

## 1999 ASSEMBLY BILL 547

October 20, 1999 - Introduced by Representatives VRAKAS and TURNER, cosponsored by Senators BAUMGART and ZIEN. Referred to Committee on Labor and Employment.

1     **AN ACT to repeal** 102.01 (2) (b); **to amend** 15.227 (4), 15.227 (11), 102.05 (1),  
2           102.07 (7) (a), 102.07 (7) (b), 102.07 (12m), 102.077 (3), 102.16 (2) (d), 102.18 (3),  
3           102.29 (8), 102.475 (title), 102.475 (1), 102.475 (8) (b) and 102.87 (9); and **to**  
4           **create** 102.475 (8) (am) and 102.475 (8) (dm) of the statutes; **relating to:**  
5           various changes to the worker's compensation law.

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### ***Analysis by the Legislative Reference Bureau***

This bill makes various changes relating to worker's compensation, as administered by the department of workforce development (DWD), as follows:

#### ***Withdrawal from coverage***

Under current law, every person who usually employs three or more employees and every person who usually employs less than three employees, but who has paid wages of \$500 or more in any calendar quarter for services performed in this state, is subject to the worker's compensation law. An employer who has not usually employed three employees and who has not paid wages of at least \$500 in this state in *any* calendar quarter in a calendar year, however, may withdraw from coverage under the worker's compensation law. This bill restricts withdrawal from worker's compensation coverage for an employer who has not usually employed three employees only if the employer has not paid wages of at least \$500 in this state in *every* calendar quarter in a calendar year.

**ASSEMBLY BILL 547*****Coverage of diving team members***

Under current law, a member of a volunteer fire department or legally organized rescue squad is considered to be an employe of that department or squad for purposes of worker's compensation coverage except that, if that department or squad has not insured its liability for worker's compensation to its employes, the county or municipality within which that department or squad is organized is liable for that worker's compensation. Current law also permits DWD to issue an order permitting the county within which a volunteer fire department, legally organized rescue squad or ambulance service provider is organized to assume full liability for worker's compensation for all volunteer members of that department, squad or provider.

This bill provides that a member of a legally organized diving team is considered to be an employe of that team for purposes of worker's compensation coverage except that, if that team has not insured its liability for worker's compensation to its employes, the county or municipality within which that team is organized is liable for that worker's compensation. The bill also permits DWD to issue an order permitting the county within which a legally organized diving team is organized to assume full liability for worker's compensation for all volunteer members of that team.

Under current law, if a law enforcement officer, correctional officer, fire fighter, rescue squad member, national guard member, state defense force member or emergency management employe or volunteer dies as a result of an injury sustained while performing services growing out of and incidental to his or her employment or volunteer activity or dies while totally and permanently disabled as a result of such an injury, DWD must pay death benefits of not less than \$50,000 to the person's dependents.

This bill requires DWD to pay death benefits of not less than \$50,000 to the dependents of a diving team member who dies as a result of an injury sustained while performing services growing out of and incidental to his or her employment or volunteer activity or who dies while totally and permanently disabled as a result of such an injury.

***Extension of expiring provisions***

Currently, a student of a public school or a private school, while he or she is engaged in performing services as part of a school work training, work experience or work study program, who is not on the payroll of an employer that is providing the work training or work experience or who is not otherwise receiving compensation on which a worker's compensation carrier could assess premiums on that employer, is an employe of a school district or private school that elects to name the student as an employe for purposes of worker's compensation coverage. Also, under current law, a student who is named as an employe of a school district or private school for purposes of worker's compensation coverage and who makes a claim for worker's compensation against his or her school district or private school may not also make a claim for worker's compensation or maintain an action in tort against the employer that provided the work training or work experience from which the claim arose.

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Currently, these provisions do not apply to injuries occurring after December 31, 1999. This bill extends that expiration date to December 31, 2001.

Under current law, DWD may determine the reasonableness of the fees charged for health services that are provided for an injured employe for whom worker's compensation is paid. Currently, DWD's authority to determine the reasonableness of a health service fee expires on July 1, 2000. This bill extends that expiration date to July 1, 2002.

***Council on worker's compensation and self-insurers council***

Under current law, there is created in DWD a council on worker's compensation whose duties include advising DWD in carrying out the purposes of the worker's compensation law, submitting recommendations relating to amendments to the worker's compensation law to each regular session of the legislature and reporting its views on pending legislation relating to worker's compensation to the proper legislative committees. Currently, the members of the council on worker's compensation are appointed by the labor and industry review commission (LIRC), and a designated employe of DWD or LIRC may serve as chairperson of the council. This bill requires the secretary of workforce development, rather than LIRC, to appoint the members of the council on worker's compensation. The bill also eliminates the option of designating an employe of LIRC to serve as chairperson of the council.

Under current law, there is created in DWD a self-insurers council whose duties include advising DWD on matters relating to employers that self-insure their worker's compensation liability rather than purchase insurance to cover that liability, including any proposed revocation by DWD of an employer's self-insured status. Currently, the members of the self-insurers council are appointed by LIRC. This bill requires the secretary of workforce development to appoint the members of the self-insurers council.

***Deputy administrator of worker's compensation division of DWD***

Under current law, DWD must have on its staff such examiners as are necessary to hear and decide disputed claims for worker's compensation and to assist in the administration of the worker's compensation law. An examiner may make findings and orders, and approve, review, set aside, modify or confirm stipulations of settlement and compromises of claims for worker's compensation. Current law defines "examiner" to include the deputy administrator of the worker's compensation division of DWD. This bill eliminates the inclusion of the deputy administrator of that division as an "examiner" under the worker's compensation law.

***Petitions for review of a worker's compensation decision***

Under current law, LIRC must dismiss a petition for review of a DWD hearing examiner's decision awarding or denying worker's compensation that is not received by DWD or LIRC within 21 days after DWD mailed a copy of the examiner's findings and order to the petitioner's last-known address, unless the *petition* shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner's control. This bill requires LIRC to dismiss such a petition that is not timely filed unless the *petitioner* shows probable good cause that the reason for failure to timely file the petition was beyond the petitioner's control.

**ASSEMBLY BILL 547*****Uninsured employers fund***

Under current law, DWD administers an uninsured employers fund, from which DWD pays to an injured employe of an uninsured employer compensation that is equal to the amount of worker's compensation that the uninsured employer owes to the injured employe. This bill corrects an incorrect reference in current law to the "*insured* employers fund" by changing that reference to the "*uninsured* employers fund".

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

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

1           **SECTION 1.** 15.227 (4) of the statutes is amended to read:

2           15.227 (4) COUNCIL ON WORKER'S COMPENSATION. There is created in the  
3 department of workforce development a council on worker's compensation appointed  
4 by the ~~labor and industry review commission~~ secretary of workforce development to  
5 consist of a member or designated employe of the department of workforce  
6 development ~~or the labor and industry review commission~~ as chairperson, 5  
7 representatives of employers and 5 representatives of employes. The ~~commission~~  
8 secretary of workforce development shall also appoint 3 representatives of insurers  
9 authorized to do a worker's compensation insurance business in this state as  
10 nonvoting members of the council.

11           **SECTION 2.** 15.227 (11) of the statutes is amended to read:

12           15.227 (11) SELF-INSURERS COUNCIL. There is created in the department of  
13 workforce development a self-insurers council consisting of 5 members appointed by  
14 the ~~labor and industry review commission~~ secretary of workforce development for  
15 3-year terms.

16           **SECTION 3.** 102.01 (2) (b) of the statutes is repealed.

17           **SECTION 4.** 102.05 (1) of the statutes is amended to read:

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1           102.05 (1) An employer who has had no employe at any time within a  
2 continuous period of 2 years shall be deemed to have effected withdrawal, which  
3 shall be effective on the last day of such period. An employer who has not usually  
4 employed 3 employes and who has not paid wages of at least \$500 for employment  
5 in this state in any every calendar quarter in a calendar year may file a withdrawal  
6 notice with the department, which withdrawal shall take effect 30 days after the date  
7 of such filing or at such later date as is specified in the notice. If an employer who  
8 is subject to this chapter only because the employer elected to become subject to this  
9 chapter under sub. (2) cancels or terminates his or her contract for the insurance of  
10 compensation under this chapter, that employer is deemed to have effected  
11 withdrawal, which shall be effective on the day after the contract is canceled or  
12 terminated.

13           **SECTION 5.** 102.07 (7) (a) of the statutes is amended to read:

14           102.07 (7) (a) Every member of ~~any a~~ volunteer fire company or fire department  
15 organized under ch. 213 ~~or any, a~~ legally organized rescue squad ~~shall be deemed or~~  
16 a legally organized diving team is considered to be an employe of ~~such that~~ company,  
17 department ~~or, squad or team~~. Every ~~such~~ member of a company, department, squad  
18 or team described in this paragraph, while serving as an auxiliary police officer at  
19 an emergency, ~~shall also be deemed~~ is also considered to be an employe of ~~said that~~  
20 company, department ~~or, squad or team~~. If ~~such a~~ company, department ~~or, squad~~  
21 or team described in this paragraph has not insured its liability for compensation to  
22 its employes, the municipality or county within which ~~such that~~ company,  
23 department ~~or, squad or team~~ was organized shall be liable for ~~such that~~  
24 compensation.

25           **SECTION 6.** 102.07 (7) (b) of the statutes is amended to read:

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1           102.07 (7) (b) The department may issue an order under s. 102.31 (1) (b)  
2 permitting the county within which a volunteer fire company or fire department  
3 organized under ch. 213, a legally organized rescue squad ~~or~~, an ambulance service  
4 provider, as defined in s. 146.50 (1) (c), or a legally organized diving team is organized  
5 to assume full liability for the compensation provided under this chapter of all  
6 volunteer members of that company, department, squad ~~or~~, provider or team.

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

8           102.07 (**12m**) A student of a public school, as described in s. 115.01 (1), or a  
9 private school, as defined in s. 115.001 (3r), while he or she is engaged in performing  
10 services as part of a school work training, work experience or work study program,  
11 and who is not on the payroll of an employer that is providing the work training or  
12 work experience or who is not otherwise receiving compensation on which a worker's  
13 compensation carrier could assess premiums on that employer, is an employe of a  
14 school district or private school that elects under s. 102.077 to name the student as  
15 its employe. This subsection does not apply after December 31, 1999 2001.

16           **SECTION 8.** 102.077 (3) of the statutes is amended to read:

17           102.077 (**3**) This section does not apply after December 31, 1999 2001.

18           **SECTION 9.** 102.16 (2) (d) of the statutes is amended to read:

19           102.16 (**2**) (d) For fee disputes that are submitted to the department before  
20 July 1, ~~2000~~ 2002, the department shall analyze the information provided to the  
21 department under par. (c) according to the criteria provided in this paragraph to  
22 determine the reasonableness of the disputed fee. The department shall determine  
23 that a disputed fee is reasonable and order that the disputed fee be paid if that fee  
24 is at or below the mean fee for the health service procedure for which the disputed  
25 fee was charged, plus 1.5 standard deviations from that mean, as shown by data from

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1 a data base that is certified by the department under par. (h). The department shall  
2 determine that a disputed fee is unreasonable and order that a reasonable fee be paid  
3 if the disputed fee is above the mean fee for the health service procedure for which  
4 the disputed fee was charged, plus 1.5 standard deviations from that mean, as shown  
5 by data from a data base that is certified by the department under par. (h), unless  
6 the health service provider proves to the satisfaction of the department that a higher  
7 fee is justified because the service provided in the disputed case was more difficult  
8 or more complicated to provide than in the usual case.

9 **SECTION 10.** 102.18 (3) of the statutes is amended to read:

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

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1 findings or order in whole or in part, or direct the taking of additional evidence. This  
2 action shall be based on a review of the evidence submitted.

3 **SECTION 11.** 102.29 (8) of the statutes is amended to read:

4 102.29 (8) No student of a public school, as described in s. 115.01 (1), or a private  
5 school, as defined in s. 115.001 (3r), who is named under s. 102.077 as an employe  
6 of the school district or private school for purposes of this chapter and who makes a  
7 claim for compensation under this chapter may make a claim or maintain an action  
8 in tort against the employer that provided the work training or work experience from  
9 which the claim arose. This subsection does not apply to injuries occurring after  
10 December 31, 1999 2001.

11 **SECTION 12.** 102.475 (title) of the statutes is amended to read:

12 **102.475 (title) Death benefit; law enforcement and correctional**  
13 **officers, fire fighters, rescue squad members, diving team members,**  
14 **national or state guard members and emergency management personnel.**

15 **SECTION 13.** 102.475 (1) of the statutes is amended to read:

16 102.475 (1) SPECIAL BENEFIT. If the deceased employe is a law enforcement  
17 officer, correctional officer, fire fighter, rescue squad member, diving team member,  
18 national guard member or state defense force member on state active duty as  
19 described in s. 102.07 (9) or if a deceased person is an employe or volunteer  
20 performing emergency management activities under ch. 166 during a state of  
21 emergency or a circumstance described in s. 166.04, who sustained an accidental  
22 injury while performing services growing out of and incidental to that employment  
23 or volunteer activity so that benefits are payable under s. 102.46 or 102.47 (1), the  
24 department shall voucher and pay from the appropriation under s. 20.445 (1) (aa) a  
25 sum equal to 75% of the primary death benefit as of the date of death, but not less

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1 than \$50,000 to the persons wholly dependent upon the deceased. For purposes of  
2 this subsection, dependency shall be determined under ss. 102.49 and 102.51.

3 **SECTION 14.** 102.475 (8) (am) of the statutes is created to read:

4 102.475 (8) (am) “Diving team member” means a member of a legally organized  
5 diving team.

6 **SECTION 15.** 102.475 (8) (b) of the statutes is amended to read:

7 102.475 (8) (b) “Fire fighter” means any person employed by the state or any  
8 political subdivision as a member or officer of a fire department or a member of a  
9 volunteer department, including the state fire marshal and deputies ~~or a member of~~  
10 a legally organized rescue squad.

11 **SECTION 16.** 102.475 (8) (dm) of the statutes is created to read:

12 102.475 (8) (dm) “Rescue squad member” means a member of a legally  
13 organized rescue squad.

14 **SECTION 17.** 102.87 (9) of the statutes is amended to read:

15 102.87 (9) A department deputy or an officer who collects a forfeiture, penalty  
16 assessment, jail assessment, crime laboratories and drug law enforcement  
17 assessment, applicable insured uninsured employer assessment and costs under  
18 this section shall pay the money to the county treasurer within 20 days after its  
19 receipt. If the department deputy or officer fails to make timely payment, the county  
20 treasurer may collect the payment from the department deputy or officer by an action  
21 in the treasurer’s name of office and upon the official bond of the department deputy  
22 or officer, with interest at the rate of 12% per year from the time when it should have  
23 been paid.

24 **SECTION 18. Initial applicability.**

