a work permit, and up to \$15,000 when a minor is injured while working at employment that is prohibited to the minor (illegally employed minor payments). Currently, the Department of Justice (DOJ) is required to represent the interests of the state in proceedings for death or disability payments, but not in proceedings for illegally employed minor payments. This bill requires DOJ to represent the interests of the state in proceedings for illegally employed minor payments.

***Required fund balance.*** Under current law, if the balance in the WISB fund on June 30 of any fiscal year exceeds three times the amount paid out of that fund during that fiscal year, DWD must reduce the death or disability payments made into that fund so that the balance in the fund will remain at three times the amounts paid out of the fund in the preceding fiscal year. This bill eliminates that requirement.

**PAYMENT OF BENEFITS**

***Interest credit.*** Under current law, if worker's compensation payments extend over a period of six months or more from the date of injury, or if payments are for a death benefit, DWD may discharge a party from or compel a party to guarantee the payments in several ways. Two ways for a party to discharge or guarantee payments are by depositing the present value of the total unpaid compensation upon a 7 percent interest discount basis with a bank, credit union, savings and loan association, or trust company designated by DWD or by making payment in gross upon a 7 percent interest discount basis as approved by DWD. This bill lowers the required interest discount basis from 7 percent to 5 percent.

Under current law, DWD may direct an employer or insurer to pay unaccrued compensation for permanent disability or death benefits to an injured employee or the employee's dependents in advance if DWD determines that the advance payment is in the best interest of the injured employee or the employee's dependents. In directing the advance, DWD must give the employer or insurer a 7 percent interest credit against its liability. This bill lowers the required interest credit from 7 percent to 5 percent.

***Occupational deafness.*** Under current law, worker's compensation or benefits from the WISB fund are payable for occupational deafness, which is defined

**SENATE BILL 430**

as permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. Under current DWD rules, an employee must have a hearing loss of more than 30 decibels to receive worker's compensation for permanent partial disability due to occupational deafness. Under current law, an employee must have a hearing loss of more than 20 percent to receive benefits from the WISB fund for permanent partial disability due to occupational deafness.

This bill provides that an employer or DWD, from the WISB fund, is not liable for the expense of any examination or test for hearing loss, any evaluation of such an examination or test, any medical treatment for improving or restoring hearing, or any hearing aid to relieve the effects of hearing loss unless it is determined that worker's compensation or benefits from the WISB fund for occupational deafness are payable. This provision applies beginning on the effective date of the bill for a case of occupational deafness in which the date of injury is on or after the effective date of the bill and beginning on the date that is six years after the effective date of the bill for a case of occupational deafness in which the date of injury is before the effective date of the bill. Currently, the right to worker's compensation and the amount of that compensation is determined in accordance with the provisions of law in effect as of the date of the injury, and an application for worker's compensation may be filed within 12 years after the date of injury.

**Attorney fees.** Under current law, in cases of admitted liability in which there is no dispute as to the amount of worker's compensation due and in which no hearing or appeal is necessary, the fee charged for the enforcement or collection of the claim for compensation may not exceed 10 percent of the amount at which the claim is compromised or of the amount awarded, adjudged, or collected, but not to exceed \$100. This bill raises the maximum fee that may be charged in those cases from \$100 to \$250.

**UNINSURED EMPLOYERS FUND**

**Adequacy of fund balance.** Under current law, if an employer is not insured or self-insured as required by the worker's compensation law, the employer is liable to DWD for certain payments that are deposited in an uninsured employers fund. DWD uses the uninsured employers fund to administer the laws relating to uninsured employers and to pay to the injured employees of uninsured employers benefits that are equal to the worker's compensation owed by the uninsured employers. Currently, if the secretary of workforce development determines that expected losses on known claims and on incurred, but not reported, claims, exceed 85 percent of the cash balance in the uninsured employers fund, that secretary must file a certificate with the secretary of administration attesting that the cash balance is likely to be inadequate to fund all claims against the fund and specifying a date after which no new claims will be paid.

This bill eliminates the requirement that the secretary of workforce development consider incurred, but not reported, claims in determining whether expected losses on claims exceed 85 percent of the cash balance in the uninsured employers fund and, therefore, whether that cash balance is likely to be inadequate to fund all claims against that fund. Accordingly, under the bill, the secretary of workforce development is required to consider only expected losses on known claims

**SENATE BILL 430**

in determining whether the cash balance in the uninsured employers fund is likely to be inadequate to fund all claims against that fund.

***Collection of payments owed.*** Current law provides two procedures by which DWD may collect payments owed to DWD by an uninsured employer. Under the first procedure, if an uninsured employer fails to pay an amount owed to DWD and no proceeding for review is pending, DWD may issue a warrant to the clerk of circuit court of any county in the state and the clerk of circuit court docket the warrant, which gives the warrant the effect of a final judgment constituting a perfected lien on the uninsured employer's real and personal property located in the county where the warrant is entered. Currently, a lien created by a judgment is effective for ten years after the date of entry of the judgment. Under the second procedure, if no proceeding for review is pending, DWD may levy on any personal property of the uninsured employer, after demanding payment and giving ten days' notice of its intent to pursue legal action to collect the debt. This bill specifies that a lien for payments owed by an uninsured employer is effective when DWD issues the warrant and provides that the lien continues in effect until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

Under current law, if DWD cannot collect a payment owed from an uninsured employer that is a corporation or limited liability company, then any officer, director, member, or manager of the uninsured employer may be held personally liable for that payment. This bill provides that the personal liability of those individuals is an independent obligation, applies to those individuals the procedures under current law by which DWD may collect payments owed by an uninsured employer, and specifies that a lien on the real and personal property of an individual who is personally liable for an amount owed by an uninsured employer continues in effect until the amount owed, including interest, costs, and other fees to the date of payment, is paid.

**PROGRAM ADMINISTRATION**

***Necessity of treatment standards.*** Under current law, DWD is required to promulgate rules establishing standards for determining the necessity of treatment provided to an injured employee, which standards must be applied by experts in rendering opinions as to necessity of treatment and by DWD in determining necessity of treatment when there is a dispute between a health care provider and an insurer or self-insured employer over necessity of treatment. Current law requires those rules, to the greatest extent practicable, to be consistent with certain Minnesota rules, as amended to January 1, 2006. This bill eliminates the requirement that the rules establishing necessity of treatment standards be consistent with those Minnesota rules.

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:***

**SENATE BILL 430**

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

2           102.03 (4) The right to compensation and the amount of the compensation shall  
3 in all cases be determined in accordance with the provisions of law in effect as of the  
4 date of the injury except as to employees whose rate of compensation is changed as  
5 provided in ss. 102.43 (7) and 102.44 (1) and (5) and employees who are eligible to  
6 receive private rehabilitative counseling and rehabilitative training under s. 102.61  
7 (1m) and except as provided in s. 102.555 (12) (b).

8           **SECTION 2.** 102.11 (1) (intro.) of the statutes is amended to read:

9           102.11 (1) (intro.) The average weekly earnings for temporary disability,  
10 permanent total disability, or death benefits for injury in each calendar year on or  
11 after January 1, 1982, shall be not less than \$30 nor more than the wage rate that  
12 results in a maximum compensation rate of 110 percent of the state's average weekly  
13 earnings as determined under s. 108.05 as of June 30 of the previous year. The  
14 average weekly earnings for permanent partial disability shall be not less than \$30  
15 and, for permanent partial disability for injuries occurring on or after April 1, 2006,  
16 ~~and before January 1, 2007, not more than \$378, resulting in a maximum~~  
17 ~~compensation rate of \$252, and, for permanent partial disability for injuries~~  
18 ~~occurring on or after January 1, 2007, not more than \$393, resulting in a maximum~~  
19 ~~compensation rate of \$262~~ the effective date of this subsection ... [revisor inserts  
20 date], and before January 1, 2009, not more than \$408, resulting in a maximum  
21 compensation rate of \$272, and, for permanent partial disability for injuries  
22 occurring on or after January 1, 2009, not more than \$423, resulting in a maximum  
23 compensation rate of \$282. Between such limits the average weekly earnings shall  
24 be determined as follows:

25           **SECTION 3.** 102.16 (1m) (a) of the statutes is amended to read:

**SENATE BILL 430**

1           102.16 (1m) (a) If an insurer or self-insured employer concedes by compromise  
2           under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
3           employer is liable under this chapter for any health services provided to an injured  
4           employee by a health service provider, but disputes the reasonableness of the fee  
5           charged by the health service provider, the department may include in its order  
6           confirming the compromise or stipulation a determination as to the reasonableness  
7           of the fee or the department may notify, or direct the insurer or self-insured employer  
8           to notify, the health service provider under sub. (2) (b) that the reasonableness of the  
9           fee is in dispute. The department shall deny payment of a health service fee that the  
10          department determines under this paragraph to be unreasonable. A health service  
11          provider and an insurer or self-insured employer that are parties to a fee dispute  
12          under this paragraph are bound by the department's determination under this  
13          paragraph on the reasonableness of the disputed fee, unless that determination is  
14          set aside, reversed, or modified by the department under sub. (2) (f) or is set aside  
15          on judicial review as provided in sub. (2) (f).

16           **SECTION 4.** 102.16 (1m) (b) of the statutes is amended to read:

17           102.16 (1m) (b) If an insurer or self-insured employer concedes by compromise  
18           under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
19           employer is liable under this chapter for any treatment provided to an injured  
20           employee by a health service provider, but disputes the necessity of the treatment,  
21           the department may include in its order confirming the compromise or stipulation  
22           a determination as to the necessity of the treatment or the department may notify,  
23           or direct the insurer or self-insured employer to notify, the health service provider  
24           under sub. (2m) (b) that the necessity of the treatment is in dispute. ~~The department~~  
25          ~~shall apply the~~ Before determining under this paragraph the necessity of treatment

**SENATE BILL 430**

1 provided to an injured employee, the department may, but is not required to, obtain  
2 the opinion of an expert selected by the department who is qualified as provided in  
3 sub. (2m) (c). The standards promulgated under sub. (2m) (g) shall be applied by an  
4 expert and by the department in rendering an opinion as to, and in determining,  
5 necessity of treatment under this paragraph. In cases in which no standards  
6 promulgated under sub. (2m) (g) apply, the department shall find the facts regarding  
7 necessity of treatment. The department shall deny payment for any treatment that  
8 the department determines under this paragraph to be unnecessary. A health  
9 service provider and an insurer or self-insured employer that are parties to a dispute  
10 under this paragraph over the necessity of treatment are bound by the department's  
11 determination under this paragraph on the necessity of the disputed treatment,  
12 unless that determination is set aside, reversed, or modified by the department  
13 under sub. (2m) (e) or is set aside on judicial review as provided in sub. (2m) (e).

14 **SECTION 5.** 102.16 (1m) (c) of the statutes is created to read:

15 102.16 **(1m)** (c) If an insurer or self-insured employer concedes by compromise  
16 under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer or self-insured  
17 employer is liable under this chapter for the cost of a prescription drug dispensed  
18 under s. 102.425 (2) for outpatient use by an injured employee, but disputes the  
19 reasonableness of the amount charged for the prescription drug, the department may  
20 include in its order confirming the compromise or stipulation a determination as to  
21 the reasonableness of the prescription drug charge or the department may notify, or  
22 direct the insurer or self-insured employer to notify, the pharmacist or practitioner  
23 dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness  
24 of the prescription drug charge is in dispute. The department shall deny payment  
25 of a prescription drug charge that the department determines under this paragraph

**SENATE BILL 430**

1 to be unreasonable. A pharmacist or practitioner and an insurer or self-insured  
2 employer that are parties to a dispute under this paragraph over the reasonableness  
3 of a prescription drug charge are bound by the department's determination under  
4 this paragraph on the reasonableness of the disputed prescription drug charge,  
5 unless that determination is set aside, reversed, or modified by the department  
6 under s. 102.425 (4m) (e) or is set aside on judicial review as provided in s. 102.425  
7 (4m) (e).

8 **SECTION 6.** 102.16 (2) (a) of the statutes is amended to read:

9 102.16 **(2)** (a) Except as provided in this paragraph, the department has  
10 jurisdiction under this subsection, sub. (1m) (a), and s. 102.17 to resolve a dispute  
11 between a health service provider and an insurer or self-insured employer over the  
12 reasonableness of a fee charged by the health service provider for health services  
13 provided to an injured employee who claims benefits under this chapter. A health  
14 service provider may not submit a fee dispute to the department under this  
15 subsection before all treatment by the health service provider of the employee's  
16 injury has ended if the amount in controversy, whether based on a single charge or  
17 a combination of charges for one or more days of service, is less than \$25. After all  
18 treatment by a health service provider of an employee's injury has ended, the health  
19 service provider may submit any fee dispute to the department, regardless of the  
20 amount in controversy. The department shall deny payment of a health service fee  
21 that the department determines under this subsection, ~~sub. (1m) (a), or s. 102.18 (1)~~  
22 ~~(b)~~ to be unreasonable.

23 **SECTION 7.** 102.16 (2) (am) of the statutes is amended to read:

24 102.16 **(2)** (am) A health service provider and an insurer or self-insured  
25 employer that are parties to a fee dispute under this subsection are bound by the

**SENATE BILL 430**

1 department's determination under this subsection on the reasonableness of the  
2 disputed fee, unless that determination is set aside on judicial review as provided in  
3 par. (f). ~~A health service provider and an insurer or self-insured employer that are~~  
4 ~~parties to a fee dispute under sub. (1m) (a) are bound by the department's~~  
5 ~~determination under sub. (1m) (a) on the reasonableness of the disputed fee, unless~~  
6 ~~that determination is set aside or modified by the department under sub. (1). An~~  
7 ~~insurer or self-insured employer that is a party to a fee dispute under s. 102.17 and~~  
8 ~~a health service provider are bound by the department's determination under s.~~  
9 ~~102.18 (1) (b) on the reasonableness of the disputed fee, unless that determination~~  
10 ~~is set aside, reversed, or modified by the department under s. 102.18 (3) or by the~~  
11 ~~commission under s. 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~

12 **SECTION 8.** 102.16 (2m) (a) of the statutes is amended to read:

13 102.16 **(2m)** (a) Except as provided in this paragraph, the department has  
14 jurisdiction under this subsection, sub. (1m) (b), and s. 102.17 to resolve a dispute  
15 between a health service provider and an insurer or self-insured employer over the  
16 necessity of treatment provided for an injured employee who claims benefits under  
17 this chapter. A health service provider may not submit a dispute over necessity of  
18 treatment to the department under this subsection before all treatment by the health  
19 service provider of the employee's injury has ended if the amount in controversy,  
20 whether based on a single charge or a combination of charges for one or more days  
21 of service, is less than \$25. After all treatment by a health service provider of an  
22 employee's injury has ended, the health service provider may submit any dispute  
23 over necessity of treatment to the department, regardless of the amount in  
24 controversy. The department shall deny payment for any treatment that the

**SENATE BILL 430**

1 department determines under this subsection, ~~sub. (1m) (b), or s. 102.18 (1) (b)~~ to be  
2 unnecessary.

3 **SECTION 9.** 102.16 (2m) (am) of the statutes is amended to read:

4 102.16 **(2m)** (am) A health service provider and an insurer or self-insured  
5 employer that are parties to a dispute under this subsection over the necessity of  
6 treatment are bound by the department's determination under this subsection on the  
7 necessity of ~~that~~ the disputed treatment, unless that determination is set aside on  
8 judicial review as provided in par. (e). ~~A health service provider and an insurer or~~  
9 ~~self-insured employer that are parties to a dispute under sub. (1m) (b) over the~~  
10 ~~necessity of treatment are bound by the department's determination under sub. (1m)~~  
11 ~~(b) on the necessity of that treatment, unless that determination is set aside or~~  
12 ~~modified by the department under sub. (1). An insurer or self-insured employer that~~  
13 ~~is a party to a dispute under s. 102.17 over the necessity of treatment and a health~~  
14 ~~service provider are bound by the department's determination under s. 102.18 (1) (b)~~  
15 ~~on the necessity of that treatment, unless that determination is set aside, reversed~~  
16 ~~or modified by the department under s. 102.18 (3) or by the commission under s.~~  
17 ~~102.18 (3) or (4) or is set aside on judicial review under s. 102.23.~~

18 **SECTION 10.** 102.16 (2m) (c) of the statutes is amended to read:

19 102.16 **(2m)** (c) Before determining under this subsection the necessity of  
20 treatment provided for an injured employee who claims benefits under this chapter,  
21 the department shall obtain a written opinion on the necessity of the treatment in  
22 dispute from an expert selected by the department. ~~Before determining under sub.~~  
23 ~~(1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured~~  
24 ~~employee who claims benefits under this chapter, the department may, but is not~~  
25 ~~required to, obtain such an expert opinion. To qualify as an expert, a person must~~

**SENATE BILL 430**

1 be licensed to practice the same health care profession as the individual health  
2 service provider whose treatment is under review and must either be performing  
3 services for an impartial health care services review organization or be a member of  
4 an independent panel of experts established by the department under par. (f). The  
5 standards promulgated under par. (g) shall be applied by an expert and by the  
6 department in rendering an opinion as to ~~necessity of treatment under this~~  
7 ~~paragraph and by the department, and~~ in determining, necessity of treatment under  
8 this paragraph. In cases in which no standards promulgated under sub. (2m) (g)  
9 apply, the department shall find the facts regarding necessity of treatment. The  
10 department shall adopt the written opinion of the expert as the department's  
11 determination on the issues covered in the written opinion, unless the health service  
12 provider or the insurer or self-insured employer present clear and convincing  
13 written evidence that the expert's opinion is in error.

14 **SECTION 11.** 102.16 (2m) (g) of the statutes is amended to read:

15 102.16 **(2m)** (g) The department shall promulgate rules establishing  
16 procedures and requirements for the necessity of treatment dispute resolution  
17 process under this subsection, including rules setting the fees under par. (f) and rules  
18 establishing standards for determining the necessity of treatment provided to an  
19 injured employee. ~~The rules establishing those standards shall, to the greatest~~  
20 ~~extent possible, be consistent with Minnesota rules 5221.6010 to 5221.8900, as~~  
21 ~~amended to January 1, 2006.~~ Before the department may amend the rules  
22 establishing those standards, the department shall establish an advisory committee  
23 under s. 227.13 composed of health care providers providing treatment under s.  
24 102.42 to advise the department and the council on worker's compensation on  
25 amending those rules.

**SENATE BILL 430**

1           **SECTION 12.** 102.16 (3) of the statutes is amended to read:

2           102.16 **(3)** No employer subject to this chapter may solicit, receive, or collect  
3 any money from an employee or any other person or make any deduction from their  
4 wages, either directly or indirectly, for the purpose of discharging any liability under  
5 this chapter or recovering premiums paid on a contract described under s. 102.31 (1)  
6 (a) or a policy described under s. 102.315 (3), (4), or (5) (a); nor may any such employer  
7 subject to this chapter sell to an employee or other person, or solicit or require the  
8 employee or other person to purchase, medical, chiropractic, podiatric, psychological,  
9 dental, or hospital tickets or contracts for medical, surgical, hospital, or other health  
10 care treatment ~~which~~ that is required to be furnished by that employer.

11           **SECTION 13.** 102.17 (4) of the statutes is amended to read:

12           102.17 **(4)** Except as provided in this subsection and s. 102.555 (12) (b), the  
13 right of an employee, the employee's legal representative, or a dependent to proceed  
14 under this section shall not extend beyond 12 years ~~from~~ after the date of the injury  
15 or death or ~~from~~ after the date that compensation, other than treatment or burial  
16 expenses, was last paid, or would have been last payable if no advancement were  
17 made, whichever date is latest. In the case of occupational disease; a traumatic injury  
18 resulting in the loss or total impairment of a hand or any part of the rest of the arm  
19 proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot,  
20 any loss of vision, or any permanent brain injury; or a traumatic injury causing the  
21 need for an artificial spinal disc or a total or partial knee or hip replacement, there  
22 shall be no statute of limitations, except that benefits or treatment expense for an  
23 occupational disease becoming due ~~after~~ 12 years ~~from~~ after the date of injury or  
24 death or last payment of compensation shall be paid from the work injury  
25 supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66

**SENATE BILL 430**

1 and benefits or treatment expense for a traumatic injury becoming due after 12 years  
2 from after that date shall be paid by the employer or insurer. Payment of wages by  
3 the employer during disability or absence from work to obtain treatment shall be  
4 deemed considered payment of compensation for the purpose of this section if the  
5 employer knew of the employee's condition and its alleged relation to the  
6 employment.

7 **SECTION 14.** 102.18 (1) (bg) 1. of the statutes is amended to read:

8 102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer or  
9 self-insured employer is liable under this chapter for any health services provided  
10 to an injured employee by a health service provider, but that the reasonableness of  
11 the fee charged by the health service provider is in dispute, the department may  
12 include in its order under par. (b) a determination as to the reasonableness of the fee  
13 or the department may notify, or direct the insurer or self-insured employer to notify,  
14 the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee  
15 is in dispute. The department shall deny payment of a health service fee that the  
16 department determines under this subdivision to be unreasonable. An insurer or  
17 self-insured employer and a health service provider that are parties to a fee dispute  
18 under this subdivision are bound by the department's determination under this  
19 subdivision on the reasonableness of the disputed fee, unless that determination is  
20 set aside, reversed, or modified by the department under sub. (3) or by the  
21 commission under sub. (3) or (4) or is set aside on judicial review under s. 102.23.

22 **SECTION 15.** 102.18 (1) (bg) 2. of the statutes is amended to read:

23 102.18 (1) (bg) 2. If the department finds under par. (b) that an employer or  
24 insurance carrier is liable under this chapter for any treatment provided to an  
25 injured employee by a health service provider, but that the necessity of the treatment

**SENATE BILL 430**

1 is in dispute, the department may include in its order under par. (b) a determination  
2 as to the necessity of the treatment or the department may notify, or direct the  
3 employer or insurance carrier to notify, the health service provider under s. 102.16  
4 (2m) (b) that the necessity of the treatment is in dispute. ~~The department shall apply~~  
5 the Before determining under this subdivision the necessity of treatment provided  
6 to an injured employee, the department may, but is not required to, obtain the  
7 opinion of an expert selected by the department who is qualified as provided in s.  
8 102.16 (2m) (c). The standards promulgated under s. 102.16 (2m) (g) shall be applied  
9 by an expert in rendering an opinion as to, and in determining, necessity of treatment  
10 under this paragraph subdivision. In cases in which no standards promulgated  
11 under s. 102.16 (2m) (g) apply, the department shall find the facts regarding  
12 necessity of treatment. The department shall deny payment for any treatment that  
13 the department determines under this subdivision to be unnecessary. An insurer or  
14 self-insured employer and a health service provider that are parties to a dispute  
15 under this subdivision over the necessity of treatment are bound by the department's  
16 determination under this subdivision on the necessity of the disputed treatment,  
17 unless that determination is set aside, reversed, or modified by the department  
18 under sub. (3) or by the commission under sub. (3) or (4) or is set aside on judicial  
19 review under s. 102.23.

20 **SECTION 16.** 102.18 (1) (bg) 3. of the statutes is created to read:

21 102.18 (1) (bg) 3. If the department finds under par. (b) that an insurer or  
22 self-insured employer is liable under this chapter for the cost of a prescription drug  
23 dispensed under s. 102.425 (2) for outpatient use by an injured employee, but that  
24 the reasonableness of the amount charged for that prescription drug is in dispute,  
25 the department may include in its order under par. (b) a determination as to the

**SENATE BILL 430**

1 reasonableness of the prescription drug charge or the department may notify, or  
2 direct the insurer or self-insured employer to notify, the pharmacist or practitioner  
3 dispensing the prescription drug under s. 102.425 (4m) (b) that the reasonableness  
4 of the prescription drug charge is in dispute. The department shall deny payment  
5 of a prescription drug charge that the department determines under this subdivision  
6 to be unreasonable. An insurer or self-insured employer and a pharmacist or  
7 practitioner that are parties to a dispute under this subdivision over the  
8 reasonableness of a prescription drug charge are bound by the department's  
9 determination under par. (b) on the reasonableness of the disputed prescription drug  
10 charge, unless that determination is set aside, reversed, or modified by the  
11 department under sub. (3) or by the commission under sub. (3) or (4) or is set aside  
12 on judicial review under s. 102.23.

13 **SECTION 17.** 102.26 (2) of the statutes is amended to read:

14 102.26 (2) Unless previously authorized by the department, no fee may be  
15 charged or received for the enforcement or collection of any claim for compensation,  
16 nor may any contract ~~therefor~~ for that enforcement or collection be enforceable ~~where~~  
17 such when that fee, inclusive of all taxable attorney fees paid or agreed to be paid for  
18 such that enforcement or collection, exceeds ~~20%~~ 20 percent of the amount at which  
19 such that claim is compromised or of the amount awarded, adjudged, or collected,  
20 except that in cases of admitted liability ~~where~~ in which there is no dispute as to the  
21 amount of compensation due and in which no hearing or appeal is necessary, the fee  
22 charged ~~shall~~ may not exceed ~~10%~~ 10 percent, but not to exceed \$100 \$250, of the  
23 amount at which ~~such~~ that claim is compromised or of the amount awarded,  
24 adjudged, or collected. The limitation as to fees shall apply to the combined charges

**SENATE BILL 430**

1 of attorneys, solicitors, representatives, and adjusters who knowingly combine their  
2 efforts toward the enforcement or collection of any compensation claim.

3 **SECTION 18.** 102.29 (6) of the statutes is renumbered 102.29 (6) (b) (intro.) and  
4 amended to read:

5 102.29 (6) (b) (intro.) No employee of a temporary help agency who makes a  
6 claim for compensation may make a claim or maintain an action in tort against any  
7 of the following:

8 1. Any employer who that compensates the temporary help agency for the  
9 employee's services.

10 **SECTION 19.** 102.29 (6) (a) of the statutes is created to read:

11 102.29 (6) (a) In this subsection, "temporary help agency" means a temporary  
12 help agency that is primarily engaged in the business of placing its employees with  
13 or leasing its employees to another employer as provided in s. 102.01 (2) (f).

14 **SECTION 20.** 102.29 (6) (b) 2. of the statutes is created to read:

15 102.29 (6) (b) 2. Any other temporary help agency that is compensated by that  
16 employer for another employee's services.

17 **SECTION 21.** 102.29 (6) (b) 3. of the statutes is created to read:

18 102.29 (6) (b) 3. Any employee of that compensating employer or of that other  
19 temporary help agency, unless the employee who makes a claim for compensation  
20 would have a right under s. 102.03 (2) to bring an action against the employee of the  
21 compensating employer or the employee of the other temporary help agency if the  
22 employees were coemployees.

23 **SECTION 22.** 102.29 (6) (c) of the statutes is created to read:

**SENATE BILL 430**

1           102.29 (6) (c) No employee of an employer that compensates a temporary help  
2 agency for another employee's services who makes a claim for compensation may  
3 make a claim or maintain an action in tort against any of the following:

4           1. The temporary help agency.

5           2. Any employee of the temporary help agency, unless the employee who makes  
6 a claim for compensation would have a right under s. 102.03 (2) to bring an action  
7 against the employee of the temporary help agency if the employees were  
8 coemployees.

9           **SECTION 23.** 102.29 (6m) of the statutes is created to read:

10           102.29 (6m) (a) No leased employee, as defined in s. 102.315 (1) (g), who makes  
11 a claim for compensation may make a claim or maintain an action in tort against any  
12 of the following:

13           1. The client, as defined in s. 102.315 (1) (b), that accepted the services of the  
14 leased employee.

15           2. Any other employee leasing company, as defined in s. 102.315 (1) (f), that  
16 provides the services of another leased employee to the client.

17           3. Any employee of the client or of that other employee leasing company, unless  
18 the leased employee who makes a claim for compensation would have a right under  
19 s. 102.03 (2) to bring an action against the employee of the client or the leased  
20 employee of the other employee leasing company if the employees and leased  
21 employees were coemployees.

22           (b) No employee of a client who makes a claim for compensation may make a  
23 claim or maintain an action in tort against any of the following:

24           1. An employee leasing company that provides the services of a leased employee  
25 to the client.

**SENATE BILL 430**

1           2. Any leased employee of the employee leasing company, unless the employee  
2 who makes a claim for compensation would have a right under s. 102.03 (2) to bring  
3 an action against the leased employee if the employee and the leased employee were  
4 coemployees.

5           **SECTION 24.** 102.31 (2m) of the statutes is repealed.

6           **SECTION 25.** 102.315 of the statutes is created to read:

7           **102.315 Worker’s compensation insurance; employee leasing**  
8 **companies. (1) DEFINITIONS.** In this section:

9           (a) “Bureau” means the Wisconsin compensation rating bureau under s.  
10 626.06.

11           (b) “Client” means a person that obtains all or part of its nontemporary, ongoing  
12 employee workforce through an employee leasing agreement with an employee  
13 leasing company.

14           (c) “Divided workforce” means a workforce in which some of the employees of  
15 a client are leased employees and some of the employees of the client are not leased  
16 employees.

17           (d) “Divided workforce plan” means a plan under which 2 worker’s  
18 compensation insurance policies are issued to cover the employees of a client that has  
19 a divided workforce, one policy covering the leased employees of the client and one  
20 policy covering the employees of the client who are not leased employees.

21           (e) “Employee leasing agreement” means a written contract between an  
22 employee leasing company and a client under which the employee leasing company  
23 provides all or part of the nontemporary, ongoing employee workforce of the client.

24           (f) “Employee leasing company” means a person that contracts to provide the  
25 nontemporary, ongoing employee workforce of a client under a written agreement,

**SENATE BILL 430**

1 regardless of whether the person uses the term “professional employer  
2 organization,” “PEO,” “staff leasing company,” “registered staff leasing company,” or  
3 “employee leasing company,” or uses any other, similar name, as part of the person’s  
4 business name or to describe the person’s business. “Employee leasing company”  
5 does not include a cooperative educational service agency. This definition applies  
6 only for the purposes of this chapter and does not apply to the use of the term in any  
7 other chapter.

8 (g) “Leased employee” means a nontemporary, ongoing employee whose  
9 services are obtained by a client under an employee leasing agreement.

10 (h) “Master policy” means a single worker’s compensation insurance policy  
11 issued by an insurer authorized to do business in this state to an employee leasing  
12 company in the name of the employee leasing company that covers more than one  
13 client of the employee leasing company.

14 (i) “Multiple coordinated policy” means a contract of insurance for worker’s  
15 compensation under which an insurer authorized to do business in this state issues  
16 separate worker’s compensation insurance policies to an employee leasing company  
17 for each client of the employee leasing company that is insured under the contract.

18 (j) “Small client” means a client that has an unmodified annual premium  
19 assignable to its business, including the business of all entities or organizations that  
20 are under common control or ownership with the client, that is equal to or less than  
21 the threshold below which employers are not experience rated under the standards  
22 and criteria under ss. 626.11 and 626.12, without regard to whether the client has  
23 a divided workforce.

24 **(2) EMPLOYEE LEASING COMPANY LIABLE.** An employee leasing company is liable  
25 under s. 102.03 for all compensation payable under this chapter to a leased employee,

**SENATE BILL 430**

1 including any payments required under s. 102.16 (3), 102.18 (1) (b) or (bp), 102.22  
2 (1), 102.35 (3), 102.57, or 102.60. Except as permitted under s. 102.29, an employee  
3 leasing company may not seek or receive reimbursement from another employer for  
4 any payments made as a result of that liability. An employee leasing company is not  
5 liable under s. 102.03 for any compensation payable under this chapter to an  
6 employee of a client who is not a leased employee.

7 **(3) MULTIPLE COORDINATED POLICY REQUIRED.** Except as provided in subs. (4) and  
8 (5) (a), an employee leasing company shall insure its liability under sub. (2) by  
9 obtaining a separate worker's compensation insurance policy for each client of the  
10 employee leasing company under a multiple coordinated policy. The policy shall  
11 name both the employee leasing company and the client as named insureds, shall  
12 indicate which named insured is the employee leasing company and which is the  
13 client, shall designate either the employee leasing company or the client, but not  
14 both, as the first named insured, and shall provide the mailing address of each  
15 named insured. Except as permitted under sub. (6), an insurer may issue a policy  
16 for a client under this subsection only if all of the employees of the client are leased  
17 employees and are covered under the policy.

18 **(4) MASTER POLICY; APPROVAL REQUIRED.** An employee leasing company may  
19 insure its liability under sub. (2) by obtaining a master policy that has been approved  
20 by the commissioner of insurance as provided in this subsection. The commissioner  
21 of insurance may approve the issuance of a master policy if the insurer proposing to  
22 issue the master policy submits a filing to the bureau showing that the insurer has  
23 the technological capacity and operation capability to provide to the bureau  
24 information, including unit statistical data, information concerning proof of  
25 coverage and cancellation, termination, and nonrenewal of coverage, and any other

**SENATE BILL 430**

1 information that the bureau may require, at the client level and in a format required  
2 by the bureau and the bureau submits the filing to the commissioner of insurance for  
3 approval under s. 626.13. A master policy filing under this subsection shall also  
4 establish basic manual rules governing the issuance of an insurance policy covering  
5 the leased employees of a divided workforce that are consistent with sub. (6) and the  
6 cancellation, termination, and nonrenewal of policies that are consistent with sub.  
7 (10). On approval by the commissioner of insurance of a master policy filing, an  
8 insurer may issue a master policy to an employee leasing company insuring the  
9 liability of the employee leasing company under sub. (2).

10 **(5) MASTER POLICY; SMALL CLIENTS.** (a) Regardless of whether a master policy  
11 has been approved under sub. (4), an employee leasing company may insure its  
12 liability under sub. (2) with respect to a group of small clients of the employee leasing  
13 company by obtaining a master policy in the voluntary market insuring that liability.  
14 The fact that an employee leasing company has a client that is covered under a  
15 mandatory risk-sharing plan under s. 619.01 does not preclude the employee leasing  
16 company from obtaining a master policy under this paragraph so long as that client  
17 is not covered under the master policy. An insurer may issue a master policy under  
18 this paragraph insuring in the voluntary market the liability under sub. (2) of an  
19 employee leasing company with respect to a group of small clients of the employee  
20 leasing company regardless of whether any of those small clients has a divided  
21 workforce.

22 (b) Within 30 days after the effective date of an employee leasing agreement  
23 with a small client that is covered under a master policy under par. (a), the employee  
24 leasing company shall report to the department all of the following information:

**SENATE BILL 430**

1           1. The name and address of the small client and of each entity or organization  
2 that is under common control or ownership with the small client.

3           2. The number of employees initially covered under the master policy.

4           3. The estimated unmodified annual premium assignable to the small client's  
5 business, including the business of all entities or organizations that are under  
6 common control or ownership with the small client, without regard to whether the  
7 small client has a divided workforce, which information the small client shall report  
8 to the employee leasing company.

9           4. The effective date of the employee leasing agreement.

10          (c) Within 30 days after the effective date of coverage of a small client under  
11 a master policy under par. (a), the insurer or, if authorized by the insurer, the  
12 employee leasing company shall file proof of that coverage with the department.  
13 Coverage of a small client under a master policy becomes binding when the insurer  
14 or employee leasing company files proof of that coverage under this paragraph or  
15 provides notice of coverage to the small client, whichever occurs first. Nothing in this  
16 paragraph requires an employee leasing company or an employee of an employee  
17 leasing company to be licensed as an insurance intermediary under ch. 628.

18          (d) If at any time the unmodified annual premium assignable to the business  
19 of a small client that is covered under a master policy under par. (a), including the  
20 business of all entities or organizations that are under common control or ownership  
21 with the small client, without regard to whether the small client has a divided  
22 workforce, exceeds the threshold below which employers are not experience rated  
23 under the standards and criteria under ss. 626.11 and 626.12, the employee leasing  
24 company shall notify the insurer and obtain coverage for the small client under sub.  
25 (3) or (4).

**SENATE BILL 430**

1           **(6) DIVIDED WORKFORCE.** (a) If a client notifies the department as provided  
2 under par. (b) of its intent to have a divided workforce, an insurer may issue a  
3 worker’s compensation insurance policy covering only the leased employees of the  
4 client. An insurer that issues a policy covering only the leased employees of a client  
5 is not liable under s. 102.03 for any compensation payable under this chapter to an  
6 employee of the client who is not a leased employee unless the insurer also issues a  
7 policy covering that employee. A client that has a divided workforce shall insure its  
8 employees who are not leased employees in the voluntary market and may not insure  
9 those employees under the mandatory risk-sharing plan under s. 619.01 unless the  
10 leased employees of the client are covered under that plan.

11           (b) A client that intends to have a divided workforce shall notify the department  
12 of that intent on a form prescribed by the department that includes all of the  
13 following:

14           1. The names and mailing addresses of the client and the employee leasing  
15 company, the effective date of the employee leasing agreement, a description of the  
16 employees of the client who are not leased employees, and such other information as  
17 the department may require.

18           2. Except as provided in par. (c), evidence that the employees of the client who  
19 are not leased employees are covered in the voluntary market. That evidence shall  
20 be in the form of a copy of the information page or declaration page of a worker’s  
21 compensation insurance policy or binder evidencing placement of coverage in the  
22 voluntary market covering those employees.

23           3. An agreement by the client to assume full responsibility to immediately pay  
24 all compensation and other payments payable under this chapter as may be required  
25 by the department should a dispute arise between 2 or more insurers as to liability

**SENATE BILL 430**

1 under this chapter for an injury sustained while a divided workforce plan is in effect,  
2 pending final resolution of that dispute. This subdivision does not preclude a client  
3 from insuring that responsibility in an insurer authorized to do business in this  
4 state.

5 (c) If the leased employees of a client are covered under a mandatory  
6 risk-sharing plan under s. 619.01, the client may, instead of providing the evidence  
7 required under par. (b) 2., provide evidence in its notification under par. (b) that both  
8 the leased employees of the client and the employees of the client who are not leased  
9 employees are covered under that mandatory risk-sharing plan. That evidence shall  
10 be in the form of a copy of the information page or declaration page of a worker's  
11 compensation insurance policy or binder evidencing placement of coverage under the  
12 mandatory risk-sharing plan covering both those leased employees and employees  
13 who are not leased employees.

14 (d) When the department receives a notification under par. (b), the department  
15 shall immediately provide a copy of the notification to the bureau.

16 (e) 1. If a client intends to terminate a divided workforce plan, the client shall  
17 notify the department of that intent on a form prescribed by the department.  
18 Termination of a divided workforce plan by a client is not effective until 10 days after  
19 notice of the termination is received by the department.

20 2. If an insurer cancels, terminates, or does not renew a worker's compensation  
21 insurance policy issued under a divided workforce plan that covers in the voluntary  
22 market the employees of a client who are not leased employees, the divided workforce  
23 plan is terminated on the effective date of the cancellation, termination, or  
24 nonrenewal of the policy, unless the client submits evidence under par. (c) that both

**SENATE BILL 430**

1 the leased employees of the client and the employees of the client who are not leased  
2 employees are covered under a mandatory risk-sharing plan.

3 3. If an insurer cancels, terminates, or does not renew a worker's compensation  
4 insurance policy issued under a divided workforce plan that covers under the  
5 mandatory risk-sharing plan under s. 619.01 the employees of a client who are not  
6 leased employees, the divided workforce plan is terminated on the effective date of  
7 the cancellation, termination, or nonrenewal of the policy.

8 **(7) FILING OF CONTRACTS.** An insurer that provides a policy under sub. (3), (4),  
9 or (5) (a) shall file the policy as provided in s. 626.35.

10 **(8) COVERAGE OF CERTAIN EMPLOYEES.** (a) A sole proprietor, a partner, or a  
11 member of a limited liability company is not eligible for worker's compensation  
12 benefits under a policy issued under sub. (3), (4), or (5) (a) unless the sole proprietor,  
13 partner, or member elects coverage under s. 102.075 by an endorsement on the policy  
14 naming the sole proprietor, partner, or member who has so elected.

15 (b) An officer of a corporation is covered for worker's compensation benefits  
16 under a policy issued under sub. (3), (4), or (5) (a), unless the officer elects under s.  
17 102.076 not to be covered under the policy by an endorsement on the policy naming  
18 the officer who has so elected.

19 (c) An employee leasing company shall obtain a worker's compensation  
20 insurance policy that is separate from a policy covering the employees whom it leases  
21 to its clients to cover the employees of the employee leasing company who are not  
22 leased employees.

23 **(9) PREMIUMS.** (a) An insurer that issues a policy under sub. (3), (4), or (5) (a)  
24 may charge a premium for coverage under that policy that complies with the

**SENATE BILL 430**

1 applicable classifications, rules, rates, and rating plans filed with and approved by  
2 the commissioner of insurance under s. 626.13.

3 (b) For a policy issued under sub. (3) in which an employee leasing company  
4 is the first named insured or for a master policy issued under sub. (4) or (5) (a), an  
5 insurer may obligate only the employee leasing company to pay premiums due for  
6 a client's coverage under the policy and may not recover any unpaid premiums due  
7 for that coverage from the client.

8 (c) This subsection does not prohibit an insurer from doing any of the following:

9 1. Collecting premiums or other charges due with respect to a client by means  
10 of list billing through an employee leasing company.

11 2. Requiring an employee leasing company to maintain a letter of credit or  
12 other form of security to ensure payment of a premium.

13 3. Issuing policies that have a common renewal date to all, or a class of all,  
14 clients of an employee leasing company.

15 4. Grouping together the clients of an employee leasing company for the  
16 purpose of offering dividend eligibility and paying dividends to those clients in  
17 compliance with s. 631.51.

18 5. Applying a discount to the premium charged with respect to a client as  
19 permitted by the bureau.

20 6. Applying a retrospective rating option for determining the premium charged  
21 with respect to a client. No insurer or employee leasing company may impose on,  
22 allocate to, or collect from a client a penalty under a retrospective rating option  
23 arrangement. This subdivision does not prohibit an insurer from requiring an  
24 employee leasing company to pay a penalty under a retrospective rating option  
25 arrangement with respect to a client of the employee leasing company.

**SENATE BILL 430**

1           **(10)** CANCELLATION, TERMINATION, AND NONRENEWAL OF POLICIES. (a) 1. A policy  
2 issued under sub. (3) in which the employee leasing company is the first named  
3 insured and a policy issued under sub. (4) or (5) (a) may be cancelled, terminated, or  
4 nonrenewed as provided in subds. 2. to 4.

5           2. The insureds under a policy described in subd. 1. may cancel the policy  
6 during the policy period if both the employee leasing company and the client agree  
7 to the cancellation, the cancellation is confirmed by the employee leasing company  
8 promptly providing written confirmation of the cancellation to the client or by the  
9 client agreeing to the cancellation in writing, and the insurer provides written notice  
10 of the cancellation to the department as required under s. 102.31 (2) (a).

11           3. Subject to subd. 4., an insurer may cancel, terminate, or nonrenew a policy  
12 described in subd. 1. by providing written notice of the cancellation, termination, or  
13 nonrenewal to the insured employee leasing company and to the department as  
14 required under s. 102.31 (2) (a) and by providing that notice to the insured client.  
15 The insurer is not required to state in the notice to the insured client the facts on  
16 which the decision to cancel, terminate, or nonrenew the policy is based. Except as  
17 provided in s. 102.31 (2) (b), cancellation or termination of a policy under this  
18 subdivision for any reason other than nonrenewal is not effective until 30 days after  
19 the insurer has provided written notice of the cancellation or termination to the  
20 insured employee leasing company, the insured client, and the department. Except  
21 as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not  
22 effective until 60 days after the insurer has provided written notice of the  
23 cancellation or termination to the insured employee leasing company, the insured  
24 client, and the department.

**SENATE BILL 430**

1           4. If an employee leasing company terminates an employee leasing agreement  
2 with a client in its entirety, an insurer may cancel or terminate a policy described in  
3 subd. 1. covering that client during the policy period by providing written notice of  
4 the cancellation or termination to the insured employee leasing company and the  
5 department as required under s. 102.31 (2) (a) and by providing that notice to the  
6 insured client. The insurer shall state in the notice to the insured client that the  
7 policy is being cancelled or terminated due to the termination of the employee leasing  
8 agreement. Except as provided in s. 102.31 (2) (b), cancellation or termination of a  
9 policy under this subdivision is not effective until 30 days after the insurer has  
10 provided written notice of the cancellation or termination to the insured employee  
11 leasing company, the insured client, and the department.

12           (b) 1. A policy issued under sub. (3) in which the client is the first named insured  
13 may be cancelled, terminated, or nonrenewed as provided in subds. 2. to 4.

14           2. The insureds under a policy described in subd. 1. may cancel the policy  
15 during the policy period if both the employee leasing company and the client agree  
16 to the cancellation, the cancellation is confirmed by the employee leasing company  
17 promptly providing written confirmation of the cancellation to the client or by the  
18 client agreeing to the cancellation in writing, and the insurer provides written notice  
19 of the cancellation to the department as required under s. 102.31 (2) (a).

20           3. An insurer may cancel, terminate, or nonrenew a policy described in subd.  
21 1., including cancellation or termination of a policy providing continued coverage  
22 under subd. 4., by providing written notice of the cancellation, termination, or  
23 nonrenewal to the insured employee leasing company and to the department as  
24 required under s. 102.31 (2) (a) and by providing that notice to the insured client.  
25 Except as provided in s. 102.31 (2) (b), cancellation or termination of a policy under

**SENATE BILL 430**

1 this subdivision for any reason other than nonrenewal is not effective until 30 days  
2 after the insurer has provided written notice of the cancellation or termination to the  
3 insured employee leasing company, the insured client, and the department. Except  
4 as provided in s. 102.31 (2) (b), nonrenewal of a policy under this subdivision is not  
5 effective until 60 days after the insurer has provided written notice of the  
6 cancellation or termination to the insured employee leasing company, the insured  
7 client, and the department.

8 4. If an employee leasing agreement is terminated during the policy period of  
9 a policy described in subd. 1., an insurer shall cancel the employee leasing company's  
10 coverage under the policy by an endorsement to the policy and coverage of the client  
11 under the policy shall continue as to all employees of the client unless the policy is  
12 cancelled or terminated as permitted under subd. 3.

13 **SECTION 26.** 102.32 (intro.) of the statutes is renumbered 102.32 (1m) (intro.)  
14 and amended to read:

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

21 **SECTION 27.** 102.32 (1) of the statutes is renumbered 102.32 (1m) (a) and  
22 amended to read:

23 102.32 **(1m)** (a) ~~By depositing~~ Depositing the present value of the total unpaid  
24 compensation upon a 7% 5 percent interest discount basis with a credit union,

**SENATE BILL 430**

1 savings bank, savings and loan association, bank, or trust company designated by  
2 the department; ~~or.~~

3 **SECTION 28.** 102.32 (2) of the statutes is renumbered 102.32 (1m) (b) and  
4 amended to read:

5 102.32 **(1m)** (b) ~~By purchasing~~ Purchasing an annuity, within the limitations  
6 provided by law, ~~in such~~ from an insurance company ~~granting annuities and licensed~~  
7 in this state, ~~as may be~~ that is designated by the department; ~~or.~~

8 **SECTION 29.** 102.32 (3) of the statutes is renumbered 102.32 (1m) (c) and  
9 amended to read:

10 102.32 **(1m)** (c) ~~By making~~ Making payment in gross upon a ~~7%~~ 5 percent  
11 interest discount basis to be approved by the department; ~~and.~~

12 **SECTION 30.** 102.32 (4) of the statutes is renumbered 102.32 (1m) (d) and  
13 amended to read:

14 102.32 **(1m)** (d) In cases ~~where~~ in which the time for making payments or the  
15 amounts ~~thereof~~ of payments cannot be definitely determined, by furnishing a bond,  
16 or other security, satisfactory to the department for the payment of compensation as  
17 may be due or become due. The acceptance of the bond, or other security, and the form  
18 and sufficiency ~~thereof~~ of the bond or other security, shall be subject to the approval  
19 of the department. If the employer or insurer is unable or fails to immediately  
20 procure the bond, then, in lieu ~~thereof~~ of procuring the bond, deposit shall be made  
21 with a credit union, savings bank, savings and loan association, bank, or trust  
22 company designated by the department, of the maximum amount that may  
23 reasonably become payable in these cases, to be determined by the department at  
24 amounts consistent with the extent of the injuries and the law. The bonds and  
25 deposits are to be reduced only to satisfy claims and withdrawn only after the claims

**SENATE BILL 430**

1 which they are to guarantee are fully satisfied or liquidated under sub. ~~(1), (2) or (3);~~  
2 and par. (a), (b), or (c).

3 **SECTION 31.** 102.32 (5) of the statutes is amended to read:

4 102.32 (5) Any insured employer may, within the discretion of the department,  
5 compel the insurer to discharge, or to guarantee payment of, the employer's  
6 liabilities in any case described in ~~this section~~ sub. (1m) and thereby release the  
7 employer from compensation liability in that case, but if for any reason a bond  
8 furnished or deposit made under sub. ~~(4)~~ (1m) (d) does not fully protect, the  
9 compensation insurer or insured employer, as the case may be, shall still be liable  
10 to the beneficiary of the bond or deposit.

11 **SECTION 32.** 102.32 (6m) of the statutes is amended to read:

12 102.32 (6m) The department may direct an advance on a payment of unaccrued  
13 compensation for permanent disability or death benefits if the department  
14 determines that the advance payment is in the best interest of the injured employee  
15 or the employee's dependents. In directing the advance, the department shall give  
16 the employer or the employer's insurer an interest credit against its liability. The  
17 credit shall be computed at ~~7~~ 5 percent. An injured employee or dependent may  
18 receive no more than 3 advance payments per calendar year.

19 **SECTION 33.** 102.42 (1) of the statutes is amended to read:

20 102.42 (1) TREATMENT OF EMPLOYEE. The employer shall supply such medical,  
21 surgical, chiropractic, psychological, podiatric, dental, and hospital treatment,  
22 medicines, medical and surgical supplies, crutches, artificial members, appliances,  
23 and training in the use of artificial members and appliances, or, at the option of the  
24 employee, ~~if the employer has not filed notice as provided in sub. (4),~~ Christian  
25 Science treatment in lieu of medical treatment, medicines, and medical supplies, as

**SENATE BILL 430**

1 may be reasonably required to cure and relieve from the effects of the injury, and to  
2 attain efficient use of artificial members and appliances, and in case of the  
3 employer's neglect or refusal seasonably to do so, or in emergency until it is  
4 practicable for the employee to give notice of injury, the employer shall be liable for  
5 the reasonable expense incurred by or on behalf of the employee in providing such  
6 treatment, medicines, supplies, and training. ~~Where~~ When the employer has  
7 knowledge of the injury and the necessity for treatment, the employer's failure to  
8 tender the necessary treatment, medicines, supplies, and training constitutes such  
9 neglect or refusal. The employer shall also be liable for reasonable expense incurred  
10 by the employee for necessary treatment to cure and relieve the employee from the  
11 effects of occupational disease prior to the time that the employee knew or should  
12 have known the nature of his or her disability and its relation to employment, and  
13 as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such  
14 treatment and appliances shall continue as required to prevent further deterioration  
15 in the condition of the employee or to maintain the existing status of such condition  
16 whether or not healing is completed.

17 **SECTION 34.** 102.42 (4) of the statutes is amended to read:

18 102.42 (4) CHRISTIAN SCIENCE. ~~Any~~ The liability of an employer may elect not  
19 ~~to be subject to the provisions for~~ for the cost of Christian Science treatment provided  
20 ~~for in this section by filing written notice of such election with the department to an~~  
21 injured employee is limited to the usual and customary charge for that treatment.

22 **SECTION 35.** 102.425 (3) (a) 1. of the statutes is amended to read:

23 102.425 (3) (a) 1. The average wholesale price of the prescription drug as of the  
24 date on which the prescription drug is dispensed, as quoted in the ~~American Druggist~~  
25 ~~Blue Book, published by Hearst Corporation, Inc. or its successor, or in the Drug~~

**SENATE BILL 430**

1 Topics Red Book, published by Medical Economics Company, Inc. or its successor,  
2 whichever is less.

3 **SECTION 36.** 102.425 (4) (b) of the statutes is amended to read:

4 102.425 (4) (b) If an employer or insurer denies or disputes liability for the cost  
5 of a drug prescribed to an injured employee under sub. (2), the pharmacist or  
6 practitioner who dispensed the drug may collect, or bring an action to collect, from  
7 the injured employee the cost of the prescription drug dispensed, subject to the  
8 limitations specified in sub. (3) (a). If an employer or insurer concedes liability for  
9 the cost of a drug prescribed to an injured employee under sub. (2), but disputes the  
10 reasonableness of the amount charged for the prescription drug, the employer or  
11 insurer shall provide notice under sub. (4m) (b) to the pharmacist or practitioner that  
12 the reasonableness of the amount charged is in dispute and the pharmacist or  
13 practitioner who dispensed the drug may not collect, or bring an action to collect,  
14 from the injured employee the cost of the prescription drug dispensed after receiving  
15 that notice.

16 **SECTION 37.** 102.425 (4m) of the statutes is created to read:

17 102.425 (4m) RESOLUTION OF PRESCRIPTION DRUG CHARGE DISPUTES. (a) The  
18 department has jurisdiction under this subsection and s. 102.16 (1m) (c) and s.  
19 102.17 to resolve a dispute between a pharmacist or practitioner and an employer  
20 or insurer over the reasonableness of the amount charged for a prescription drug  
21 dispensed under sub. (2) for outpatient use by an injured employee who claims  
22 benefits under this chapter.

23 (b) An employer or insurer that disputes the reasonableness of the amount  
24 charged for a prescription drug dispensed under sub. (2) for outpatient use by an  
25 injured employee or the department under sub. (4) (b) or s. 102.16 (1m) (c) or 102.18

**SENATE BILL 430**

1 (1) (bg) 3. shall provide, within 30 days after receiving a completed bill for the  
2 prescription drug, notice to the pharmacist or practitioner that the charge is being  
3 disputed. After receiving notice under this paragraph or under sub. (4) (b) or s.  
4 102.16 (1m) (c) or 102.18 (1) (bg) 1. that a prescription drug charge is being disputed,  
5 a pharmacist or practitioner may not collect the disputed charge from, or bring an  
6 action for collection of the disputed charge against, the employee who received the  
7 prescription drug.

8 (c) A pharmacist or practitioner that receives notice under par. (b) that the  
9 reasonableness of the amount charged for a prescription drug dispensed under sub.  
10 (2) for outpatient use by an injured employee is in dispute shall file the dispute with  
11 the department within 6 months after receiving that notice.

12 (d) The department shall deny payment of a prescription drug charge that the  
13 department determines under this subsection to be unreasonable. A pharmacist or  
14 practitioner and an employer or insurer that are parties to a dispute under this  
15 subsection over the reasonableness of a prescription drug charge are bound by the  
16 department's determination under this subsection on the reasonableness of the  
17 disputed charge, unless that determination is set aside on judicial review as provided  
18 in par. (e).

19 (e) Within 30 days after a determination under this subsection, the department  
20 may set aside, reverse, or modify the determination for any reason that the  
21 department considers sufficient. Within 60 days after a determination under this  
22 subsection, the department may set aside, reverse, or modify the determination on  
23 grounds of mistake. A pharmacist, practitioner, employer, or insurer that is  
24 aggrieved by a determination of the department under this subsection may seek

**SENATE BILL 430**

1 judicial review of that determination in the same manner that compensation claims  
2 are reviewed under s. 102.23.

3 **SECTION 38.** 102.44 (1) (intro.) of the statutes is amended to read:

4 102.44 (1) (intro.) Notwithstanding any other provision of this chapter, every  
5 employee who is receiving compensation under this chapter for permanent total  
6 disability or continuous temporary total disability more than 24 months after the  
7 date of injury resulting from an injury which occurred prior to January 1, ~~1987~~ 1993,  
8 shall receive supplemental benefits which shall be payable in the first instance by  
9 the employer or the employer's insurance carrier, or in the case of benefits payable  
10 to an employee under s. 102.66, shall be paid by the department out of the fund  
11 created under s. 102.65. These supplemental benefits shall be paid only for weeks  
12 of disability occurring after January 1, ~~1989~~ 1995, and shall continue during the  
13 period of such total disability subsequent to that date.

14 **SECTION 39.** 102.44 (1) (a) of the statutes is amended to read:

15 102.44 (1) (a) If such employee is receiving the maximum weekly benefits in  
16 effect at the time of the injury, the supplemental benefit for a week of disability  
17 occurring after ~~January 1, 2007~~ the effective date of this paragraph .... [revisor  
18 inserts date], shall be an amount which, when added to the regular benefit  
19 established for the case, shall equal ~~\$338~~ \$450.

20 **SECTION 40.** 102.44 (1) (b) of the statutes is amended to read:

21 102.44 (1) (b) If such employee is receiving a weekly benefit which is less than  
22 the maximum benefit which was in effect on the date of the injury, the supplemental  
23 benefit for a week of disability occurring after ~~January 1, 2007~~ the effective date of  
24 this paragraph .... [revisor inserts date], shall be an amount sufficient to bring the

**SENATE BILL 430**

1 total weekly benefits to the same proportion of \$338 \$450 as the employee's weekly  
2 benefit bears to the maximum in effect on the date of injury.

3 **SECTION 41.** 102.555 (1) of the statutes is renumbered 102.555 (1) (intro.) and  
4 amended to read:

5 102.555 (1) (intro.) "~~Occupational deafness~~" means ~~permanent partial or~~  
6 ~~permanent total loss of hearing of one or both ears due to prolonged exposure to noise~~  
7 ~~in employment.~~ In this section:

8 (a) "Noise" means sound capable of producing occupational deafness.

9 (b) "Noisy employment" means employment in the performance of which an  
10 employee is subjected to noise.

11 **SECTION 42.** 102.555 (1) (c) of the statutes is created to read:

12 102.555 (1) (c) "Occupational deafness" means permanent partial or  
13 permanent total loss of hearing of one or both ears due to prolonged exposure to noise  
14 in employment.

15 **SECTION 43.** 102.555 (12) of the statutes is created to read:

16 102.555 (12) (a) An employer or the department is not liable for the expense  
17 of any examination or test for hearing loss, any evaluation of such an exam or test,  
18 any medical treatment for improving or restoring hearing, or any hearing aid to  
19 relieve the effect of hearing loss unless it is determined that compensation for  
20 occupational deafness is payable under sub. (3), (4), or (11).

21 (b) For a case of occupational deafness in which the date of injury is on or after  
22 the effective date of this paragraph .... [revisor inserts date], this subsection applies  
23 beginning on that date. Notwithstanding ss. 102.03 (4) and 102.17 (4), for a case of  
24 occupational deafness in which the date of injury is before the effective date of this

**SENATE BILL 430**

1 paragraph .... [revisor inserts date], this subsection applies beginning on the date  
2 that is 6 years after the effective date of this paragraph .... [revisor inserts date].

3 **SECTION 44.** 102.64 (2) of the statutes is amended to read:

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

15 **SECTION 45.** 102.65 (3) of the statutes is repealed.

16 **SECTION 46.** 102.80 (3) (ag) of the statutes is amended to read:

17 102.80 (3) (ag) The secretary shall monitor the cash balance in, and incurred  
18 losses to, the uninsured employers fund using generally accepted actuarial  
19 principles. If the secretary determines that the expected ultimate losses to the  
20 uninsured employers fund on known claims ~~and on incurred, but not reported, claims~~  
21 exceed ~~85%~~ 85 percent of the cash balance in the uninsured employers fund, the  
22 secretary shall consult with the council on worker's compensation. If the secretary,  
23 after consulting with the council on worker's compensation, determines that there  
24 is a reasonable likelihood that the cash balance in the uninsured employers fund may  
25 become inadequate to fund all claims under s. 102.81 (1), the secretary shall file with

**SENATE BILL 430**

1 the secretary of administration a certificate attesting that the cash balance in the  
2 uninsured employer's fund is likely to become inadequate to fund all claims under  
3 s. 102.81 (1) and specifying a date after which no new claims under s. 102.81 (1) will  
4 be paid.

5 **SECTION 47.** 102.83 (1) (a) 1. of the statutes is amended to read:

6 102.83 (1) (a) 1. If an uninsured employer or any individual who is found  
7 personally liable under sub. (8) fails to pay to the department any amount owed to  
8 the department under s. 102.82 and no proceeding for review is pending, the  
9 department or any authorized representative may issue a warrant directed to the  
10 clerk of circuit court for any county of the state.

11 **SECTION 48.** 102.83 (1) (a) 2. of the statutes is amended to read:

12 102.83 (1) (a) 2. The clerk of circuit court shall enter in the judgment and lien  
13 docket the name of the uninsured employer or the individual mentioned in the  
14 warrant and the amount of the payments, interest, costs, and other fees for which  
15 the warrant is issued and the date when the warrant is entered.

16 **SECTION 49.** 102.83 (1) (a) 3. of the statutes is amended to read:

17 102.83 (1) (a) 3. A warrant entered under subd. 2. shall be considered in all  
18 respects as a final judgment constituting a perfected lien on the ~~uninsured~~  
19 ~~employer's~~ right, title, and interest of the uninsured employer or the individual in  
20 ~~all of the uninsured employer's~~ that person's real and personal property located in  
21 the county where the warrant is entered. The lien is effective when the department  
22 issues the warrant under subd. 1. and shall continue until the amount owed,  
23 including interest, costs, and other fees to the date of payment, is paid.

24 **SECTION 50.** 102.83 (1) (a) 4. of the statutes is amended to read:

**SENATE BILL 430**

1           102.83 (1) (a) 4. After the warrant is entered in the judgment and lien docket,  
2 the department or any authorized representative may file an execution with the  
3 clerk of circuit court for filing by the clerk of circuit court with the sheriff of any  
4 county where real or personal property of the uninsured employer or the individual  
5 is found, commanding the sheriff to levy upon and sell sufficient real and personal  
6 property of the uninsured employer or the individual to pay the amount stated in the  
7 warrant in the same manner as upon an execution against property issued upon the  
8 judgment of a court of record, and to return the warrant to the department and pay  
9 to it the money collected by virtue of the warrant within 60 days after receipt of the  
10 warrant.

11           **SECTION 51.** 102.83 (1) (b) of the statutes is amended to read:

12           102.83 (1) (b) The clerk of circuit court shall accept and enter the warrant in  
13 the judgment and lien docket without prepayment of any fee, but the clerk of circuit  
14 court shall submit a statement of the proper fee semiannually to the department  
15 covering the periods from January 1 to June 30 and July 1 to December 31 unless a  
16 different billing period is agreed to between the clerk and the department. The fees  
17 shall then be paid by the department, but the fees provided by s. 814.61 (5) for  
18 entering the warrants shall be added to the amount of the warrant and collected from  
19 the uninsured employer or the individual when satisfaction or release is presented  
20 for entry.

21           **SECTION 52.** 102.83 (2) of the statutes is amended to read:

22           102.83 (2) The department may issue a warrant of like terms, force, and effect  
23 to any employee or other agent of the department, who may file a copy of the warrant  
24 with the clerk of circuit court of any county in the state, and thereupon the clerk of  
25 circuit court shall enter the warrant in the judgment and lien docket and the warrant

**SENATE BILL 430**

1 shall become a lien in the same manner, and with the same force and effect, as  
2 provided in sub. (1). In the execution of the warrant, the employee or other agent  
3 shall have all the powers conferred by law upon a sheriff, but may not collect from  
4 the uninsured employer or the individual any fee or charge for the execution of the  
5 warrant in excess of the actual expenses paid in the performance of his or her duty.

6 **SECTION 53.** 102.83 (3) of the statutes is amended to read:

7 102.83 (3) If a warrant is returned not satisfied in full, the department shall  
8 have the same remedies to enforce the amount due for payments, interest, costs, and  
9 other fees as if the department had recovered judgment against the uninsured  
10 employer or the individual and an execution had been returned wholly or partially  
11 not satisfied.

12 **SECTION 54.** 102.83 (4) of the statutes is amended to read:

13 102.83 (4) When the payments, interest, costs, and other fees specified in a  
14 warrant have been paid to the department, the department shall issue a satisfaction  
15 of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall  
16 immediately enter the satisfaction of the judgment in the judgment and lien docket.  
17 The department shall send a copy of the satisfaction to the uninsured employer or  
18 the individual.

19 **SECTION 55.** 102.83 (8) of the statutes is amended to read:

20 102.83 (8) Any officer or director of an uninsured employer that is a corporation  
21 and any member or manager of an uninsured employer that is a limited liability  
22 company may be found individually and jointly and severally liable for the payments,  
23 interest, costs and other fees specified in a warrant under this section if after proper  
24 proceedings for the collection of those amounts from the corporation or limited  
25 liability company, as provided in this section, the corporation or limited liability

**SENATE BILL 430**

1 company is unable to pay those amounts to the department. The personal liability  
2 of the officers and directors of a corporation or of the members and managers of a  
3 limited liability company as provided in this subsection is an independent obligation,  
4 survives dissolution, reorganization, bankruptcy, receivership, assignment for the  
5 benefit of creditors, judicially confirmed extension or composition, or any analogous  
6 situation of the corporation or limited liability company, and shall be set forth in a  
7 determination or decision issued under s. 102.82.

8 **SECTION 56.** 102.835 (1) (ad) of the statutes is created to read:

9 102.835 (1) (ad) “Debtor” means an uninsured employer or an individual found  
10 personally liable under s. 102.83 (8) who owes the department a debt.

11 **SECTION 57.** 102.835 (2) of the statutes is amended to read:

12 102.835 (2) POWERS OF LEVY AND DISTRAINT. If any ~~uninsured employer~~ debtor  
13 who is liable for any debt fails to pay that debt after the department has made  
14 demand for payment, the department may collect that debt and the expenses of the  
15 levy by levy upon any property belonging to the ~~uninsured employer~~ debtor. If the  
16 value of any property that has been levied upon under this section is not sufficient  
17 to satisfy the claim of the department, the department may levy upon any additional  
18 property of the ~~uninsured employer~~ debtor until the debt and expenses of the levy  
19 are fully paid.

20 **SECTION 58.** 102.835 (4) (a) of the statutes is amended to read:

21 102.835 (4) (a) Any ~~uninsured employer~~ debtor who fails to surrender any  
22 property or rights to property that is subject to levy, upon demand by the department,  
23 is subject to proceedings to enforce the amount of the levy.

24 **SECTION 59.** 102.835 (4) (c) of the statutes is amended to read:

**SENATE BILL 430**

1           102.835 (4) (c) When a 3rd party surrenders the property or rights to the  
2 property on demand of the department or discharges the obligation to the  
3 department for which the levy is made, the 3rd party is discharged from any  
4 obligation or liability to the ~~uninsured-employer~~ debtor with respect to the property  
5 or rights to the property arising from the surrender or payment to the department.

6           **SECTION 60.** 102.835 (5) (a) of the statutes is amended to read:

7           102.835 (5) (a) If the department has levied upon property, any person, other  
8 than the ~~uninsured-employer~~ debtor who is liable to pay the debt out of which the levy  
9 arose, who claims an interest in or lien on that property, and who claims that that  
10 property was wrongfully levied upon may bring a civil action against the state in the  
11 circuit court for Dane County. That action may be brought whether or not that  
12 property has been surrendered to the department. The court may grant only the  
13 relief under par. (b). No other action to question the validity of or to restrain or enjoin  
14 a levy by the department may be maintained.

15           **SECTION 61.** 102.835 (7) (a) of the statutes is amended to read:

16           102.835 (7) (a) The department shall apply all money obtained under this  
17 section first against the expenses of the proceedings and then against the liability  
18 in respect to which the levy was made and any other liability owed to the department  
19 by the ~~uninsured-employer~~ debtor.

20           **SECTION 62.** 102.835 (12) of the statutes is amended to read:

21           102.835 (12) NOTICE BEFORE LEVY. If no proceeding for review permitted by law  
22 is pending, the department shall make a demand to the ~~uninsured-employer~~ debtor  
23 for payment of the debt which is subject to levy and give notice that the department  
24 may pursue legal action for collection of the debt against the ~~uninsured-employer~~  
25 debtor. The department shall make the demand for payment and give the notice at

**SENATE BILL 430**

1 least 10 days prior to the levy, personally or by any type of mail service which requires  
2 a signature of acceptance, at the address of the ~~uninsured employer~~ debtor as it  
3 appears on the records of the department. The demand for payment and notice shall  
4 include a statement of the amount of the debt, including costs and fees, and the name  
5 of the ~~uninsured employer~~ debtor who is liable for the debt. The ~~uninsured~~  
6 ~~employer's~~ debtor's failure to accept or receive the notice does not prevent the  
7 department from making the levy. Notice prior to levy is not required for a  
8 subsequent levy on any debt of the same ~~uninsured employer~~ debtor within one year  
9 after the date of service of the original levy.

10 **SECTION 63.** 102.835 (13) (a) of the statutes is amended to read:

11 102.835 (13) (a) The department shall serve the levy upon the ~~uninsured~~  
12 ~~employer~~ debtor and 3rd party by personal service or by any type of mail service  
13 which requires a signature of acceptance.

14 **SECTION 64.** 102.835 (13) (b) of the statutes is amended to read:

15 102.835 (13) (b) Personal service shall be made upon an individual, other than  
16 a minor or incapacitated person, by delivering a copy of the levy to the ~~uninsured~~  
17 ~~employer~~ debtor or 3rd party personally; by leaving a copy of the levy at the  
18 ~~uninsured employer's~~ debtor's dwelling or usual place of abode with some person of  
19 suitable age and discretion residing there; by leaving a copy of the levy at the  
20 business establishment of the ~~uninsured employer~~ debtor with an officer or employee  
21 of the ~~uninsured employer~~ debtor; or by delivering a copy of the levy to an agent  
22 authorized by law to receive service of process.

23 **SECTION 65.** 102.835 (13) (d) of the statutes is amended to read:

24 102.835 (13) (d) The ~~uninsured employer's or 3rd party's~~ failure of a debtor or  
25 3rd party to accept or receive service of the levy does not invalidate the levy.

**SENATE BILL 430**

1           **SECTION 66.** 102.835 (14) of the statutes is amended to read:

2           102.835 **(14)** ANSWER BY 3RD PARTY. Within 20 days after the service of the levy  
3 upon a 3rd party, the 3rd party shall file an answer with the department stating  
4 whether the 3rd party is in possession of or obligated with respect to property or  
5 rights to property of the ~~uninsured employer~~ debtor, including a description of the  
6 property or the rights to property and the nature and dollar amount of any such  
7 obligation. If the 3rd party is an insurance company, the insurance company shall  
8 file an answer with the department within 45 days after the service of the levy.

9           **SECTION 67.** 102.835 (19) of the statutes is amended to read:

10           102.835 **(19)** HEARING. Any ~~uninsured employer~~ debtor who is subject to a levy  
11 proceeding made by the department may request a hearing under s. 102.17 to review  
12 the levy proceeding. The hearing is limited to questions of prior payment of the debt  
13 that the department is proceeding against, and mistaken identity of the ~~uninsured~~  
14 ~~employer~~ debtor. The levy is not stayed pending the hearing in any case in which  
15 property is secured through the levy.

16           **SECTION 68.** 626.35 (1) of the statutes is amended to read:

17           626.35 **(1)** FILING. An insurer who provides a contract under s. 102.31 (1) (a)  
18 or 102.315 (3), (4), or (5) (a) shall file with the bureau a copy of the contract, or other  
19 evidence of the contract as designated by the bureau, not more than 60 days after the  
20 effective date of the contract.

21           **SECTION 69.** 631.37 (3) of the statutes is amended to read:

22           631.37 **(3)** WORKER'S COMPENSATION INSURANCE. ~~Section~~ Sections 102.31 (2)  
23 applies and 102.315 (10) apply to the termination of worker's compensation  
24 insurance.

25           **SECTION 70.** 632.98 of the statutes is amended to read:

**SENATE BILL 430**

1           **632.98 Worker’s compensation insurance.** Sections 102.31, 102.315, and  
2 102.62 apply to worker’s compensation insurance.

3           **SECTION 71. Initial applicability.**

4           (1) EMPLOYEE LEASING COMPANY LIABILITY.

5           (a) *Liability.* The treatment of sections 102.29 (6m) and 102.315 (2), (3), (4), (5),  
6 (6), and (8) of the statutes first applies to injuries occurring on the effective date of  
7 this paragraph.

8           (b) *Premiums.* The treatment of section 102.315 (9) of the statutes first applies  
9 to a worker’s compensation insurance policy insuring liability under section 102.315  
10 (2) of the statutes issued, or extended, modified, or renewed, on the effective date of  
11 this paragraph.

12           (c) *Cancellations, terminations, or nonrenewals.* The treatment of section  
13 102.315 (10) of the statutes first applies to a worker’s compensation insurance policy  
14 insuring liability under section 102.315 (2) of the statutes whose cancellation or  
15 termination date is 30 days after the effective date of this paragraph or whose  
16 nonrenewal date is 60 days after the effective date of this paragraph.

17           (2) PRESCRIPTION DRUG CHARGE DISPUTE RESOLUTION.

18           (a) *Disputes.* The treatment of sections 102.425 (4) (b) and (4m) of the statutes  
19 first applies to prescription drug, as defined in section 102.425 (1) (h) of the statutes,  
20 charge disputes submitted to department of workforce development on the effective  
21 date of this paragraph.

22           (b) *Orders.* The treatment of sections 102.16 (1m) (c) and 102.18 (1) (bg) 3. of  
23 the statutes first applies to orders under section 102.16 (1) or 102.18 (1) (b) of the  
24 statutes issued on the effective date of this paragraph.

