

# State of Wisconsin



2009 Senate Bill 522

Date of enactment: **April 21, 2010**  
Date of publication\*: **April 30, 2010**

## 2009 WISCONSIN ACT 206

**AN ACT to repeal** 102.60 (6) and 103.78 (4); **to renumber and amend** 102.17 (1) (a), 102.44 (1) (intro.) and 102.44 (1) (a); **to amend** 102.03 (1) (c) 2., 102.04 (1) (b) 1., 102.11 (1) (intro.), 102.11 (3), 102.16 (2) (b), 102.16 (2m) (b), 102.31 (2) (a), 102.425 (4m) (b), 102.44 (1) (b), 102.50, 102.555 (12) (b), 102.60 (1m) (intro.), 102.75 (2), 102.81 (1) (a), 102.82 (1) and 102.82 (2) (ar); and **to create** 102.17 (1) (a) 3., 102.43 (9) (d) and 102.44 (5) (g) of the statutes; **relating to:** various changes to the worker's compensation law.

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

**SECTION 1.** 102.03 (1) (c) 2. of the statutes is amended to read:

102.03 (1) (c) 2. Any employee going to and from his or her employment in the ordinary and usual way, while on the premises of the employer, or while in the immediate vicinity thereof of those premises if the injury results from an occurrence on the premises; any employee going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way; any volunteer fire fighter, first responder, emergency medical technician, rescue squad member, or diving team member while responding to a call for assistance, from the time of the call for assistance to the time of his or her return from responding to that call, including traveling to and from any place to respond to and return from that call, but excluding any deviations for private or personal purposes; or any fire fighter or municipal utility employee responding to a call for assistance outside the limits of his or her city or village, unless that response is in violation of law, is performing service growing out of and incidental to employment.

**SECTION 2.** 102.04 (1) (b) 1. of the statutes is amended to read:

102.04 (1) (b) 1. Every person who usually employs 3 or more employees for services performed in this state, whether in one or more trades, businesses, professions, or occupations, and whether in one or more locations.

**SECTION 3.** 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability, or death benefits for injury in each calendar year on or after January 1, 1982, shall be not less than \$30 nor more than the wage rate that results in a maximum compensation rate of 110 percent of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability shall be not less than \$30 and, for permanent partial disability for injuries occurring on or after April 1, 2008, and before January 1, 2009, not more than \$408, resulting in a maximum compensation rate of \$272, and, for permanent partial disability for injuries occurring on or after January 1, 2009, not more than \$423, resulting in a maximum compensation rate of \$282 the effective date of this subsection ... [LRB inserts date], and before January 1, 2011, not more than \$438, resulting in a maximum

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

compensation rate of \$292, and, for permanent partial disability for injuries occurring on or after January 1, 2011, not more than \$453, resulting in a maximum compensation rate of \$302. Between such limits the average weekly earnings shall be determined as follows:

**SECTION 4.** 102.11 (3) of the statutes is amended to read:

102.11 (3) The weekly wage loss referred to in this chapter, ~~except under s. 102.60 (6), shall be such the~~ percentage of the average weekly earnings of the injured employee computed ~~according to the provisions of under~~ this section, ~~as shall that~~ fairly represent ~~represents~~ the proportionate extent of the impairment of the employee's earning capacity in the employment in which the employee was working at the time of the injury, and other suitable employments, ~~the same to.~~ Weekly wage loss shall be fixed as of the time of the injury, but ~~to shall~~ be determined in view of the nature and extent of the injury.

**SECTION 5.** 102.16 (2) (b) of the statutes is amended to read:

102.16 (2) (b) An insurer or self-insured employer that disputes the reasonableness of a fee charged by a health service provider or the department under sub. (1m) (a) or s. 102.18 (1) (bg) 1. shall provide reasonable written notice to the health service provider that the fee is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (a) or s. 102.18 (1) (bg) 1. that a health service fee is being disputed, a health service provider may not collect the disputed fee from, or bring an action for collection of the disputed fee against, the employee who received the services for which the fee was charged.

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

102.16 (2m) (b) An insurer or self-insured employer that disputes the necessity of treatment provided by a health service provider or the department under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable written notice to the health service provider that the necessity of that treatment is being disputed. After receiving reasonable written notice under this paragraph or under sub. (1m) (b) or s. 102.18 (1) (bg) 2. that the necessity of treatment is being disputed, a health service provider may not collect a fee for that disputed treatment from, or bring an action for collection of the fee for that disputed treatment against, the employee who received the treatment.

**SECTION 7.** 102.17 (1) (a) of the statutes is renumbered 102.17 (1) (a) 1. and amended to read:

102.17 (1) (a) 1. Upon the filing with the department by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, ~~it the department~~ shall mail a copy of ~~such the~~ application to all other parties in interest, and the insurance carrier shall be ~~deemed~~ considered a party in interest. The department may bring

in additional parties by service of a copy of the application. ~~The~~

2. Subject to subd. 3., ~~the~~ department shall cause notice of hearing on the application to be given to each interested party ~~interested~~, by service of ~~such that~~ notice on the interested party personally or by mailing a copy of that notice to the interested party's last-known address at least 10 days before ~~such the~~ hearing. ~~In case If~~ a party in interest is located without ~~the this~~ state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed with the department of financial institutions and shall also be sent by registered or certified mail to the last-known post-office address of ~~such the~~ party. Such filing and mailing shall constitute sufficient service, with the same effect as if served upon a party located within this state.

4. The hearing may be adjourned in the discretion of the department, and hearings may be held at such places as the department designates, within or without the state. The department may also arrange to have ~~hearing hear-~~ ings held by the commission, officer, or tribunal having authority to hear cases arising under the worker's compensation law of any other state, of the District of Columbia, or of any territory of the United States, the testimony and proceedings at any such hearing to be reported to the department and to be part of the record in the case. Any evidence so taken shall be subject to rebuttal upon final hearing before the department.

**SECTION 8.** 102.17 (1) (a) 3. of the statutes is created to read:

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

**SECTION 9.** 102.31 (2) (a) of the statutes is amended to read:

102.31 (2) (a) No party to a contract of insurance may cancel the contract within the contract period or terminate or not renew the contract upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party intends to terminate or does not intend to renew the policy upon expiration. Except as provided in par. (b), when an insurance company does not renew a policy upon expiration, the nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insured employer and the department. Cancellation or termination of a policy by an insurance company for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice of the cancellation or termination to the insured employer and the department.

Notice to the department may be given by personal service of the notice upon the department at its office in Madison, ~~or by sending the notice by certified mail addressed to the department at its office in Madison, or by transmitting the notice to the department at its office in Madison by facsimile machine transmission, electronic mail, or any electronic, magnetic, or other in a medium approved by the department.~~ The department may provide by rule that the notice of cancellation or termination be given to the Wisconsin compensation rating bureau rather than to the department ~~and that the notice of cancellation or termination be given to the Wisconsin compensation rating bureau by certified mail, facsimile machine transmission, electronic mail, or other in a medium approved by the department after consultation with the Wisconsin compensation rating bureau.~~ Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.

**SECTION 10.** 102.425 (4m) (b) of the statutes is amended to read:

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

**SECTION 11.** 102.43 (9) (d) of the statutes is created to read:

102.43 (9) (d) The employee has been convicted of a crime, is incarcerated, and is not available to return to a restricted type of work during the healing period.

**SECTION 12.** 102.44 (1) (intro.) of the statutes is renumbered 102.44 (1) (ag) and amended to read:

102.44 (1) (ag) Notwithstanding any other provision of this chapter, every employee who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury ~~which that~~ occurred prior to January 1, ~~1993~~ 2001, shall receive supplemental benefits ~~which that~~ shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employee under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. ~~These~~ Those supplemental benefits shall be paid only for weeks

of disability occurring after January 1, ~~1995~~ 2003, and shall continue during the period of such total disability subsequent to that date.

**SECTION 13.** 102.44 (1) (a) of the statutes is renumbered 102.44 (1) (am) and amended to read:

102.44 (1) (am) If ~~such the~~ employee is receiving the maximum weekly benefits in effect at the time of the injury, the supplemental benefit for a week of disability occurring after ~~April 1, 2008~~ the effective date of this paragraph .... [LRB inserts date], shall be an amount ~~which that~~, when added to the regular benefit established for the case, shall equal \$450 ~~\$582~~.

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

102.44 (1) (b) If ~~such the~~ employee is receiving a weekly benefit ~~which that~~ is less than the maximum benefit ~~which that~~ was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after ~~April 1, 2008~~ the effective date of this paragraph .... [LRB inserts date], shall be an amount sufficient to bring the total weekly benefits to the same proportion of \$450 ~~\$582~~ as the employee's weekly benefit bears to the maximum in effect on the date of injury.

**SECTION 15.** 102.44 (5) (g) of the statutes is created to read:

102.44 (5) (g) No reduction under this subsection shall be made on temporary disability benefits payable during a period in which an injured employee is receiving vocational rehabilitation services under s. 102.61 (1) or (1m).

**SECTION 16.** 102.50 of the statutes is amended to read:

**102.50 Burial expenses.** In all cases ~~where in which~~ the death of an employee proximately results from the injury, the employer or insurer shall pay the reasonable actual expense for burial, not exceeding \$6,000 ~~\$10,000~~.

**SECTION 17.** 102.555 (12) (b) of the statutes is amended to read:

102.555 (12) (b) For a case of occupational deafness in which the date of injury is on or after April 1, 2008, this subsection applies beginning on that date. Notwithstanding ss. 102.03 (4) and 102.17 (4), for a case of occupational deafness in which the date of injury is before April 1, 2008, this subsection applies beginning ~~on the date that is 6 years after April 1, 2008~~ January 1, 2012.

**SECTION 18.** 102.60 (1m) (intro.) of the statutes is amended to read:

102.60 (1m) (intro.) When the injury is sustained by a minor who is illegally employed, the employer, in addition to paying compensation ~~or wage loss under sub. (6)~~ to the minor and death benefits to the dependents of the minor, shall pay the following amounts into the state treasury, for deposit in the fund established under s. 102.65:

**SECTION 19.** 102.60 (6) of the statutes is repealed.

**SECTION 20.** 102.75 (2) of the statutes is amended to read:

102.75 (2) The department shall require that payments for costs and expenses for each fiscal year shall be made on such dates as the department prescribes by each licensed worker's compensation insurance carrier and employer exempted under s. 102.28 (2). Each such payment shall be a sum equal to a proportionate share of the annual costs and expenses assessed upon each carrier and employer as estimated by the department. Interest shall accrue on amounts not paid within ~~90~~ 30 days after the date prescribed by the department under this subsection at the rate of 1 percent per month. All interest payments received under this subsection shall be deposited in the fund established under s. 102.65.

**SECTION 21.** 102.81 (1) (a) of the statutes is amended to read:

102.81 (1) (a) If an employee of an uninsured employer, other than an employee who is eligible to receive alternative benefits under s. 102.28 (3), suffers an injury for which the uninsured employer is liable under s. 102.03, the department or the department's reinsurer shall pay to or on behalf of the injured employee or to the employee's dependents an amount equal to the compensation owed them by the uninsured employer under this chapter except penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57, and 102.60 ~~(6)~~.

**SECTION 22.** 102.82 (1) of the statutes is amended to read:

102.82 (1) ~~An~~ Except as provided in sub. (2) (ar), an uninsured employer shall reimburse the department for any payment made under s. 102.81 (1) to or on behalf of an employee of the uninsured employer or to an employee's dependents and for any expenses paid by the department in administering the claim of the employee or dependents, less amounts repaid by the employee or dependents under s. 102.81 (4) (b). The reimbursement owed under this subsection is due within 30 days after the date on which the department notifies the uninsured employer that the reimbursement is owed. Interest shall accrue on amounts not paid when due at the rate of 1% per month.

**SECTION 23.** 102.82 (2) (ar) of the statutes is amended to read:

102.82 (2) (ar) The department may waive any payment owed under par. (a) or (ag) or sub. (1) if the department determines that the sole reason for the uninsured employer's failure to comply with s. 102.28 (2) is that the uninsured employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or insurance broker or by a person whom a reasonable person would believe is an insurance agent or insurance broker.

**SECTION 24.** 103.78 (4) of the statutes is repealed.

**SECTION 25. Initial applicability.**

(1) ASSESSMENTS. The treatment of section 102.75 (2) of the statutes first applies to an assessment imposed in the effective date of this subsection.