

1975 Spec. Sess.  
Senate Bill 2

Date published: December 29, 1975

## CHAPTER 147, Laws of 1975

AN ACT to repeal 20.445 (7) (q) and (r), 25.17 (1) (d) and (i), 102.01 (2) (a), (g) and (h), 102.08, 102.49 (5) (e), (6) and (8) and 102.59 (4); to renumber 102.01 (2) (b) to (e) and (i), 102.49 (7) and 102.555 (6) and (8); to renumber and amend 102.555 (4) (e), (5) and (7); to amend 102.13 (title) and (1), 102.16 (2) and (3), 102.17 (1) (as), (b) and (c) and (4), 102.24 (1), 102.29 (1) to (3), 102.30 (3), 102.31 (1) (a), 102.42 (1), (2), (3), (4), (6) and (8), 102.43 (intro.) and (5), 102.44 (3) (intro.), 102.48 (3), 102.49 (5) (b) and (c), 102.51 (6), 102.52 (intro.) and (4) to (7), 102.555 (4) (c) and (d), 102.59 (2), 102.61 (3) and 102.64 (1); to repeal and recreate 102.11 (1) (intro.), 102.18 (2), 102.42 (10), 102.43 (1) and 102.59 (3); and to create 20.445 (7) (s) and (t), 25.17 (1) (p) and (z), 102.03 (5), 102.28 (7) and (8), 102.35 (3), 102.49 (7), 102.65 and 102.66 of the statutes, relating to various changes in the worker's compensation law and making appropriations.

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

SECTION 1. 20.445 (7) (q) and (r) of the statutes are repealed.

SECTION 2. 20.445 (7) (s) and (t) of the statutes are created to read:

20.445 (7) (s) *Self-insured employers liability fund.* All moneys paid into the self-insured employers liability fund under s. 102.28 (7), to be used for the discharge of liability and claims service authorized under such subsection.

(t) *Work injury supplemental benefit fund.* All moneys paid into the work injury supplemental benefit fund under ss. 102.49 and 102.59, to be used for the discharge of liabilities payable under ss. 102.44 (1), 102.49, 102.59, 102.63 and 102.66.

SECTION 3. 25.17 (1) (d) of the statutes is repealed.

SECTION 4. 25.17 (1) (i) of the statutes is repealed.

SECTION 5. 25.17 (1) (p) of the statutes is created to read:

25.17 (1) (p) Self-insured employers liability fund [s. 102.28 (8)];

SECTION 6. 25.17 (1) (z) of the statutes is created to read:

25.17 (1) (z) Work injury supplemental benefit fund (s. 102.65);

SECTION 7. 102.01 (2) (a) of the statutes is repealed.

SECTION 8. 102.01 (2) (b) of the statutes is renumbered 101.02 (2) (a).

SECTION 9. 102.01 (2) (c) of the statutes is renumbered 101.02 (2) (e).

SECTION 10. 102.01 (2) (d) of the statutes is renumbered 101.02 (2) (c).

SECTION 11. 102.01 (2) (e) of the statutes is renumbered 101.02 (2) (d).

SECTION 12. 102.01 (2) (g) and (h) of the statutes are repealed.

SECTION 13. 102.01 (2) (i) of the statutes is renumbered 101.02 (2) (b).

SECTION 15. 102.03 (5) of the statutes is created to read:

102.03 (5) If an employe, while working outside the territorial limits of this state, suffers an injury on account of which the employe, or in the event of the employe's death, his or her dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employe, or in the event of the employe's death resulting from such injury, the dependents of the employe, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following applies:

(a) His or her employment is principally localized in this state.

(b) He or she is working under a contract of hire made in this state in employment not principally localized in any state.

(c) He or she is working under a contract made in this state in employment principally localized in another state whose worker's compensation law is not applicable to that person's employer.

(d) He or she is working under a contract of hire made in this state for employment outside the United States.

SECTION 16. 102.08 of the statutes is repealed.

SECTION 17. 102.11 (1) (intro.) of the statutes is repealed and recreated to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability or death benefits for injury on or after January 1, 1976, shall be taken at not less than \$30 nor more than such wage rate as will result in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30, 1975. The maximum weekly compensation rate after December 31, 1976, is 100% of the average weekly earnings determined as of June 30, 1976. The average weekly earnings for permanent partial disability for injuries after January 1, 1976, shall be taken at not less than \$30 nor more than

\$85.50, resulting in a weekly maximum compensation rate of \$57. Between such limits the average weekly earnings shall be determined as follows:

SECTION 18. 102.13 (title) and (1) of the statutes are amended to read:

**102.13 (title) Examination by physician, chiropractor or podiatrist; competent witnesses; exclusion of evidence; autopsy.** (1) Whenever compensation is claimed by an employe, ~~he~~ the employe shall, upon the written request of ~~his~~ the employe's employer, submit to reasonable examination by a physician, chiropractor or podiatrist, provided and paid for by the employer, and shall submit to examination by any physician, chiropractor or podiatrist selected by the commission, ~~or a commissioner~~ or an examiner. The employe shall be entitled to have a physician, chiropractor or podiatrist, provided by himself or herself, present at any such examination. ~~The examination and testimony of a podiatrist shall be accepted in regard to any matter in which he is competent to practice under s. 448.10 (1).~~ So long as the employe, after such written request of the employer, refuses to submit to such examination, or in any way obstructs the same, ~~his~~ the employe's right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if ~~he~~ the employe refuses to submit to such examination after direction by the commission, ~~or a commissioner~~ or an examiner, or in any way obstructs ~~the same~~, his such examination, the employe's right to the weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction, shall be barred. Any physician, chiropractor or podiatrist who is present at any such examination may be required to testify as to the results thereof. Any physician, chiropractor or podiatrist having attended an employe may be required to testify before the department when it so directs. Notwithstanding any other statutory provisions, any physician, chiropractor or podiatrist attending a ~~workmen's~~ worker's compensation claimant may furnish to the employe, employer, ~~workmen's~~ worker's compensation insurance carrier, or the department information and reports relative to a compensation claim. The testimony of any physician ~~or surgeon~~, chiropractor or podiatrist, who is licensed to practice where he or she resides or practices outside the state, may be received in evidence in compensation proceedings.

SECTION 19. 102.16 (2) and (3) of the statutes are amended to read:

102.16 (2) The department ~~shall have~~ has jurisdiction to pass upon the reasonableness of medical and hospital health service bills in all cases of dispute where compensation is paid, in the same manner and to the same effect as it passes upon compensation.

(3) No employer subject to ~~the provisions of~~ this chapter ~~shall~~ may solicit, receive or collect any money from his or her employes or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under ~~the provisions of this chapter~~; nor ~~shall~~ may any such employer sell to an employe, or solicit or require ~~him~~ the employe to purchase, medical, chiropractic, podiatric or hospital tickets or contracts for medical, surgical, or hospital treatment which is required to be furnished by such employer.

SECTION 20. 102.17 (1) (as), (b) and (c) and (4) of the statutes are amended to read:

102.17 (1) (as) The contents of verified medical and surgical reports, by physicians, podiatrists ~~and~~ surgeons and chiropractors licensed in and practicing in ~~Wisconsin this state~~, presented by claimants a party for compensation shall constitute prima facie evidence as to the matter contained therein, subject to such rules and limitations as the department prescribes. Verified reports of physicians, podiatrists ~~and~~ surgeons and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, if such ~~doctor~~ practitioner consents to subject himself or herself to cross-examination shall also constitute prima facie evidence as to the matter

contained therein and verified reports by doctors of dentistry shall be admissible as evidence of the diagnosis and necessity for treatment but not of disability. Physicians, podiatrists ~~and~~, surgeons, dentists and chiropractors licensed in and practicing in this state may certify instead of verify such reports, and such certification shall be equivalent to verification; and any physician, podiatrist ~~or~~, surgeon, dentist or chiropractor who knowingly makes a false statement of fact or opinion in such certified report may be fined or imprisoned, or both, under s. 943.395. The record of a hospital or sanatorium in this state operated by any department, or agency, or municipality of the federal or state government or by any municipality, or of any other hospital or sanatorium in this state which is satisfactory to the department, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist or surgeon, to be such record of the patient in question, and made in the regular course of examination or treatment of such patient, shall constitute prima facie evidence in any ~~workmen's~~ worker's compensation proceeding as to the matter contained therein, insofar as it is otherwise competent and relevant.

(b) The department may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be ~~had~~ made, or the time books and payrolls of the employer to be examined by any commissioner or examiner, and may direct any employe claiming compensation to be examined by a ~~regular~~ physician, chiropractor or podiatrist; the testimony so taken, and the results of any such inspection or examination, to be reported to the department for its consideration upon final hearing. All ex parte testimony taken by the department shall be reduced to writing and either party shall have opportunity to rebut ~~the same~~ such testimony on final hearing.

(c) Whenever the testimony presented at any hearing indicates a dispute, or is such as to create doubt, as to the extent or cause of disability or death, the department may direct that the injured employe be examined or autopsy be performed, or an opinion of a physician, chiropractor or podiatrist be obtained without examination or autopsy, by an impartial, competent physician, chiropractor or podiatrist designated by the department who is not under contract with or regularly employed by a compensation insurance carrier or self-insured employer. The expense of such examination shall be paid by the employer. The report of such examination shall be transmitted in writing to the department and a copy thereof shall be furnished by the department to each party, who shall have an opportunity to rebut ~~the same~~ such report on further hearing.

(4) The right of an employe, ~~his~~ the employe's legal representative or dependent to proceed under this section shall not extend beyond 6 years from the date of the injury or death or from the date that compensation ~~(, other than medical treatment or burial expenses),~~ was last paid, or would have been last payable if no advancement were made, whichever date is latest, ~~except that in~~. In case of injury or death caused by lung disease or by exposure to a toxic substance or to ionized radiation the time limit shall be 12 years and that in case of injury or death caused by exposure to ionized radiation the right to proceed hereunder shall be subject to no time limitations but in the case of occupational disease there shall be no statute of limitations, except that benefits or treatment expense becoming due after the 6-year period set forth in this subsection or 12 years from the date of injury or death or last payment of compensation in cases of lung disease or exposure to a toxic substance or ionized radiation, shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66. Payment of wage ~~wages~~ by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section ~~provided if~~ the employer knew of the employe's condition and its alleged relation to the employment.

SECTION 21. 102.18 (2) of the statutes is repealed and recreated to read:

102.18 (2) The department shall have and maintain on its staff such examiners as are necessary to hear and decide disputed claims and to assist in the effective administration of the worker's compensation act. Such examiners may make findings and orders, and approve, review, set aside, modify or confirm stipulations of settlement or compromises of claims for compensation. Any party who is dissatisfied with the findings and order of an examiner may file a written petition with the department for review by the commission of the findings or order.

SECTION 22. 102.24 (1) of the statutes is amended to read:

102.24 (1) Upon the setting aside of any order or award, the court may recommit the controversy and remand the record in the case to the department, for further hearing or proceedings, or it may enter the proper judgment upon the findings of the commission, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such order or award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

SECTION 23. 102.28 (7) and (8) of the statutes are created to read:

102.28 (7) (a) If an employer who is currently or was formerly exempted by written order of the department under sub. (2) is unable to make payment of an award and if judgment is rendered in accordance with s. 102.20 against such employer and if execution is levied and returned unsatisfied in whole or in part, then payments for such liabilities shall be made from the fund established by sub. (8). The state treasurer shall proceed to recover such payments from the employer, or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor. The attorney general shall appear on behalf of the state treasurer in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established by sub. (8).

(b) Each employer exempted by written order of the department under sub. (2) shall pay into the fund established by sub. (8) a sum equal to that assessed against each of the other such exempt employers upon the issuance of an initial order. The order shall provide for a sum sufficient to secure estimated payments of the insolvent exempt employer for a period of one year following the date of the order. Payments ordered to be made to the fund shall be paid to the department within 30 days. If additional moneys are required, further assessments shall be made based on orders of the department with assessment prorated on the basis of the gross payroll for this state of the exempt employer, reported to the department for the previous calendar year for unemployment compensation purposes under ch. 108. If the exempt employer is not covered under ch. 108, then the department shall determine the comparable gross payroll for the exempt employer. If payment of any assessment made under this subsection is not made within 30 days of the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

(c) The department may retain an insurance carrier or insurance service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the fund.

(8) The moneys paid into the state treasury under sub. (7), together with all accrued interest, shall constitute the "self-insured employers liability fund".

SECTION 24. 102.29 (1) to (3) of the statutes are amended to read:

102.29 (1) 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, ~~his~~ 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 are applicable, or the adjustment of any such claim, affect the right of the injured employe or ~~his~~ the employe's dependents to recover compensation. The employer or compensation insurer who shall have paid or is obligated to pay a lawful claim under this chapter shall ~~likewise~~ have the same right to make claim or maintain an action in tort against any other party for such 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. If a party entitled to notice cannot be found, the department shall become the agent of such party for the giving of a notice as required ~~herein~~ in this subsection and the notice, when given to the department, shall include an affidavit setting forth the facts, including the steps taken to locate such party. Each shall have an equal voice in the prosecution of said 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 ~~herein~~ provided in this subsection, 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 ~~said~~ such claim, the proceeds of such claim shall be divided as follows: After deducting the reasonable cost of collection, one-third of the remainder shall in any event be paid to the injured employe or ~~his~~ the employe's personal representative or other person entitled to bring action. Out of the balance remaining, the employer or insurance carrier shall be reimbursed for all payments made by it, or which it may be obligated to make in the future, under ~~the workmen's compensation act~~ this chapter, except that it shall not be reimbursed for any payments of increased compensation made or to be made under s. 102.22, 102.57 or 102.60. Any balance remaining shall be paid to the employe or ~~his~~ the employe's personal representative or other person entitled to bring action. If both the employe or ~~his~~ the employe's personal representative or other person entitled to bring action, and the employer or compensation insurer, join in the pressing of said claim and are represented by counsel, the attorneys' fees allowed as a part of the costs of collection shall be, unless otherwise agreed upon, divided between such attorneys as directed by the court or by the department. A settlement of any 3rd party claim shall be void unless said settlement and the distribution of the proceeds thereof is approved by the court before whom the action is pending and if no action is pending, then by a court of record or by the department.

(2) In the case of liability of the employer or insurer to make payment into the state treasury under s. 102.49 or 102.59, if the injury or death was due to the actionable act, neglect or default of a third party, the employer or insurer shall have a right of action against such third party to recover the sum so paid into the state treasury, which right may be enforced either by joining in the action mentioned in sub. (1), or by independent action. Contributory negligence of the employe because of whose injury or death such payment was made shall bar recovery if such negligence was ~~as great as~~ greater than the negligence of the person against whom recovery is sought, and the recovery allowed the employer or insurer shall be diminished in proportion to the amount of negligence attributable to such injured or deceased employe. Any action brought under this subsection may, upon order of the court, be consolidated and tried together with any action brought under sub. (1).

(3) Nothing in this ~~act~~ chapter shall prevent an employe from taking the compensation he or she may be entitled to under it and also maintaining a civil action against any physician, chiropractor or ~~surgeon~~ podiatrist for malpractice. The employer or compensation insurer shall have no interest in or right to share in the proceeds of any civil action against any physician, chiropractor or ~~surgeon~~ podiatrist

for malpractice.

SECTION 25. 102.30 (3) of the statutes is amended to read:

102.30 (3) The department may order direct reimbursement out of the proceeds payable under this chapter for payments made under a nonindustrial insurance policy covering the same disability and medical, chiropractic or podiatric expense when the claimant consents, or when it is established that such payments under the nonindustrial insurance policy were improper and no attorney fee shall be due as to such reimbursement.

SECTION 26. 102.31 (1) (a) of the statutes is amended to read:

102.31 (1) (a) Every contract for the insurance of the compensation ~~herein~~ provided for by this chapter, or against liability therefor, shall be deemed to be made subject to this ~~act chapter~~, and provisions thereof inconsistent with this ~~act chapter~~ are void. Such contract shall be construed to grant full coverage of all liability of the assured under this ~~act chapter~~, notwithstanding any agreement of the parties to the contrary unless the department has theretofore by written order specifically consented to the issuance of a policy on a part of such liability, except that an intermediate agency or publisher referred to in s. 102.07 (6) may, under its own policy, cover liability of employes as defined in s. 102.07 (6) for an intermediate or independent news agency, provided the policy of insurance of ~~such the~~ publisher or intermediate agency is ~~indorsed~~ endorsed to cover such persons. If the publisher so covers it is not necessary for the intermediate or independent news agency to cover liability for such persons. No policy ~~shall may~~ be canceled by either party within the policy period nor terminated upon expiration date until a notice in writing is given to the other party, fixing the date on which it is proposed to cancel it, or declaring that the party does not intend to renew the policy upon expiration ~~date~~. Such cancellation or termination shall not become effective until 30 days after written notice has been given to the department ~~unless prior thereto the employer obtains other insurance coverage or an order exempting him from carrying insurance as provided in s. 102.28 (2). Such notice to the department shall be served personally or by registered or certified mail on the department at its office in Madison. Issuance of a new policy shall automatically revoke and terminate any former policy or policies issued by the same company either by personal service of such notice upon the department at its office in Madison or by sending the notice by certified mail addressed to the department at its office in Madison. However, such cancellation or termination shall become effective whether or not such notice has been given to the department upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance as provided in s. 102.28 (2).~~

SECTION 27. 102.35 (3) of the statutes is created to read:

102.35 (3) Any employer who without reasonable cause refuses to rehire an employe who is injured in the course of employment, where suitable employment is available within the employe's physical and mental limitations, shall, upon order of the department and in addition to other benefits, pay to the employe the wages lost during the period of such refusal, not exceeding one year's wages. In determining the availability of suitable employment the continuance in business of the employer shall be considered and any written rules promulgated by the employer with respect to seniority or the provisions of any collective bargaining agreement with respect to seniority shall govern.

SECTION 28. 102.42 (1), (2), (3), (4), (6) and (8) of the statutes are amended to read:

102.42 (1) TREATMENT OF EMPLOYE. The employer shall supply such medical, surgical, chiropractic, podiatric and hospital treatment, medicines, medical and

surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the employe, if the employer has not filed notice as ~~hereinafter~~ provided in sub. (5), Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances, and in case of ~~his~~ the employer's neglect or refusal seasonably to do so, or in emergency until it is practicable for the employe to give notice of injury, the employer shall be liable for the reasonable expense incurred by or on behalf of the employe in providing ~~the same~~ such treatment, medicines, supplies and training. Where the employer has knowledge of the injury and the necessity for treatment, the employer's failure to tender the necessary treatment, medicines, supplies and training constitutes such neglect or refusal. The employer shall also be liable for reasonable expense incurred by the employe for necessary treatment to cure and relieve ~~him~~ the employe from the effects of occupational disease prior to the time that the employe knew or should have known the nature of his or her disability and its relation to employment, and as to such treatment subs. (2) and (3) shall not apply. The obligation to furnish such treatment and appliances shall continue as required to prevent further deterioration in the condition of the employe or to maintain the existing status of such condition whether or not healing is completed.

(2) (title) PANELS OF PHYSICIANS, CHIROPRACTORS OR PODIATRISTS. The employe shall have the right to ~~make choice of his~~ choose his or her attending physician, chiropractor or podiatrist from any available panel of physicians, chiropractors or podiatrists to be named by the employer. Where the employer has knowledge of the injury and the necessity for treatment, ~~his~~ the employer's failure to tender the same shall constitute such neglect or refusal. Failure of the employer to maintain a reasonable number of competent and impartial physicians, chiropractors or podiatrists, ready to undertake the treatment of the employe, and to permit the employe to ~~make choice of his~~ choose an attendant from among them, ~~shall constitute~~ constitutes neglect and refusal to furnish such attendance and treatment. Nothing contained in this section ~~shall limit~~ limits the right of the employe to make a 2nd choice of physician, chiropractor or podiatrist from the panel named by the employer. The department may upon summary hearing permit an injured employe to make selection of a physician, chiropractor or podiatrist not on the panel.

(3) (title) TREATMENT PANEL. In determining the reasonableness of the size of the ~~medical~~ panel, the department shall take into account the number of competent physicians, chiropractors and podiatrists immediately available to the community in which the ~~medical~~ service is required, and where only one such physician, chiropractor or podiatrist is available, the tender of attention by such ~~physician practitioner~~ shall be construed as a compliance with this section unless specialized or extraordinary treatment is necessary. In such panel, partners and clinics shall be deemed as one ~~physician practitioner~~. Every employer shall post the names and addresses of the physicians, chiropractors and podiatrists on his or her panel in such manner as to afford ~~his~~ the employer's employes reasonable notice thereof.

(4) (title) PREJUDICED PRACTITIONER. Whenever in the opinion of the department a panel ~~physician member~~ has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employe, the department may cause such employe to be examined by a physician, chiropractor or podiatrist selected by it, and to obtain from him or her a report containing ~~his~~ an estimate of such disabilities. If the report ~~of such physician~~ shows that the estimate of the panel ~~physician practitioner~~ has not been impartial from the standpoint of such employe, the department may in its discretion charge the cost of such examination to the employer, if ~~he~~ the employer is a self-insurer, or to the insurance company which is



carrying the risk.

(6) ARTIFICIAL MEMBERS. Liability for repair and replacement of prosthetic devices is limited to the effects of normal wear and tear. Artificial members furnished at the end of the healing period for cosmetic purposes only need not be duplicated.

(8) MEDICAL EXPENSES OF STATE EMPLOYEE. In the event of a claim by a state employe under the conditions enumerated in s. 102.03, involving only payment of medical, chiropractic or podiatric expense of not to exceed a gross of \$500, plus compensation for not to exceed 3 weeks of temporary disability, the employing department may approve payment of such reasonable ~~medical~~ expense for necessary ~~medical~~ treatment to whomsoever owing and compensation for not to exceed 3 weeks of temporary disability, subject to subsequent review by the department of industry, labor and human relations. If the employing department rejects the claim, the employe may make claim to the department of industry, labor and human relations. Payment shall be charged to the appropriate fund, as provided by s. 20.865 (1) (d).

SECTION 29. 102.42 (10) of the statutes is repealed and recreated to read:

102.42 (10) REHABILITATION; MEDICAL AND PHYSICAL. (a) One of the primary purposes of this chapter is restoration of an injured employe to gainful employment. To this end, the department may employ one or more specialists in physical, medical and vocational rehabilitation.

(b) Such specialist shall study the problems of rehabilitation, both physical and vocational and shall refer suitable cases to the department of health and social services for vocational evaluation and training. The specialist shall investigate and maintain a directory of such rehabilitation facilities, private and public, as are capable of rendering competent rehabilitation service to seriously injured employes.

(c) The specialist shall review and evaluate reported injuries for potential cases in which seriously injured employes may be in need of physical and medical rehabilitation and may confer with the injured employe, employer, insurance carrier or attending practitioner regarding treatment and rehabilitation.

SECTION 30. 102.43 (intro.) of the statutes is amended to read:

**102.43 Weekly compensation schedule.** (intro.) If the injury causes disability, an indemnity shall be due as wages commencing the 4th calendar day from the commencement of the day the scheduled work shift began, exclusive of Sundays only, excepting where ~~such employes work~~ the employe works on Sunday, after the employe leaves work as the result of the injury, and shall be payable weekly thereafter, during such disability. If the disability exists after ~~10~~ 7 calendar days from the date the employe leaves work as a result of the injury and only if it so ~~exist exists~~, indemnity shall also be due and payable for the first 3 calendar days, exclusive of Sundays only, excepting where ~~such employes work~~ the employe works on Sunday. Said weekly indemnity shall be as follows:

SECTION 31. 102.43 (1) of the statutes is repealed and recreated to read:

102.43 (1) If the injury causes total disability, two-thirds of the average weekly earnings during such disability.

SECTION 32. 102.43 (5) of the statutes is amended to read:

102.43 (5) 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, and shall include such period as the employe may be receiving instruction pursuant to ~~the provisions of section s.~~ 102.61. Temporary disability on account of receiving instruction of the latter nature, and not otherwise resulting from the injury, shall not be in excess of 40 weeks. Such 40-week limitation does not apply to temporary disability or travel or maintenance expense

under s. 102.61 if the department determines that additional training is warranted. The necessity for additional training as authorized by the department for any employe shall be subject to periodic review and reevaluation.

SECTION 33. 102.44 (3) (intro.) of the statutes is amended to read:

102.44 (3) (intro.) For permanent partial disability not covered by ss. 102.52 to 102.56 the aggregate number of weeks of indemnity shall bear such relation to the number of weeks set out in pars. (a) and (b) as the nature of the injury bears to one causing permanent total disability and shall be payable at the rate of ~~70%~~ two-thirds of the average weekly earnings of the employe ~~to January 1, 1975, and two-thirds of such earnings thereafter~~, the earnings to be computed as provided in s. 102.11. Such weekly indemnity shall be in addition to compensation for the healing period and shall be for the period that ~~he~~ the employe may live, not to exceed:

SECTION 34. 102.48 (3) of the statutes is amended to read:

102.48 (3) ~~Death~~ A death benefit, other than burial expenses, except as otherwise provided, shall be paid in weekly instalments corresponding in amount to ~~50%~~ two-thirds of the weekly earnings of the employe, until otherwise ordered by the department.

SECTION 35. 102.49 (5) (b) and (c) of the statutes are amended to read:

102.49 (5) (b) In each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall pay into the state treasury ~~the sum of \$11,000~~ 80% of the death benefit otherwise payable.

(c) In each case of injury resulting in death, leaving one or more persons partially dependent for support, the employer or insurer shall pay into the state treasury an amount which, when added to the sums paid or to be paid on account of partial dependency, shall equal the death benefit payable to a person wholly dependent, plus the amount payable into the state treasury under this subsection where there is a person wholly dependent, such payment to the state treasury in no event to exceed \$11,000 80% of the amount payable for total dependency.

SECTION 36. 102.49 (5) (e) and (6) of the statutes are repealed.

SECTION 37. 102.49 (7) of the statutes is renumbered 102.49 (6).

SECTION 38. 102.49 (7) of the statutes is created to read:

102.49 (7) All payments received under this section shall be deposited in the fund established by s. 102.65.

SECTION 39. 102.49 (8) of the statutes is repealed.

SECTION 40. 102.51 (6) of the statutes, as affected by chapter 94, laws of 1975, is amended to read:

102.51 (6) DIVISION AMONG DEPENDENTS. Benefits accruing to a minor dependent child may be awarded to either parent in the discretion of the department. Notwithstanding sub. (1), the department may reassign the death benefit, in accordance with their respective needs therefor as between a surviving spouse and children designated in sub. (1) and s. 102.49.

SECTION 41. 102.52 (intro.) and (4) to (7) of the statutes are amended to read:

**102.52 Permanent partial disability schedule.** (intro.) In cases included in the following schedule of permanent partial disabilities indemnity shall be paid for the healing period, and in addition thereto, where the employe is 52 years of age or less, for the period specified, ~~at the rate of 70% of the average weekly earnings of the employe, and for an injury occurring on or after January 1, 1975, at the rate of two-~~

thirds of the average weekly earnings of the employee, to be computed as provided in s. 102.11:

- (4) The loss of a palm where the thumb remains, ~~275~~ 325 weeks;
- (5) The loss of a thumb and the metacarpal bone thereof, ~~125~~ 160 weeks;
- (6) The loss of a thumb at the proximal joint, ~~100~~ 120 weeks;
- (7) The loss of a thumb at the distal joint, ~~40~~ 50 weeks;

SECTION 42. 102.555 (4) (c) and (d) of the statutes are amended to read:

102.555 (4) (c) Termination of the employer-employee relationship; or

(d) Layoff, provided the layoff is complete and continuous for one year;

SECTION 43. 102.555 (4) (e) of the statutes is renumbered 102.555 (5) and amended to read:

102.555 (5) No claim under ~~this subsection shall~~ sub. (4) may be filed, ~~however,~~ until ~~6~~ 2 consecutive months of removal from noisy employment after the time of injury except that under ~~par. sub. (4) (d)~~ sub. (4) (d) such ~~6~~ 2 consecutive months' period may commence within the last ~~6~~ 2 months of layoff.

SECTION 44. 102.555 (5) of the statutes is renumbered 102.555 (6) and amended to read:

102.555 (6) The limitation provisions in this ~~act~~ chapter shall control claims arising under this section. Such provisions shall run from the first date upon which claim ~~is~~ may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or hearing tests have been conducted by a competent medical specialist after the employee has been removed from the noisy environment for a period of ~~6~~ 2 months.

SECTION 45. 102.555 (6) of the statutes is renumbered 102.555 (7).

SECTION 46. 102.555 (7) of the statutes is renumbered 102.555 (8) and amended to read:

102.555 (8) An employer ~~shall become~~ is liable for the entire occupational deafness to which his or her employment has contributed; but if previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to noise within the ~~6~~ 2 months preceding such test, ~~he shall~~ the employer is not ~~be~~ liable for previous loss so established nor ~~shall is~~ he ~~be~~ liable for any loss for which compensation has previously been paid or awarded.

SECTION 47. 102.555 (8) of the statutes is renumbered 102.555 (9).

SECTION 48. 102.59 (2) of the statutes is amended to read:

102.59 (2) In the case of the loss or of the total impairment of a hand, arm, foot, leg or eye, the employer shall be required to pay ~~\$1,500~~ \$2,500 into the state treasury. The payment shall be made in all such cases regardless of whether the employee, ~~his~~ the ~~employee's~~ dependent or personal representatives, commence action against a third party as provided in s. 102.29.

SECTION 49. 102.59 (3) of the statutes is repealed and recreated to read:

102.59 (3) All payments received under this section shall be deposited in the fund established by s. 102.65.

SECTION 50. 102.59 (4) of the statutes is repealed.

SECTION 51. 102.61 (3) of the statutes is amended to read:

102.61 (3) He or she may not have expenses of travel and costs of maintenance on account of training for a period in excess of 40 weeks in all, except as provided in s.

102.43 (5).

SECTION 52. 102.64 (1) of the statutes is amended to read:

102.64 (1) A representative of the department of justice designated by the attorney general shall represent the state in all cases involving payment into or out of the state treasury under s. 20.865 (1) (d) ~~or s.~~ 102.49 ~~or~~ 102.59 or 102.66. The department of justice as directed by the attorney general may compromise the amount of such payments but such compromises shall be subject to review by the department of industry, labor and human relations. If the ~~wife or husband~~ spouse of the deceased employe compromises ~~her or his or her~~ claim for primary death benefit, the claim of the children of such employe under s. 102.49 shall be compromised on the same pro rata basis subject to approval by the department.

SECTION 53. 102.65 and 102.66 of the statutes are created to read:

**102.65 Work injury supplemental benefit fund.** (1) The moneys payable to the state treasury under ss. 102.49 and 102.59, together with all accrued interest, shall constitute a fund to be known as the "Work Injury Supplemental Benefit Fund".

(2) For proper administration of the moneys available in the fund the department shall by order, set aside in the state treasury suitable reserves to carry to maturity the liability for benefits under ss. 102.44, 102.49, 102.59 and 102.66. Such moneys shall be invested by the investment board in securities authorized in s. 206.34.

(3) If the balance in the fund on any June 30 exceeds 3 times the amount paid out of such fund during the fiscal year ending on such date, the commission shall by order direct an appropriate proportional reduction of the payments into such fund under ss. 102.49 and 102.59 so that the balance in the fund will remain at 3 times the payments made in the preceding fiscal year.

**102.66 Payment of certain barred claims.** (1) In the event that there is an otherwise meritorious claim for occupational disease 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 such compensation and such medical expenses as would otherwise be due, based on the date of injury to or on behalf of the injured employe. Such benefits shall be supplemental to the extent of compensation liability to any disability or medical benefits payable from any group insurance policy where the premium is paid in whole or in part by any employer. Death benefits payable under any such group policy do not limit the benefits payable under this section.

(2) In the case of occupational disease, appropriate benefits may be awarded from the work injury supplemental benefit fund where the status or existence of the employer or its insurance carrier cannot be determined or where there is otherwise no adequate remedy, subject to the limitations contained in sub. (1).

SECTION 54. **Term changes.** (1) Whenever in sections 15.227 (4), 16.21 (4), 16.24 (4) (c), 16.30 (1) (h), 20.145 (6), 22.16 (9) (d) and (f), 47.40 (6) (f), 49.05 (4), 50.04 (2), 56.07 (7), 56.21, 60.29 (18) (a), 66.315, 66.94 (34) (d), 71.09 (7) (a) 1, 83.17, 101.02 (2) (a) and (b), as renumbered, 101.80, chapter 102 (title), 102.01 (1), 102.03 (2), 102.04, 102.07 (11), 102.14 (2), 102.17 (1) (a), 102.23, 102.26 (2m), 102.28 (title), 102.31 (title), (3) and (5), 102.38, 102.44 (1), 102.75 (1) and (2), 103.73 (3), 103.75 (1), 103.76, 105.01 (1) (b) 1, 198.12 (3), 201.04 (16), 204.30, 204.31 (3) (b) 4b, 5b and 6b and (7), chapter 205 (title), 205.01 (1) and (4), 205.05 (4), 227.22 (2), 289.14 (1), 289.15 (1), 289.80 (6), 344.33 (4), 611.19 (4) (d), 612.31 (4) (e), 619.01 (1), 625.03 (2), 645.47 (1) (a) and (b), 646.02 (2), 646.11 (2) (c) (intro.), 646.23 and 861.07 (2) of the statutes, the term "workmen's" appears, the term "worker's" is substituted.

(2) Wherever in sections 102.06, 102.28 (6), 102.29 (5) and 102.37 of the statutes the reference to “the workmen’s compensation act” appears, the reference to “this chapter” is substituted.

(3) Wherever in sections 102.17 (1) (bm), 102.28 (2), (4) and (5), 102.30 (1), 102.33 and 102.555 (1) of the statutes the reference to “act” appears, the reference to “chapter” is substituted.

**SECTION 55. Program citations.** (1) Under the listing of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, the reference to section “102.28 (7)” is inserted.

(2) Under the listing of program responsibilities specified for the investment board in section 15.761 of the statutes, the references to sections “102.49 (8)” and “102.59 (4)” are deleted, and the reference to section “102.65 (2)” is inserted.

**SECTION 56. Appropriation transfer.** On the effective date of this act, the unencumbered balances of the appropriations to the department of industry, labor and human relations in the funds under section 20.445 (7) (q) and (r) of the statutes, as repealed by this act, are transferred to the fund under section 20.445 (7) (t) of the statutes, as created by this act.

**SECTION 57. Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

| <b>A</b>               | <b>B</b>                   | <b>C</b>                   |
|------------------------|----------------------------|----------------------------|
| <b>Statute Section</b> | <b>Old Cross Reference</b> | <b>New Cross Reference</b> |
| 102.44 (1) (c)         | 102.59                     | 102.65                     |
| 102.60 (5) (b)         | 102.49                     | 102.65                     |

**SECTION 58. Application.** (1) This act shall take effect on the day after publication, except as provided in this section.

(2) Section 102.28 (7) of the statutes, as created by this act, shall apply to employers who are exempt on or after the effective date of this act for injuries occurring on or after such date.

---