



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 686**

February 10, 2006 – Offered by Representative MURSAU.

1     **AN ACT** *to amend* 20.445 (1) (ha), 102.125, 102.16 (1m) (a), 102.16 (1m) (b),  
2           102.16 (2) (a), 102.16 (2) (am), 102.16 (2) (b), 102.16 (2) (c), 102.16 (2) (e) 1.,  
3           102.16 (2) (f), 102.16 (2m) (a), 102.16 (2m) (am), 102.16 (2m) (b), 102.16 (2m) (c),  
4           102.16 (2m) (d), 102.16 (2m) (e), 102.17 (1) (g), 102.18 (1) (bg) 1., 102.18 (1) (bw),  
5           102.26 (3) (b) 3., 102.28 (2) (a), 102.28 (2) (b) (title), 102.28 (2) (c), 102.28 (2) (d),  
6           102.28 (7) (title), 102.28 (7) (a), 102.28 (7) (b), 102.33 (2) (b) (intro.), 102.33 (2)  
7           (b) 3., 102.75 (1), 102.75 (2) and 102.75 (4); and *to create* 20.445 (1) (sg), 25.17  
8           (1) (pd), 102.28 (2) (bm), 102.28 (9) and 102.28 (10) of the statutes; **relating to:**  
9           permitting certain employers engaged in the forestry industry to pool their  
10          worker’s compensation liabilities for purposes of operating as a self-insured  
11          group and granting rule-making authority.

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

Under current law, every employer that is subject to the worker’s compensation law must carry worker’s compensation insurance from an insurer that is authorized

to do business in this state (duty to insure), except that the Department of Workforce Development (DWD) may exempt an employer from the duty to insure if the employer shows that it is able to self-insure its worker's compensation liability and if the employer agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD.

Current law also establishes a self-insured employers liability fund, consisting of assessments paid into the fund by self-insured employers, that is used to pay the worker's compensation liability of current or former self-insured employers that are unable to pay that liability.

This substitute amendment permits two or more employers engaged in the forest industry, which is defined in the substitute amendment as the business of growing, harvesting, processing, or selling Christmas trees, firewood, maple syrup, or any other product derived from wood or wood fiber that is manufactured with woodworking equipment, that have combined assets of \$1,000,000 or more to enter into an agreement to pool their worker's compensation liabilities in order to obtain an exemption from the duty to insure, if those employers agree to assume joint and several liability for payment of those liabilities. Under the substitute amendment, DWD may exempt a group of such employers from their duty to insure if the group shows that it is able to self-insure its worker's compensation liability and if the group agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD. The substitute amendment also establishes a self-insured groups liability fund, consisting of assessments paid into the fund by self-insured groups, that is used to pay the worker's compensation liability of current or former self-insured groups that are unable to pay that liability.

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

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

2           20.445 (1) (ha) *Worker's compensation operations.* The amounts in the schedule  
3 for the administration of the worker's compensation program by the department. All  
4 moneys received under ss. 102.28 (2) (b) and (bm) and 102.75 for the department's  
5 activities and not appropriated under par. (hp) shall be credited to this  
6 appropriation. From this appropriation, an amount not to exceed \$5,000 may be  
7 expended each fiscal year for payment of expenses for travel and research by the  
8 council on worker's compensation.

9           **SECTION 2.** 20.445 (1) (sg) of the statutes is created to read:

1           20.445 (1) (sg) *Self-insured groups liability fund*. All moneys paid into the  
2 self-insured groups liability fund under s. 102.28 (10), to be used for the discharge  
3 of liability and claims service authorized under that subsection.

4           **SECTION 3.** 25.17 (1) (pd) of the statutes is created to read:

5           25.17 (1) (pd) Self-insured groups liability fund (s. 102.28 (10));

6           **SECTION 4.** 102.125 of the statutes is amended to read:

7           **102.125 Fraudulent claims reporting and investigation.** If an insurer ~~or~~,  
8 self-insured employer, or self-insured group has evidence that a claim is false or  
9 fraudulent in violation of s. 943.395 and if the insurer ~~or~~, self-insured employer, or  
10 self-insured group is satisfied that reporting the claim to the department will not  
11 impede its ability to defend the claim, the insurer ~~or~~, self-insured employer, or  
12 self-insured group shall report the claim to the department. The department may  
13 require an insurer ~~or~~, self-insured employer, or self-insured group to investigate an  
14 allegedly false or fraudulent claim and may provide the insurer ~~or~~, self-insured  
15 employer, or self-insured group with any records of the department relating to that  
16 claim. An insurer ~~or~~, self-insured employer, or self-insured group that investigates  
17 a claim under this section shall report on the results of that investigation to the  
18 department. If based on the investigation the department has a reasonable basis to  
19 believe that a violation of s. 943.395 has occurred, the department shall refer the  
20 results of the investigation to the district attorney of the county in which the alleged  
21 violation occurred for prosecution.

22           **SECTION 5.** 102.16 (1m) (a) of the statutes is amended to read:

23           102.16 (1m) (a) If an insurer ~~or~~, self-insured employer, or self-insured group  
24 concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the  
25 insurer ~~or~~, self-insured employer, or self-insured group is liable under this chapter

1 for any health services provided to an injured employee by a health service provider,  
2 but disputes the reasonableness of the fee charged by the health service provider, the  
3 department may include in its order confirming the compromise or stipulation a  
4 determination as to the reasonableness of the fee or the department may notify, or  
5 direct the insurer ~~or, self-insured employer, or self-insured group~~ to notify, the  
6 health service provider under sub. (2) (b) that the reasonableness of the fee is in  
7 dispute.

8 **SECTION 6.** 102.16 (1m) (b) of the statutes is amended to read:

9 102.16 **(1m)** (b) If an insurer ~~or, self-insured employer, or self-insured group~~  
10 concedes by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the  
11 insurer ~~or, self-insured employer, or self-insured group~~ is liable under this chapter  
12 for any treatment provided to an injured employee by a health service provider, but  
13 disputes the necessity of the treatment, the department may include in its order  
14 confirming the compromise or stipulation a determination as to the necessity of the  
15 treatment or the department may notify, or direct the insurer ~~or, self-insured~~  
16 ~~employer, or self-insured group~~ to notify, the health service provider under sub. (2m)  
17 (b) that the necessity of the treatment is in dispute.

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

19 102.16 **(2)** (a) Except as provided in this paragraph, the department has  
20 jurisdiction under this subsection, sub. (1m) (a), and s. 102.17 to resolve a dispute  
21 between a health service provider and an insurer ~~or, self-insured employer, or~~  
22 ~~self-insured group~~ over the reasonableness of a fee charged by the health service  
23 provider for health services provided to an injured employee who claims benefits  
24 under this chapter. A health service provider may not submit a fee dispute to the  
25 department under this subsection before all treatment by the health service provider

1 of the employee's injury has ended if the amount in controversy, whether based on  
2 a single charge or a combination of charges for one or more days of service, is less than  
3 \$25. After all treatment by a health service provider of an employee's injury has  
4 ended, the health service provider may submit any fee dispute to the department,  
5 regardless of the amount in controversy. The department shall deny payment of a  
6 health service fee that the department determines under this subsection, sub. (1m)  
7 (a), or s. 102.18 (1) (b) to be unreasonable.

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

9 102.16 (2) (am) A health service provider and an insurer ~~or~~, self-insured  
10 employer, or self-insured group that are parties to a fee dispute under this  
11 subsection are bound by the department's determination under this subsection on  
12 the reasonableness of the disputed fee, unless that determination is set aside on  
13 judicial review as provided in par. (f). A health service provider and an insurer ~~or~~,  
14 self-insured employer, or self-insured group that are parties to a fee dispute under  
15 sub. (1m) (a) are bound by the department's determination under sub. (1m) (a) on the  
16 reasonableness of the disputed fee, unless that determination is set aside or modified  
17 by the department under sub. (1). An insurer ~~or~~, self-insured employer, or  
18 self-insured group that is a party to a fee dispute under s. 102.17 and a health service  
19 provider are bound by the department's determination under s. 102.18 (1) (b) on the  
20 reasonableness of the disputed fee, unless that determination is set aside, reversed,  
21 or modified by the department under s. 102.18 (3) or by the commission under s.  
22 102.18 (3) or (4) or is set aside on judicial review under s. 102.23.

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

24 102.16 (2) (b) An insurer ~~or~~, self-insured employer, or self-insured group that  
25 disputes the reasonableness of a fee charged by a health service provider or the

1 department under sub. (1m) (a) or s. 102.18 (1) (bg) 1. shall provide reasonable notice  
2 to the health service provider that the fee is being disputed. After receiving  
3 reasonable notice under this paragraph or under sub. (1m) (a) or s. 102.18 (1) (bg) 1.  
4 that a health service fee is being disputed, a health service provider may not collect  
5 the disputed fee from, or bring an action for collection of the disputed fee against, the  
6 employee who received the services for which the fee was charged.

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

8 102.16 (2) (c) After a fee dispute is submitted to the department, the insurer  
9 ~~or, self-insured employer, or self-insured group~~ that is a party to the dispute shall  
10 provide to the department information on that fee and information on fees charged  
11 by other health service providers for comparable services. The insurer ~~or,~~  
12 ~~self-insured employer, or self-insured group~~ shall obtain the information on  
13 comparable fees from a database that is certified by the department under par. (h).  
14 Except as provided in par. (e) 1., if the insurer ~~or, self-insured employer, or~~  
15 ~~self-insured group~~ does not provide the information required under this paragraph,  
16 the department shall determine that the disputed fee is reasonable and order that  
17 it be paid. If the insurer ~~or, self-insured employer, or self-insured group~~ provides  
18 the information required under this paragraph, the department shall use that  
19 information to determine the reasonableness of the disputed fee.

20 **SECTION 11.** 102.16 (2) (e) 1. of the statutes is amended to read:

21 102.16 (2) (e) 1. Subject to subd. 2., if an insurer ~~or, self-insured employer, or~~  
22 ~~self-insured group~~ that disputes the reasonableness of a fee charged by a health  
23 service provider cannot provide information on fees charged by other health service  
24 providers for comparable services because the database to which the insurer ~~or,~~  
25 ~~self-insured employer, or self-insured group~~ subscribes is not able to provide

1 accurate information for the health service procedure at issue, the department may  
2 use any other information that the department considers to be reliable and relevant  
3 to the disputed fee to determine the reasonableness of the disputed fee.

4 **SECTION 12.** 102.16 (2) (f) of the statutes is amended to read:

5 102.16 (2) (f) Within 30 days after a determination under this subsection, the  
6 department may set aside, reverse, or modify the determination for any reason that  
7 the department considers sufficient. Within 60 days after a determination under  
8 this subsection, the department may set aside, reverse, or modify the determination  
9 on grounds of mistake. A health service provider, insurer, ~~or~~ self-insured employer,  
10 or self-insured group that is aggrieved by a determination of the department under  
11 this subsection may seek judicial review of that determination in the same manner  
12 that compensation claims are reviewed under s. 102.23.

13 **SECTION 13.** 102.16 (2m) (a) of the statutes is amended to read:

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

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

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

19 **SECTION 15.** 102.16 (2m) (b) of the statutes is amended to read:

20 102.16 (2m) (b) An insurer ~~or~~, self-insured employer, or self-insured group  
21 that disputes the necessity of treatment provided by a health service provider or the  
22 department under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable notice  
23 to the health service provider that the necessity of that treatment is being disputed.  
24 After receiving reasonable notice under this paragraph or under sub. (1m) (b) or s.  
25 102.18 (1) (bg) 2. that the necessity of treatment is being disputed, a health service



1 provider may not collect a fee for that disputed treatment from, or bring an action  
2 for collection of the fee for that disputed treatment against, the employee who  
3 received the treatment.

4 **SECTION 16.** 102.16 (2m) (c) of the statutes is amended to read:

5 102.16 **(2m)** (c) Before determining under this subsection the necessity of  
6 treatment provided for an injured employee who claims benefits under this chapter,  
7 the department shall obtain a written opinion on the necessity of the treatment in  
8 dispute from an expert selected by the department. Before determining under sub.  
9 (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured  
10 employee who claims benefits under this chapter, the department may, but is not  
11 required to, obtain such an expert opinion. To qualify as an expert, a person must  
12 be licensed to practice the same health care profession as the individual health  
13 service provider whose treatment is under review and must either be performing  
14 services for an impartial health care services review organization or be a member of  
15 an independent panel of experts established by the department under par. (f). The  
16 department shall adopt the written opinion of the expert as the department's  
17 determination on the issues covered in the written opinion, unless the health service  
18 provider or the insurer ~~or~~ self-insured employer present, or self-insured group  
19 presents clear and convincing written evidence that the expert's opinion is in error.

20 **SECTION 17.** 102.16 (2m) (d) of the statutes is amended to read:

21 102.16 **(2m)** (d) The department may charge a party to a dispute over the  
22 necessity of treatment provided for an injured employee who claims benefits under  
23 this chapter for the full cost of obtaining the written opinion of the expert under par.  
24 (c). The department shall charge the insurer ~~or~~ self-insured employer, or  
25 self-insured group for the full cost of obtaining the written opinion of the expert for

1 the first dispute that a particular individual health service provider is involved in,  
2 unless the department determines that the individual health service provider's  
3 position in the dispute is frivolous or based on fraudulent representations. In a  
4 subsequent dispute involving the same individual health service provider, the  
5 department shall charge the losing party to the dispute for the full cost of obtaining  
6 the written opinion of the expert.

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

8 102.16 **(2m)** (e) Within 30 days after a determination under this subsection, the  
9 department may set aside, reverse, or modify the determination for any reason that  
10 the department considers sufficient. Within 60 days after a determination under  
11 this subsection, the department may set aside, reverse, or modify the determination  
12 on grounds of mistake. A health service provider, insurer, ~~or~~ self-insured employer,  
13 or self-insured group that is aggrieved by a determination of the department under  
14 this subsection may seek judicial review of that determination in the same manner  
15 that compensation claims are reviewed under s. 102.23.

16 **SECTION 19.** 102.17 (1) (g) of the statutes is amended to read:

17 102.17 **(1)** (g) Whenever the testimony presented at any hearing indicates a  
18 dispute or creates a doubt as to the extent or cause of disability or death, the  
19 department may direct that the injured employee be examined, that an autopsy be  
20 performed, or that an opinion be obtained without examination or autopsy, by or from  
21 an impartial, competent physician, chiropractor, dentist, psychologist, or podiatrist  
22 designated by the department who is not under contract with or regularly employed  
23 by a compensation insurance carrier ~~or~~, self-insured employer, or self-insured  
24 group. The expense of the examination, autopsy, or opinion shall be paid by the  
25 employer or, if the employee claims compensation under s. 102.81, from the

1 uninsured employers fund. The report of the examination, autopsy, or opinion shall  
2 be transmitted in writing to the department and a copy of the report shall be  
3 furnished by the department to each party, who shall have an opportunity to rebut  
4 such report on further hearing.

5 **SECTION 20.** 102.18 (1) (bg) 1. of the statutes is amended to read:

6 102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer ~~or,~~  
7 self-insured employer, or self-insured group is liable under this chapter for any  
8 health services provided to an injured employee by a health service provider, but that  
9 the reasonableness of the fee charged by the health service provider is in dispute, the  
10 department may include in its order under par. (b) a determination as to the  
11 reasonableness of the fee or the department may notify, or direct the insurer ~~or,~~  
12 self-insured employer, or self-insured group to notify, the health service provider  
13 under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute.

14 **SECTION 21.** 102.18 (1) (bw) of the statutes is amended to read:

15 102.18 (1) (bw) If an insurer, a self-insured employer, self-insured group, or,  
16 if applicable, the uninsured employers fund pays compensation to an employee in  
17 excess of its liability and another insurer is liable for all or part of the excess  
18 payment, the department may order the insurer ~~or,~~ self-insured employer, or  
19 self-insured group that is liable to reimburse the insurer ~~or,~~ self-insured employer,  
20 or self-insured group that made the excess payment or, if applicable, the uninsured  
21 employers fund.

22 **SECTION 22.** 102.26 (3) (b) 3. of the statutes is amended to read:

23 102.26 (3) (b) 3. The claimant may request the insurer ~~or,~~ self-insured  
24 employer, or self-insured group to pay any compensation that is due the claimant by  
25 depositing the payment directly into an account maintained by the claimant at a

1 financial institution. If the insurer ~~or~~, self-insured employer, or self-insured group  
2 agrees to the request, the insurer ~~or~~, self-insured employer, or self-insured group  
3 may deposit the payment by direct deposit, electronic funds transfer, or any other  
4 money transfer technique approved by the department. The claimant may revoke  
5 a request under this subdivision at any time by providing appropriate written notice  
6 to the insurer ~~or~~, self-insured employer, or self-insured group.

7 **SECTION 23.** 102.28 (2) (a) of the statutes is amended to read:

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

18 **SECTION 24.** 102.28 (2) (b) (title) of the statutes is amended to read:

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

20 **SECTION 25.** 102.28 (2) (bm) of the statutes is created to read:

21 102.28 (2) (bm) *Exemption from duty to insure; self-insured groups.* 1. In this  
22 paragraph:

23 a. “Forest industry” means the business of growing, harvesting, processing, or  
24 selling forest products, except that “forest industry” includes the business of selling  
25 forest products at the retail level only if the retailer receives more than 80 percent

1 of its income from the growing, harvesting, processing, or wholesale sale of forest  
2 products. "Forest industry" also includes the business of supplying or servicing a  
3 business engaged in the growing, harvesting, processing, or selling of forest  
4 products, if the person engaged in that supplying or servicing receives more than 80  
5 percent of its income from businesses engaged in the growing, harvesting,  
6 processing, or selling of forest products.

7 b. "Forest product" includes Christmas trees, firewood, maple syrup, and any  
8 other product derived from wood or wood fiber that is manufactured with  
9 woodworking equipment, such as saws, planers, drills, chippers, lumber dry kilns,  
10 sanders, glue presses, nailers, notchers, shapers, lathes, molders, and other similar  
11 finishing equipment.

12 2. The department, under rules promulgated by the department, may permit  
13 2 or more employers engaged in the forest industry that have combined assets of  
14 \$1,000,000 or more to enter into an agreement to pool their liabilities under this  
15 chapter for the purpose of obtaining an exemption from the duty under par. (a) to  
16 insure payment of those liabilities, if those employers agree to assume joint and  
17 several liability for the payment of those liabilities.

18 3. The department may grant a written order of exemption to a group of  
19 employers described in subd. 2. that shows its financial ability to pay the amount of  
20 compensation, agrees to report faithfully all compensable injuries, and agrees to  
21 comply with this chapter and the rules of the department. The department may  
22 condition the granting of an exemption upon the group's furnishing of satisfactory  
23 security to guarantee payment of all claims under compensation. The department  
24 may require that bonds or other personal guarantees be enforceable against sureties  
25 in the same manner as an award may be enforced. The department may from time

1 to time require proof of financial ability of the self-insured group to pay  
2 compensation. Any exemption shall be void if the application for it contains a  
3 financial statement that is false in any material respect. An employer that is a  
4 member of a group that files an application containing a false financial statement  
5 remains subject to par. (a). The department may promulgate rules establishing an  
6 amount to be charged to an initial applicant for exemption under this subdivision  
7 and an annual amount to be charged to self-insured groups that have been exempted  
8 under this subdivision.

9 **SECTION 26.** 102.28 (2) (c) of the statutes is amended to read:

10 102.28 (2) (c) *Revocation of exemption.* The department, after seeking the  
11 advice of the self-insurers council, may revoke an exemption granted to ~~an a~~  
12 self-insured employer under par. (b) or to a self-insured group under par. (bm) 3.,  
13 upon giving the self-insured employer or self-insured group 10 days' written notice,  
14 if the department finds that the employer's financial condition of the self-insured  
15 employer or self-insured group is inadequate to pay its employees' claims for  
16 compensation, that the self-insured employer or self-insured group has received an  
17 excessive number of claims for compensation, or that the self-insured employer or  
18 self-insured group has failed to discharge faithfully its obligations according to the  
19 agreement contained in the application for exemption. The self-insured employer  
20 or self-insured group may, within 10 days after receipt of the notice of revocation,  
21 request in writing a review of the revocation by the secretary or the secretary's  
22 designee and the secretary or the secretary's designee shall review the revocation  
23 within 30 days after receipt of the request for review. If the self-insured employer  
24 or self-insured group is aggrieved by the determination of the secretary or the  
25 secretary's designee, the self-insured employer or self-insured group may, within 10

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

9 **SECTION 27.** 102.28 (2) (d) of the statutes is amended to read:

10 102.28 (2) (d) *Effect of insuring with unauthorized insurer.* An A self-insured  
11 employer who or self-insured group that procures an exemption under par. (b) or  
12 (bm) 3. and thereafter enters into any agreement for excess insurance coverage with  
13 an insurer not authorized to do business in this state shall report that agreement to  
14 the department immediately. The placing of such coverage shall not by itself be  
15 grounds for revocation of the exemption.

16 **SECTION 28.** 102.28 (7) (title) of the statutes is amended to read:

17 102.28 (7) (title) **INSOLVENT SELF-INSURED EMPLOYERS; ASSESSMENTS.**

18 **SECTION 29.** 102.28 (7) (a) of the statutes is amended to read:

19 102.28 (7) (a) If an employer who is currently or was formerly exempted by  
20 written order of the department under sub. (2) (b) is unable to pay an award,  
21 judgment is rendered in accordance with s. 102.20 against that employer, and  
22 execution is levied and returned unsatisfied in whole or in part, payments for the  
23 employer's liability shall be made from the fund established under sub. (8). If a  
24 currently or formerly exempted employer files for bankruptcy and not less than 60  
25 days after that filing the department has reason to believe that compensation

1 payments due are not being paid, the department in its discretion may make  
2 payment for the employer's liability from the fund established under sub. (8). The  
3 secretary of administration shall proceed to recover such those payments from the  
4 employer or the employer's receiver or trustee in bankruptcy, and may commence an  
5 action or proceeding or file a claim ~~therefor~~ for those payments. The attorney general  
6 shall appear on behalf of the secretary of administration in any such action or  
7 proceeding. All moneys recovered in any such action or proceeding shall be paid into  
8 the fund established under sub. (8).

9 **SECTION 30.** 102.28 (7) (b) of the statutes is amended to read:

10 102.28 (7) (b) Each self-insured employer that is exempted by written order  
11 of the department under sub. (2) (b) shall pay into the fund established by sub. (8)  
12 a sum equal to that assessed against each of the other such exempt self-insured  
13 employers upon the issuance of an initial order. The order shall provide for a sum  
14 sufficient to secure estimated payments of the insolvent exempt self-insured  
15 employer due for the period up to the date of the order and for one year following the  
16 date of the order and to pay the estimated cost of insurance carrier or insurance  
17 service organization services under par. (c). Payments ordered to be made to the fund  
18 shall be paid to the department within 30 days. If additional moneys are required,  
19 further assessments shall be made based on orders of the department with  
20 assessment prorated on the basis of the gross payroll for this state of the exempt  
21 self-insured employer, reported to the department for the previous calendar year for  
22 unemployment insurance purposes under ch. 108. If the exempt self-insured  
23 employer is not covered under ch. 108, then the department shall determine the  
24 comparable gross payroll for the exempt self-insured employer. If payment of any  
25 assessment made under this subsection is not made within 30 days of the order of



1 the department, the attorney general may appear on behalf of the state to collect the  
2 assessment.

3 **SECTION 31.** 102.28 (9) of the statutes is created to read:

4 102.28 (9) INSOLVENT SELF-INSURED GROUPS; ASSESSMENTS. (a) If a group of  
5 employers that is or was exempted by written order of the department under sub. (2)  
6 (bm) 3. is unable to pay an award, judgment is rendered in accordance with s. 102.20  
7 against that group, and execution is levied and returned unsatisfied in whole or in  
8 part, payments for the group's liability shall be made from the fund established  
9 under sub. (10). If a currently or formerly exempted group of employers files for  
10 bankruptcy and not less than 60 days after that filing the department has reason to  
11 believe that compensation payments due are not being paid, the department in its  
12 discretion may make payment for the group's liability from the fund established  
13 under sub. (10). The secretary of administration shall proceed to recover those  
14 payments from the group, the members of the group, or the group's receiver or trustee  
15 in bankruptcy, and may commence an action or proceeding or file a claim for those  
16 payments. The attorney general shall appear on behalf of the secretary of  
17 administration in any such action or proceeding. All moneys recovered in any such  
18 action or proceeding shall be paid into the fund established under sub. (10).

19 (b) Each self-insured group that is exempted by written order of the  
20 department under sub. (2) (bm) 3. shall pay into the fund established under sub. (10)  
21 a sum equal to that assessed against each of the other such exempt self-insured  
22 groups upon the issuance of an initial order. The order shall provide for a sum  
23 sufficient to secure estimated payments of the insolvent exempt self-insured group  
24 due for the period up to the date of the order and for one year following the date of  
25 the order and to pay the estimated cost of insurance carrier or insurance service

1 organization services under par. (c). Payments ordered to be made to the fund shall  
2 be paid to the department within 30 days. If additional moneys are required, further  
3 assessments shall be made based on orders of the department with assessment  
4 prorated on the basis of the gross payroll for this state of each employer that is a  
5 member of the exempt self-insured group, reported to the department for the  
6 previous calendar year for unemployment insurance purposes under ch. 108. If an  
7 employer that is a member of the exempt self-insured is not covered under ch. 108,  
8 then the department shall determine the comparable gross payroll for the employer.  
9 If payment of any assessment made under this subsection is not made within 30 days  
10 of the order of the department, the attorney general may appear on behalf of the state  
11 to collect the assessment.

12 (c) The department may retain an insurance carrier or insurance service  
13 organization to process, investigate, and pay valid claims. The charge for such  
14 service shall be paid from the fund as provided under par. (b).

15 **SECTION 32.** 102.28 (10) of the statutes is created to read:

16 102.28 (10) SELF-INSURED GROUPS LIABILITY FUND. The moneys paid into the  
17 state treasury under sub. (9), together with all accrued interest, shall constitute the  
18 “self-insured groups liability fund.”

19 **SECTION 33.** 102.33 (2) (b) (intro.) of the statutes is amended to read:

20 102.33 (2) (b) (intro.) Notwithstanding par. (a), a record maintained by the  
21 department that reveals the identity of an employee who claims worker’s  
22 compensation benefits, the nature of the employee’s claimed injury, the employee’s  
23 past or present medical condition, the extent of the employee’s disability, the amount,  
24 type or duration of benefits paid to the employee or any financial information  
25 provided to the department by a self-insured employer or self-insured group or by

1 an applicant for exemption under s. 102.28 (2) (b) or (bm) 3. is confidential and not  
2 open to public inspection or copying under s. 19.35 (1). The department may deny  
3 a request made under s. 19.35 (1) or, subject to s. 102.17 (2m) and (2s), refuse to honor  
4 a subpoena issued by an attorney of record in a civil or criminal action or special  
5 proceeding to inspect and copy a record that is confidential under this paragraph,  
6 unless one of the following applies:

7 **SECTION 34.** 102.33 (2) (b) 3. of the statutes is amended to read:

8 102.33 (2) (b) 3. The record that is requested contains financial information  
9 provided by a self-insured employer or self-insured group or by an applicant for  
10 exemption under s. 102.28 (2) (b) or (bm) 3. and the requester is the self-insured  
11 employer or self-insured group or applicant for exemption or an attorney or  
12 authorized agent of the self-insured employer, self-insured group, or applicant for  
13 exemption. An attorney or authorized agent of the self-insured employer or  
14 self-insured group or of the applicant for exemption shall provide a written  
15 authorization for inspection and copying from the self-insured employer or  
16 self-insured group or applicant for exemption if requested by the department.

17 **SECTION 35.** 102.75 (1) of the statutes is amended to read:

18 102.75 (1) The department shall assess upon and collect from each licensed  
19 worker's compensation insurance carrier ~~and,~~ from each self-insured employer  
20 exempted under s. 102.28 (2) (b) by special order or by rule, and from each  
21 self-insured group exempted under s. 102.28 (2) (bm) 3. by special rule or order, the  
22 proportion of total costs and expenses incurred by the council on worker's  
23 compensation for travel and research and by the department and the commission in  
24 the administration of this chapter for the current fiscal year, plus any deficiencies  
25 in collections and anticipated costs from the previous fiscal year, that the total

1 indemnity paid or payable under this chapter by each such carrier ~~and, exempt~~  
2 self-insured employer, and exempt self-insured group in worker's compensation  
3 cases initially closed during the preceding calendar year, other than for increased,  
4 double, or treble compensation, bore to the total indemnity paid in cases closed the  
5 previous calendar year under this chapter by all carriers ~~and, exempt employer~~  
6 self-insured employers, and exempt self-insured groups other than for increased,  
7 double, or treble compensation. The council on worker's compensation and the  
8 commission shall annually certify any costs and expenses for worker's compensation  
9 activities to the department at such time as the secretary requires.

10 **SECTION 36.** 102.75 (2) of the statutes is amended to read:

11 102.75 (2) The department shall require that payments for costs and expenses  
12 for each fiscal year shall be made on such dates as the department prescribes by each  
13 licensed worker's compensation insurance carrier ~~and, by each self-insured~~  
14 employer exempted under s. 102.28 (2) (b), and by each self-insured group exempted  
15 under s. 102.28 (2) (bm) 3. Each such payment shall be a sum equal to a proportionate  
16 share of the annual costs and expenses assessed upon each carrier ~~and, self-insured~~  
17 employer, and self-insured group as estimated by the department.

18 **SECTION 37.** 102.75 (4) of the statutes is amended to read:

19 102.75 (4) From the appropriation under s. 20.445 (1) (ha), the department  
20 shall allocate the amounts that it collects in application fees from employers  
21 applying for exemption under s. 102.28 (2) (b) and from groups of employers applying  
22 for exemption under s. 102.28 (2) (bm) 3. and the annual amount that it collects from  
23 self-insured employers that have been exempted under s. 102.28 (2) (b) and from

1 self-insured groups that have been exempted under s. 102.28 (2) (bm) 3. to fund the  
2 activities of the department under s. 102.28 (2) (b), (bm), and (c).

3 (END)