

State of Wisconsin



2011 Senate Bill 409

Date of enactment: April 2, 2012
Date of publication*: April 16, 2012

2011 WISCONSIN ACT 183

AN ACT *to renumber and amend* 102.29 (1); *to amend* 16.865 (4), 20.445 (1) (t), 102.03 (4), 102.11 (1) (intro.), 102.13 (2) (c), 102.16 (2) (d), 102.17 (4), 102.35 (1), 102.43 (5), 102.43 (7) (b), 102.44 (1) (am), 102.44 (1) (b), 102.44 (1) (c), 102.49 (1), 102.56 (1), 102.56 (2), 102.59 (1), 102.61 (1), 102.61 (1g) (b), 102.61 (1m) (c), 102.61 (1m) (d), 102.61 (1r) (c), 102.64 (2), 102.66 (1) and 102.66 (2); and *to create* 102.43 (5) (c), 102.65 (3) and 102.65 (4) of the statutes; **relating to:** various changes to the worker's compensation law, granting rule-making authority, and making an appropriation.

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

SECTION 1. 16.865 (4) of the statutes is amended to read:

16.865 (4) Manage the state employees' worker's compensation program and the statewide self-funded programs to protect the state from losses of and damage to state property and liability and, if retained by the department of workforce development under s. 102.65 (3), process, investigate, and pay claims under ss. 102.44 (1), 102.49, 102.59, and 102.66 as provided in s. 102.65 (3).

SECTION 2. 20.445 (1) (t) of the statutes is amended to read:

20.445 (1) (t) *Work injury supplemental benefit fund.* All moneys paid into the work injury supplemental benefit fund under ss. 102.35 (1), 102.47, 102.49, 102.59, 102.60, and 102.75 (2), to be used for the discharge of liabilities payable under ss. 102.44 (1), 102.49, 102.59, 102.63, 102.64 (2), and 102.66 and for the retention of services under s. 102.65 (3).

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

102.03 (4) The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of law in effect as of the date of the injury except as to employees whose rate of compensation is changed as provided in ss. 102.43 (7) and or 102.44 (1) and or (5) or, before the first day of the 25th month beginning after the effective date of this subsection [LRB inserts date], as provided in s. 102.43 (5) (c) and employees who are eligible to receive private rehabilitative counseling and rehabilitative training under s. 102.61 (1m) and except as provided in s. 102.555 (12) (b).

SECTION 4. 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 ~~May 6,~~

* Section 991.11, WISCONSIN STATUTES 2009-10 : 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].

2010, and before January 1, 2011, not more than \$438, resulting in a maximum 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 the effective date of this subsection [LRB inserts date], and before January 1, 2013, not more than \$468, resulting in a maximum compensation rate of \$312, and, for permanent partial disability for injuries occurring on or after January 1, 2013, not more than \$483, resulting in a maximum compensation rate of \$322, except as provided in 2011 Wisconsin Act (this act), section 30 (2) (a). Between such limits the average weekly earnings shall be determined as follows:

SECTION 5. 102.13 (2) (c) of the statutes is amended to read:

102.13 (2) (c) If Except as provided in this paragraph, if an injured employee has a period of temporary disability that exceeds 3 weeks or a permanent disability or, if the injured employee has undergone surgery to treat his or her injury, other than surgery to correct a hernia, or if the injured employee sustained an eye injury requiring medical treatment on 3 or more occasions off the employer's premises, the department may by rule require the insurer or self-insured employer to submit to the department a final report of the employee's treating practitioner. The department may not require an insurer or self-insured employer to submit to the department a final report of an employee's treating practitioner when the insurer or self-insured employer denies the employee's claim for compensation and the employee does not contest that denial. A treating practitioner may charge a reasonable fee for the completion of the final report, but may not require prepayment of that fee. An insurer or self-insured employer that disputes the reasonableness of a fee charged for the completion of a treatment practitioner's final report may submit that dispute to the department for resolution under s. 102.16 (2).

SECTION 6. 102.16 (2) (d) of the statutes is amended to read:

102.16 (2) (d) The department shall analyze the information provided to the department under par. (c) according to the criteria provided in this paragraph to determine the reasonableness of the disputed fee. The Except as provided in 2011 Wisconsin Act (this act), section 30 (2) (b), the department shall determine that a disputed fee is reasonable and order that the disputed fee be paid if that fee is at or below the mean fee for the health service procedure for which the disputed fee was charged, plus 1.4 1.2 standard deviations from that mean, as shown by data from a database that is certified by the department under par. (h). The Except as provided in 2011 Wisconsin Act (this act), section 30 (2) (b), the department shall determine that a disputed fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service pro-

cedure for which the disputed fee was charged, plus 1.4 1.2 standard deviations from that mean, as shown by data from a database that is certified by the department under par. (h), unless the health service provider proves to the satisfaction of the department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

SECTION 7. 102.17 (4) of the statutes is amended to read:

102.17 (4) Except as provided in this subsection and s. 102.555 (12) (b), the right of an employee, the employee's legal representative, or a dependent to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. In the case of occupational disease; a traumatic injury resulting in the loss or total impairment of a hand or any part of the rest of the arm proximal to the hand or of a foot or any part of the rest of the leg proximal to the foot, any loss of vision, or any permanent brain injury; or a traumatic injury causing the need for an artificial spinal disc or a total or partial knee or hip replacement, there shall be no statute of limitations, except that benefits or treatment expense for an occupational disease becoming due 12 years after the date of injury or death or last payment of compensation, other than for treatment or burial expenses, shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66 and benefits or treatment expense for such a traumatic injury becoming due 12 years after that date shall be paid by the employer or insurer from that fund and in that manner if the date of injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006. Payment of wages by the employer during disability or absence from work to obtain treatment shall be considered payment of compensation for the purpose of this section if the employer knew of the employee's condition and its alleged relation to the employment.

SECTION 8. 102.29 (1) of the statutes is renumbered 102.29 (1) (a) (intro.) and amended to read:

102.29 (1) (a) (intro.) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action, to make claim or maintain an action in tort against any other party for such injury or death, hereinafter referred to as a 3rd party; nor shall the making of a claim by any such person against a 3rd party for damages by reason of an injury to which ss. 102.03 to ~~102.64~~ 102.66 are applicable, or the adjustment of any such claim, affect the right of the injured employee or the employee's dependents to recover compensation. The An employer or compensa-

tion insurer who shall have ~~that has~~ paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. If the department pays or is obligated to pay a claim under s. 102.66 (1) or 102.81 (1), the department shall also have the right to maintain an action in tort against any other party for the employee's injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

(b) If a party entitled to notice cannot be found, the department shall become the agent of ~~such that~~ party for the giving of a notice as required in ~~this subsection par. (a)~~ and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate ~~such that~~ party. Each shall have an equal voice in the prosecution of ~~said the~~ claim, and any disputes arising shall be passed upon by the court before whom the case is pending, and if no action is pending, then by a court of record or by the department. If notice is given as provided in ~~this subsection par. (a)~~, the liability of the tort-feasor shall be determined as to all parties having a right to make claim, and, irrespective of whether or not all parties join in prosecuting ~~such the~~ claim, the proceeds of ~~such the~~ claim shall be divided as follows:

1. After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employee or the employee's personal representative or other person entitled to bring action.

2. Out of the balance remaining after the deduction and payment specified in subd. 1., the employer, the insurance carrier, or, if applicable, the uninsured employers fund or the work injury supplemental benefit fund shall be reimbursed for all payments made by ~~it the employer, insurance carrier, or department~~, or which ~~it the employer, insurance carrier, or department~~ may be obligated to make in the future, under this chapter, except that ~~it the employer, insurance carrier, or department~~ shall not be reimbursed for any payments made or to be made under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57, or 102.60.

3. Any balance remaining after the reimbursement described in subd. 2. shall be paid to the employee or the employee's personal representative or other person entitled to bring action.

(c) If both the employee or the employee's personal representative or other person entitled to bring action, and the employer, compensation insurer, or department, join in the pressing of said claim and are represented by counsel, the attorney fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between ~~such the~~ attorneys for those parties as directed by the court or by the department.

(d) A settlement of ~~any a~~ 3rd-party claim shall be void unless ~~said the~~ settlement and the distribution of the

proceeds ~~thereof is of the settlement are~~ approved by the court before whom the action is pending ~~and or~~, if no action is pending, then by a court of record or by the department.

SECTION 9. 102.35 (1) of the statutes is amended to read:

102.35 (1) Every employer and every insurance company that fails to keep the records or to make the reports required by this chapter or that knowingly falsifies such records or makes false reports shall pay a work injury supplemental benefit surcharge to the state of not less than \$10 nor more than \$100 for each offense. The department may waive or reduce a surcharge imposed under this subsection if the employer or insurance company that violated this subsection requests a waiver or reduction of the surcharge within 45 days after the date on which notice of the surcharge is mailed to the employer or insurance company and shows that the violation was due to mistake or an absence of information. A surcharge imposed under this subsection is due within ~~90~~ 30 days after the date on which notice of the surcharge is mailed to the employer or insurance company. Interest shall accrue on amounts that are not paid when due at the rate of 1 percent per month. All surcharges and interest payments received under this subsection shall be deposited in the fund established under s. 102.65.

SECTION 10. 102.43 (5) of the statutes is amended to read:

102.43 (5) (a) Temporary disability, during which compensation shall be payable for loss of earnings, shall include such period as may be reasonably required for training in the use of artificial members and appliances.

(b) Except as provided in s. 102.61 (1g), temporary disability shall also include such period as the employee may be receiving instruction ~~pursuant to under~~ s. 102.61 (1) or (1m). Temporary disability on account of receiving instruction ~~of the latter nature under s. 102.61 (1) or (1m)~~, and not otherwise resulting from the injury, shall not be in excess of 80 weeks. Such 80-week limitation does not apply to temporary disability benefits under this section, the cost of tuition, fees, books, travel, or maintenance expense under s. 102.61 (1), or the cost of private rehabilitation counseling or rehabilitative training costs under s. 102.61 (1m) if the department determines that additional training is warranted. The necessity for additional training as authorized by the department for any employee shall be subject to periodic review and reevaluation.

SECTION 11. 102.43 (5) (c) of the statutes is created to read:

102.43 (5) (c) Compensation for temporary disability on account of receiving instruction under s. 102.61 (1) or (1m) shall not be reduced under sub. (2) on account of any wages earned for the first 24 hours worked by an employee during a week in which the employee is receiving that instruction. If an employee performs more than

24 hours of work during a week in which the employee is receiving that instruction, all wages earned for hours worked in excess of 24 during that week shall be offset against the employee's average weekly wage in calculating compensation for temporary disability under sub. (2). An employee who is receiving compensation for temporary disability on account of receiving instruction under s. 102.61 (1) or (1m) shall report any wages earned during the period in which the employee is receiving that instruction to the insurance carrier or self-insured employer paying that compensation. This paragraph does not apply after the last day of the 24th month beginning after the effective date of this paragraph [LRB inserts date].

SECTION 12. 102.43 (7) (b) of the statutes is amended to read:

102.43 (7) (b) An employee need not return to work at least 10 days preceding a renewed period of temporary disability to obtain benefits under sub. (5) (b) for rehabilitative training commenced more than 2 years after the date of injury. Benefits for rehabilitative training shall be made as provided in par. (c).

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

102.44 (1) (am) If 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 May 6 1, 2010, shall be an amount that, when added to the regular benefit established for the case, shall equal \$582.

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

102.44 (1) (b) If the employee is receiving a weekly benefit that is less than the maximum benefit that was in effect on the date of the injury, the supplemental benefit for a week of disability occurring after May 6 1, 2010, shall be an amount sufficient to bring the total weekly benefits to the same proportion of \$582 as the employee's weekly benefit bears to the maximum in effect on the date of injury.

SECTION 15. 102.44 (1) (c) of the statutes is amended to read:

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

SECTION 16. 102.49 (1) of the statutes is amended to read:

102.49 (1) ~~When Subject to any certificate filed under s. 102.65 (4), when~~ the beneficiary under s. 102.46 or 102.47 (1) is the spouse or domestic partner under ch. 770 of the deceased employee and is wholly dependent ~~on the deceased employee~~ for support, an additional death benefit shall be paid from the funds provided by sub. (5) for each child by their marriage or domestic partnership under ch. 770 who is living at the time of the death of the employee, and who is likewise wholly dependent ~~upon the on the deceased~~ employee for support. That payment shall commence ~~at the time that when~~ primary death benefit payments are completed or, if advancement of compensation has been paid, ~~at the time~~ when payments would normally have been completed. Payments shall continue at the rate of 40% 10 percent of the surviving parent's weekly indemnity until the child's 18th birthday. If the child is physically or mentally incapacitated, payments may be continued beyond the child's 18th birthday but the payments may not continue for more than a total of 15 years.

SECTION 17. 102.56 (1) of the statutes is amended to read:

102.56 (1) ~~If Subject to sub. (2), if~~ an employee is so permanently disfigured as to occasion potential wage loss ~~due to the disfigurement~~, the department may allow such sum as it ~~deems the department considers~~ just as compensation ~~therefor for the disfigurement~~, not exceeding the employee's average annual earnings ~~as defined in s. 102.11~~. In determining the potential for wage loss ~~due to the disfigurement~~ and the sum awarded, the department shall take into account the age, education, training, and previous experience and earnings of the employee, the employee's present occupation and earnings, and likelihood of future suitable occupational change. Consideration for disfigurement allowance is confined to those areas of the body that are exposed in the normal course of employment. The department shall also take into account the appearance of the disfigurement, its location, and the likelihood of its exposure in occupations for which the employee is suited.

SECTION 18. 102.56 (2) of the statutes is amended to read:

102.56 (2) ~~Notwithstanding sub. (1), if~~ If an employee who claims compensation under ~~this section sub. (1)~~ returns to work for the employer who employed the employee at the time of the injury, ~~or is offered employment with that employer~~, at the same or a higher wage, the employee ~~may not be compensated unless the employee shows that he or she probably has lost or will lose wages~~ department may not allow that compensation unless the employee suffers an actual wage loss due to the disfigurement.

SECTION 19. 102.59 (1) of the statutes is amended to read:

102.59 (1) ~~If an employee has~~ Subject to any certificate filed under s. 102.65 (4), if at the time of injury an employee has permanent disability ~~which that~~ if it had resulted from ~~such that~~ injury would have entitled ~~him or her~~ the employee to indemnity for 200 weeks and, ~~if as a result of such that injury,~~ the employee incurs further permanent disability ~~which that~~ entitles ~~him or her~~ the employee to indemnity for 200 weeks, the employee shall be paid from the funds provided in this section additional compensation equivalent to the amount ~~which that~~ would be payable for ~~said that~~ previous disability if ~~it that~~ previous disability had resulted from ~~such that~~ injury or the amount ~~which that~~ is payable for ~~said that~~ further disability, whichever is the ~~lesser less~~, ~~except that an employee may not be paid that additional compensation if the employee has already received compensation under this subsection.~~ If said the previous and further disabilities result in permanent total disability, the additional compensation shall be in such amount as will complete the payments which that would have been due had said the permanent total disability resulted from such that injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from such the injury is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7). No compromise agreement of liability for this additional compensation may provide for any lump sum payment.

SECTION 20. 102.61 (1) of the statutes is amended to read:

102.61 (1) Subject to subs. (1g) and (1m), an employee who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving ~~instructions~~ instruction under 29 USC 701 to 797b, as administered by the state in which the employee resides or in which the employee resided at the time of becoming physically disabled, shall, in addition to other indemnity, be paid the actual and necessary ~~expenses of costs of tuition, fees, books, and travel at the same rate as is provided for state officers and employees under s. 20.916 (8)~~ required for the employee's rehabilitation training program and, if the employee receives ~~instructions that instruction~~ elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the conditions and limitations specified in sub. (1r). The costs of travel under this subsection shall be paid at the same rate as is provided for state officers and employees under s. 20.916 (8).

SECTION 21. 102.61 (1g) (b) of the statutes is amended to read:

102.61 (1g) (b) If an employer offers an employee suitable employment as provided in par. (c), the employer or the employer's insurance carrier is not liable for tem-

porary disability benefits under s. 102.43 (5) (b) or for the cost of tuition, fees, books, travel, and maintenance expenses under sub. (1). Ineligibility for compensation under this paragraph does not preclude an employee from receiving vocational rehabilitation services under 29 USC 701 to 797b if the department determines that the employee is eligible to receive those services.

SECTION 22. 102.61 (1m) (c) of the statutes is amended to read:

102.61 (1m) (c) The employer or insurance carrier shall pay the reasonable cost of any services provided for an employee by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including the cost of tuition, fees, books, maintenance, and travel at the same rate as is provided for state officers and employees under s. 20.916 (8). Notwithstanding that the department may authorize under s. 102.43 (5) (b) a rehabilitative training program that lasts longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to be reasonable.

SECTION 23. 102.61 (1m) (d) of the statutes is amended to read:

102.61 (1m) (d) If an employee receives services from a private rehabilitation counselor under par. (a) and later receives similar services from the department under sub. (1) without the prior approval of the employer or insurance carrier, the employer or insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) (b) or for tuition, fee, book, travel, and maintenance expenses costs under sub. (1) that exceed what the employer or insurance carrier would have been liable for under the rehabilitative training program developed by the private rehabilitation counselor.

SECTION 24. 102.61 (1r) (c) of the statutes is amended to read:

102.61 (1r) (c) The employee may not have ~~expenses of travel and the costs of tuition, fees, books, travel, and maintenance~~ paid under sub. (1) or the costs of private rehabilitation counseling and rehabilitative training paid under sub. (1m) on account of training for a period in excess of 80 weeks in all, except as provided in s. 102.43 (5) (b).

SECTION 25. 102.64 (2) of the statutes is amended to read:

102.64 (2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. ~~The~~ Except as provided in s. 102.65 (3), the department of justice shall represent the interests of the state in proceedings under s. 102.44 (1), 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise claims in those proceedings, but the

compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

SECTION 26. 102.65 (3) of the statutes is created to read:

102.65 (3) The department of workforce development may retain the department of administration to process, investigate, and pay claims under ss. 102.44 (1), 102.49, 102.59, and 102.66. If retained by the department of workforce development, the department of administration may compromise a claim processed by that department, but a compromise made by that department is subject to review by the department of workforce development. The department of workforce development shall pay for the services retained under this subsection from the appropriation account under s. 20.445 (1) (t).

SECTION 27. 102.65 (4) of the statutes is created to read:

102.65 (4) The secretary shall monitor the cash balance in, and incurred losses to, the work injury supplemental benefit fund using generally accepted actuarial principles. If the secretary determines that the expected ultimate losses to the work injury supplemental benefit fund on known claims exceed 85 percent of the cash balance in that fund, the secretary shall consult with the council on worker's compensation. If the secretary, after consulting with the council on worker's compensation, determines that there is a reasonable likelihood that the cash balance in the work injury supplemental benefit fund may become inadequate to fund all claims under ss. 102.44 (1) (c), 102.49, 102.59, and 102.66, the secretary shall file with the secretary of administration a certificate attesting that the cash balance in that fund is likely to become inadequate to fund all claims under ss. 102.44 (1) (c), 102.49, 102.59, and 102.66 and specifying one of the following:

(a) That payment of those claims will be made as provided in a schedule that the department shall promulgate by rule.

(b) A date after which payment of those claims will be reduced.

(c) A date after which no new claims under those provisions will be paid.

SECTION 28. 102.66 (1) of the statutes is amended to read:

102.66 (1) ~~In the event that~~ Subject to any certificate filed under s. 102.65 (4), if there is an otherwise meritorious claim for occupational disease, or for a traumatic injury described in s. 102.17 (4) in which the date of

injury or death or last payment of compensation, other than for treatment or burial expenses, is before April 1, 2006, and if the claim is barred solely by the statute of limitations under s. 102.17 (4), the department may, in lieu of worker's compensation benefits, direct payment from the work injury supplemental benefit fund under s. 102.65 of such compensation and such medical expenses as would otherwise be due, based on the date of injury, to or on behalf of the injured employee. The benefits shall be supplemental, to the extent of compensation liability, to any disability or medical benefits payable from any group insurance policy whose premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

SECTION 29. 102.66 (2) of the statutes is amended to read:

102.66 (2) In the case of occupational disease, or of a traumatic injury described in s. 102.17 (4) in which the date of injury or death or last payment of compensation, other than for treatment for burial expenses, is before April 1, 2006, appropriate benefits may be awarded from the work injury supplemental benefit fund when the status or existence of the employer or its insurance carrier cannot be determined or when there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

SECTION 30. Nonstatutory provisions.

(1) REIMBURSEMENT OF SUPPLEMENTAL BENEFITS PAID BEFORE 2011. Notwithstanding section 102.44 (1) (c) of the statutes, as affected by this act, to receive reimbursement under that provision for supplemental benefits paid before 2011, an employer or insurance carrier must file a claim for that reimbursement with the department of workforce development by no later than December 31, 2012.

(2) AUDIT OF HEALTH SERVICE FEE DISPUTE DATABASES. The department of workforce development shall conduct an audit of the health service fee databases certified by that department under section 102.16 (2) (h) of the statutes. The secretary of workforce development shall create a committee under section 15.04 (1) (c) of the statutes to determine the scope of that audit. The committee shall consist of one representative of employers, one representative of employees, one representative of the department of workforce development, and one representative who is a liaison from the health care community to the council on worker's compensation. Upon determining the scope of the audit, the committee shall report its findings, conclusions, and recommendations to the department of workforce development and the council on worker's compensation, after which the committee shall terminate its activities and cease to exist. If the audit is not commenced by the first day of the 7th month begin-

ning after the effective date of this subsection, all of the following apply:

(a) *Permanent partial disability compensation amount.* Notwithstanding section 102.11 (1) (intro.) of the statutes, as affected by this act, the average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 2013, shall be not more than \$475, resulting in a maximum compensation rate of \$317.

(b) *Reasonableness of disputed health service fees.* Notwithstanding section 102.16 (2) (d) of the statutes, as affected by this act, beginning on January 1, 2013, the department of workforce development shall determine that a disputed health service fee is reasonable and order that the disputed fee be paid if that fee is at or below the mean fee for the health service procedure for which the disputed fee was charged, plus 1.3 standard deviations from that mean, as shown by data from a database that is certified by that department under section 102.16 (2) (h) of the statutes, and shall determine that a disputed health service fee is unreasonable and order that a reasonable fee be paid if the disputed fee is above the mean fee for the health service procedure for which the disputed fee was charged, plus 1.3 standard deviations from that mean, as shown by data from such a database, unless the health service provider proves to the satisfaction of that department that a higher fee is justified because the service provided in the disputed case was more difficult or more complicated to provide than in the usual case.

(3) **STUDY OF FUNDING OF PERMANENT TOTAL DISABILITY INCREASES.** The secretary of workforce development shall create a committee under section 15.04 (1) (c) of the statutes to study methods of funding the cost of providing regular, periodic increases in the weekly indemnity for permanent total disability, if legislation providing for those increases were to be enacted. The study shall include methods of funding the cost of providing those increases for injured employees receiving that indemnity on the day before the effective date of that legislation.

The committee shall include representatives of employers, employees, worker's compensation insurers authorized to do business in this state, and the department of workforce development. Upon completion of the study, the committee shall report its findings, conclusions, and recommendations to the department of workforce development and the council on worker's compensation, after which the committee shall terminate its activities and cease to exist.

SECTION 31. Initial applicability.

(1) **THIRD-PARTY ACTIONS BY WORK INJURY SUPPLEMENTAL BENEFIT FUND.** The treatment of section 102.29 (1) of the statutes first applies to an injury or death occurring on the effective date of this subsection.

(2) **WORK INJURY SUPPLEMENTAL BENEFIT FUND SURCHARGES.** The treatment of section 102.35 (1) of the statutes first applies to surcharges imposed on the effective date of this subsection.

(3) **REIMBURSEMENT OF SUPPLEMENTAL BENEFITS.** Except as provided in SECTION 30 (1) of this act, the treatment of 102.44 (1) (c) of the statutes first applies to supplemental benefits paid by an employer or insurance carrier in 2011.

(4) **VOCATIONAL REHABILITATION.**

(a) *Temporary disability compensation during vocational rehabilitation.* The treatment of sections 102.03 (4) and 102.43 (5) (c) of the statutes first applies to a week of disability beginning after the effective date of this paragraph.

(b) *Vocational rehabilitation costs.* The treatment of section 102.61 (1), (1g) (b), (1m) (c) and (d), and (1r) (c) of the statutes and the amendment of section 102.43 (5) (with respect to the cost of tuition, fees, and books) of the statutes first apply to tuition, fee, and book costs incurred on the effective date of this paragraph.

(5) **FEE DISPUTES.** The treatment of section 102.16 (2) (d) of the statutes first applies to a fee dispute submitted to the department of workforce development on the effective date of this subsection.