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Tony Evers, Governor
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Senate Committee on Labor and Regulatory Reform
Tuesday, February 8, 2022
10:00 AM
State Capitol, 300 Southeast

Testimony of Department of Workforce Development's Worker's Compensation Division Administrator and Worker's Compensation Advisory Council Chair Steven Peters.

Thank you, Chair Nass, Vice-Chair Wanggaard, and Committee Members, for having me here today to provide testimony on Senate Bills 896 and 898. I am Steven Peters, Division Administrator in the Department of Workforce Development's (DWD) Worker's Compensation Division. I also serve as the Chair of the Worker's Compensation Advisory Council. On behalf of the Council, I would like to thank you for hearing the Council's agreed-upon bills.

Wisconsin's Worker's Compensation system is over 110 years old and was the first constitutionally valid worker's compensation system in the nation, enshrining the grand compromise between management and labor that ensures support for workers injured on the job while protecting employers from further liability as long as they are insured.

Since 1968, the Wisconsin Worker's Compensation Advisory Council (WCAC) has advised state government on how to best support and strengthen the state's worker's compensation system, which has served as a national model for stability and effectiveness. The WCAC is made up of equal numbers of labor and management with members from the insurance industry joining in an advisory role.

The legislation before you, SB 896 and SB 898, are the product of input from stakeholders representing all facets of the worker's compensation community, management, labor, insurers, medical professionals, attorneys, and DWD. The Council also received feedback from a biennial public hearing held in December 2020. After months of negotiations, the WCAC voted unanimously on December 13, 2021 to advance these agreed-upon bills proposing changes to Wisconsin's worker's compensation laws.

Enclosed with DWD's written testimony, I have provided for you a summary of the provisions in the bills. Thank you again opportunity to testify today and for your time and consideration. I am happy to answer any questions from the committee.

Summary of the Worker's Compensation Advisory Council Bills, SB 896 and SB 898

The Worker's Compensation Advisory Council approved the provisions in SB 896 and SB 898 for revisions to Wisconsin's worker's compensation (WC) system. The following is a summary of the statutory changes proposed in the bills:

SB 896 – Related to change to the position authority for the Department of Workforce Development and making an appropriation:

1. This bill authorizes the Worker's Compensation Division to increase FTE positions by 0.2 with the necessary budget appropriation. The Division currently possesses a 0.8 position in its administrative services section, which is difficult to fill. The Division would use the 0.2 FTE position authority as proposed in the bill and the existing 0.8 FTE position authority to hire a 1.0 FTE to do vital document production, human resources, financial, and other administrative duties.

SB 898 – Related to various changes to the worker's compensation law and granting rule-making authority:

1. The maximum weekly rates for permanent partial disability (PPD) will be increased to \$415 for injuries occurring in 2022 and to \$430 for injuries occurring in 2023.
2. There will no longer be wage expansion for employees who restrict employment to part-time. The average weekly wage will be calculated as the greater of the hourly rate on the date of injury times the number of hours the employee was scheduled to work in the week, or the gross earnings from the employer in the 52 weeks preceding the injury divided by the number of weeks actually worked during the preceding year. The wage will be expanded only when the employee is employed elsewhere, or if the employee was employed less than 12 months before being injured. Wage expansion may be rebutted when there is evidence to show an employee chose to restrict employment to part-time.
3. Provide clarification that individuals who provide services to elderly and disabled people under long-term care programs are considered employees of the entities providing fiscal management services (fiscal agents) for those persons for worker's compensation purposes.
4. The definition of "employer" is amended to clarify that every person who at any time employs three or more employees in Wisconsin is subject to the Wisconsin Worker's Compensation Act on the day on which the person employs three or more employees in this state.
5. Farmers will have the same statutory authority to withdraw from subjectivity to Wis. Stats. Chapter 102 as other employers who had no employee in the previous two years.
6. Employees who appear at examinations directed by employers and WC insurers will be authorized to have an observer present at the examination.
7. WC will be provided with statutory authority to promulgate administrative rules that are necessary to carry out its duties and functions.
8. WC will be provided statutory authority to conduct alternative dispute resolution activities to resolve disputed worker's compensation cases.

9. The license to appear process for non-attorney advocates will be transferred to the Department of Administration-Division of Hearings and Appeals.
10. WC will be authorized to provide limited worker's compensation information from records to the Department of Health Services or a county department of social services. The information will be limited to the name and address of an employee, name and address of the employee's employer, and any financial information about the employee in the record.
11. The Uninsured Employer Fund will receive the same distribution of proceeds from third-party settlements as WC insurers and self-insured employers.



TO: Members, Senate Committee on Labor and Regulatory Reform

FROM: Rachel Ver Velde, Director of Workforce, Education and Employment Policy

RE: Worker's Compensation Reform Bills – SB 896 & SB 898

DATE: February 8, 2022

Wisconsin Manufacturers and Commerce (WMC) **supports** the adoption of the Worker's Compensation Reform Bills – Senate Bill 896 and Senate Bill 898.

These bills are the product of lengthy discussion, analysis and negotiation by the Worker's Compensation Advisory Council. The Council, which is composed of five labor and five management representatives, was created when the original worker's compensation law was enacted in 1911. The concept was to have the main parties at interest negotiate any changes in the law in an effort to avoid wide swings in policy that might result if one side or the other had a political advantage.

This is consistent with the original bargain of worker's compensation where workers gave up the right to sue their employer over work related injuries in exchange for a no-fault system of benefits.

The proposals before you represent a modest set of reforms designed to address a couple of the most important issues along with a handful of technical corrections. Specifically, the bills would:

- Increase the authorized FTE positions for the department by 0.2 SEG;
- Increase the cap on the maximum amount of weekly permanent partial disability benefits a claimant may receive;
- Curtail most instances of wage expansion where a part time employee's wages are increased to full time for the purposes of calculating benefits;
- Allow an observer to be present during an employer requested medical exam;
- Harmonize the treatment of third-party claims between cases involving a fully insured employer with those involving an uninsured employer;
- Clarify the circumstances under which an employer becomes subject to the worker's compensation law and when farm employers are deemed to have withdrawn from coverage;