

1983 Senate Bill 423

Date of enactment: **November 29, 1983**
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1983 Wisconsin Act 98

AN ACT *to renumber* 102.43 (7) (a) and (b); *to renumber and amend* 102.04 (1) (d) and 102.43 (7) (intro.); *to amend* 20.445 (1) (aa) (title), 102.01 (2) (b) and (c), 102.03 (1) (c) 1, 102.04 (2), 102.11 (1) (intro.), 102.12, 102.13 (1), 102.13 (2), 102.16 (1), (3) and (4), 102.18 (1) (bp), 102.22 (2), 102.23 (1) (a), 102.28 (2) (a), 102.32 (1), (3) and (6), 102.44 (1) (intro.), 102.47 (1) and (2), 102.475 (title) and (1) (a), 102.51 (4), 102.555 (4) (b), 102.57, 102.58 and 102.64 (2); and *to create* 102.04 (1) (d), 102.07 (12) to (15), 102.075,

102.13 (1) (e) and 102.43 (7) (b) of the statutes, *relating to* various changes in the worker's compensation laws.

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

SECTION 1. 20.445 (1) (aa) (title) of the statutes is amended to read:

20.445 (1) (aa) (title) *Special death benefit.*

SECTION 2. 102.01 (2) (b) and (c) of the statutes are amended to read:

102.01 (2) (b) "Examiner" includes the ~~administrator~~ and deputy administrator of the worker's compensation division of the department.

(c) "Injury" means mental or physical harm to an employe caused by accident or disease, and also means damage to or destruction of artificial members, dental appliances, teeth, hearing aids and eyeglasses, but, in the case of hearing aids or eyeglasses, only if such damage or destruction resulted from accident which also caused personal injury entitling the employe to compensation therefor either for disability or treatment. "Injury" includes mental harm or emotional stress or strain without physical trauma, if it arises from exposure to conditions or circumstances beyond those common to ~~daily occupational or nonoccupational~~ life.

SECTION 3. 102.03 (1) (c) 1 of the statutes is amended to read:

102.03 (1) (c) 1. Where, at the time of the injury, the employe is performing service growing out of and incidental to his or her employment. Every employe going to and from his or her employment in the ordinary and usual way, while on the premises of his the employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, shall be deemed to be performing service growing out of and incidental to his the employment; so shall any employe going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way; and so shall any ~~fireman~~ fire fighter or municipal utility employe responding to a call for assistance outside the limits of his or her city or village, unless ~~such that~~ response is in violation of law; ~~so shall an employe going to and from his or her employment utilizing transportation organized or financed by or a vehicle owned or leased by an employer, if the employer undertakes to provide the transportation or vehicle as part of the contract of hire; and so shall an employe going to or from his or her employment if he or she is paid wages or salary for that travel time.~~ An employe is not performing service growing out of and incidental to his or her employment while going to or from employment in a private or group or employer-sponsored car pool, van pool, commuter bus service or other ride-sharing program in which the employe participates voluntarily and the sole purpose of which is the mass transportation of employes to and from employment. The premises of his the employer shall be deemed to include also the premises of any other person on whose premises service is being performed.

SECTION 4. 102.04 (1) (d) of the statutes is renumbered 102.04 (1) (e) and amended to read:

102.04 (1) (e) Every person to whom pars. (a), ~~(b) and (c)~~ (d) are not applicable, who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the injury to the employe for which compensation may be claimed, shall, as provided in s. 102.05, have elected to become subject to the provisions of this chapter, and who shall not, prior to such accident, have effected a withdrawal of such election.

SECTION 5. 102.04 (1) (d) of the statutes is created to read:

102.04 (1) (d) Every joint venture electing under s. 102.28 (2) (a) to be an employer.

SECTION 6. 102.04 (2) of the statutes is amended to read:

102.04 (2) ~~Members~~ Except with respect to a partner electing under s. 102.075, ~~members~~ of partnerships shall not be counted as employes. Except as provided in s. 102.07 (5) (a), a person under contract of hire for the performance of any service for any employer subject to this section (1961) shall not constitute an employer of any other person with respect to such service and such other person shall, with respect to such service, be deemed to be an employe only of such employer for whom the service is being performed.

SECTION 7. 102.07 (12) to (15) of the statutes are created to read:

102.07 (12) A student in a vocational, technical and adult education district while, as a part of a training program, he or she is engaged in performing services for which a school organized under ch. 38 collects a fee or is engaged in producing a product sold by such a school is an employe of that school.

(13) A child performing uncompensated community service work as a result of an informal disposition under s. 48.245, a consent decree under s. 48.32 or an order under s. 48.34 (9) is an employe of the county in which the court ordering the community service work is located. No compensation may be paid to that employe for temporary disability during the healing period. This subsection does not apply after December 31, 1985.

(14) An adult performing uncompensated community service work under s. 971.38 is an employe of the county in which the court ordering the community service work is located. No compensation may be paid to that employe for temporary disability during the healing period. This subsection does not apply after December 31, 1985.

(15) A sole proprietor or partner electing under s. 102.075 is an employe.

SECTION 8. 102.075 of the statutes is created to read:

102.075 Election by sole proprietor or partner. (1) Any sole proprietor or partner engaged in a vocation, profession or business on a substantially full-time basis may elect to be an employe under this chapter by procuring insurance against injury sustained in the pursuit of that vocation, profession or business. This coverage may be obtained by endorsement on an existing policy of worker's compensation insurance or by issuance of a separate policy to the sole proprietor or partner on the same basis as any other policy of worker's compensation insurance.

(2) For the purpose of any insurance policy other than a worker's compensation insurance policy, no sole proprietor or partner may be considered eligible for worker's compensation benefits unless he or she elected to be an employe under this section.

(3) Any sole proprietor or partner who elected to be an employe under this section may withdraw that election upon 30 days' prior written notice to the insurance carrier and the Wisconsin compensation rating bureau.

SECTION 9. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability or death benefits for injury in each calendar year on or after January 1, 1982, shall be taken at not less than \$30 nor more than ~~such the wage rate as will result which results~~ in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability for injuries on or after January 1, 1982, shall be taken at not less than \$30 nor more than \$135, resulting in a weekly maximum compensation rate of \$90. The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1984, shall be taken at not less than \$30 nor more than \$150, resulting in a maximum compensation rate of \$100. The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1985, shall be taken at not less than \$30 nor more than \$162, resulting in a maximum compensation rate of \$108. Between such limits the average weekly earnings shall be determined as follows:

SECTION 10. 102.12 of the statutes is amended to read:

102.12 Notice of injury, exception, laches. No claim for compensation ~~shall~~ may be maintained unless, within 30 days after the occurrence of the injury or within 30 days after the employe knew or ought to have known the nature of his or her disability and its relation to ~~his~~ the employment, actual notice was received by the employer or by an officer, manager or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior ~~shall be~~ is sufficient. Absence of notice ~~shall~~ does not bar recovery if it is found that the employer was not misled thereby. Regardless of whether notice was received, if no payment of compensation (, other than medical treatment or burial expense), is made, and no application is filed with the department within 2 years from the date of the injury or death, or from the date the employe or his or her dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation therefor ~~shall be~~ is barred, except that the right to compensation ~~shall~~ is not be barred if the employer knew or should have known, within the 2-year period, that the employe had sustained the injury on which the claim is based. Issuance of notice of a hearing on the department's own motion ~~shall have~~ has the same effect for the purposes of this section as the filing of an application. This section does not affect any claim barred under s. 102.17 (4).

SECTION 11. 102.13 (1) of the statutes is amended to read:

102.13 (1) (a) Except as provided in sub. (4), whenever compensation is claimed by an employe, the employe shall, upon the written request of 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 an examiner.~~ No employe who submits to an examination under this paragraph is a patient of the examining physician, chiropractor or podiatrist for any purpose other than for the purpose of bringing an action under ch. 655, unless the employe specifically requests treatment from that physician, chiropractor or podiatrist.

(b) An employer who requests that an employe submit to reasonable examination under par. (a) shall tender to the employe, before the examination, all necessary expenses including transportation expenses. The employe ~~shall be~~ is entitled to have a physician, chiropractor or podiatrist, provided by himself or herself, present at ~~any such~~ the examination. The employer's written request for examination shall notify the employe of all of the following:

1. The proposed date, time and place of the examination and the identity of the examining physician, chiropractor or podiatrist.

2. The procedure for changing the proposed date, time and place of the examination.

3. The employe's right to have his or her physician, chiropractor or podiatrist present at the examination.

(c) So long as the employe, after ~~such~~ a written request of the employer which complies with par. (b), refuses to submit to ~~such~~ examination, or in any way obstructs the examination, the employe's right to begin or maintain any proceeding for the collection of compensation ~~shall be~~ is suspended, except as provided in sub. (4). If the employe refuses to submit to ~~such~~ the examination after direction by the department or an examiner, or in any way obstructs ~~such~~ the examination, the employe's right to the weekly indemnity which accrues and becomes payable during the period of ~~such~~ that refusal or obstruction, ~~shall be~~ is barred, except as provided in sub. (4).

(d) Subject to par. (e):

1. Any physician, chiropractor or podiatrist who is present at any ~~such~~ examination under par. (a) may be required to testify as to the results thereof.

2. Any physician, chiropractor or podiatrist who attended ~~an employe~~ a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may be required to testify before the department when it so directs.

3. Notwithstanding any ~~other~~ statutory provisions except par. (e), any physician, chiropractor or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employe, employer, worker's compensation insurer, or the department information and reports relative to a compensation claim.

4. The testimony of any physician, chiropractor or podiatrist, who is licensed to practice where he or she resides or practices ~~outside the~~ in any state, may be received in evidence in compensation proceedings.

SECTION 12. 102.13 (1) (e) of the statutes is created to read:

102.13 (1) (e) No person may testify on the issue of the reasonableness of the fees of a licensed health care professional unless the person is licensed to practice the same health care profession as the professional whose fees are the subject of the testimony.

SECTION 13. 102.13 (2) of the statutes is amended to read:

102.13 (2) An employe who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employe claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employe, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employe claims compensation.

SECTION 14. 102.16 (1), (3) and (4) of the statutes are amended to read:

102.16 (1) Any controversy concerning compensation, including any in which the state may be a party, shall be submitted to the department in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified or confirmed by the department within one year from the date ~~such~~ the compromise is filed with the department, or from the date an award has been entered, based thereon, or the department may take ~~such~~ that action upon application made within ~~such~~ one year. Unless the word "compromise" appears in a stipulation of settlement, the settlement shall not be deemed a compromise, and further claim ~~shall~~ is not be barred except as provided in s. 102.17 (4) ~~irrespective~~ regardless of whether ~~an~~ award is made. The employer, insurer or dependent under s. 102.51 (5) shall have equal rights with the employe to have review of a compromise or any other stipulation of settlement. Upon petition filed ~~by the employer, insurer or dependent under s. 102.51 (5)~~ with the department ~~within one year from any award upon a stipulation of settlement~~, the department shall have power to may set aside ~~said~~ the award or otherwise determine the rights of the parties.

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

(4) ~~Any~~ The department has jurisdiction to pass on any question arising out of sub. (3) and has jurisdiction to order the employer to reimburse an employe or other person for any sum deducted from wages or paid by him or her in violation of that subsection. In addition, any employer violating sub. (3) shall be subject to the penalties provided in s. 102.28 (3), and, in addition thereto, shall be liable to an injured employe for the reasonable value of the necessary services rendered to ~~such~~ that employe pursuant to any arrangement made in violation of sub. (3) without regard to ~~said~~ that employe's actual disbursements for the same.

SECTION 15. 102.18 (1) (bp) of the statutes is amended to read:

102.18 (1) (bp) The department may include a penalty in its final award to an employe if it determines that the employer's or insurance carrier's suspension of, termination of or failure to make payments or failure to report injury resulted from malice or bad faith. This penalty is the exclusive remedy against an employer or insurance carrier for malice or bad faith. The department may award an amount which it considers just, not to exceed the lesser of 200% of total compensation due or \$15,000. The department may assess the penalty against the employer, the insurance carrier or both. Neither the employer nor the insurance carrier is liable to reimburse the other for the penalty amount. The department may, by rule, define actions which demonstrate malice or bad faith.

SECTION 16. 102.22 (2) of the statutes is amended to read:

102.22 (2) If the sum ordered by the department to be paid is not paid when due, ~~such~~ that sum shall bear interest at the rate of 10% per year. The state is liable for such interest on awards issued against it under this chapter. The department has jurisdiction to issue award for payment of such interest at any time within one year of the date of its order, or upon appeal within one year after final court determination. Such interest becomes due from the date the examiner's order becomes final or from the date of a decision by the labor and industry review commission, whichever is later.

SECTION 17. 102.23 (1) (a) of the statutes is amended to read:

102.23 (1) (a) In such an action a complaint shall be served with the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon a commissioner or agent authorized by the commission to accept service shall be deemed complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the ~~department~~ commission shall mail one copy to each other defendant. If the summons and complaint are not filed within 6 months from date of service, ~~such~~ that service is void.

SECTION 18. 102.28 (2) (a) of the statutes is amended to read:

102.28 (2) (a) *Duty to insure payment for compensation.* Unless exempted by the department, every employer which is liable to pay compensation under this chapter shall insure payment for that compensation in an insurer authorized to do business in this state. A joint venture may elect to be an employer under this chapter and obtain insurance for payment of compensation.

SECTION 19. 102.32 (1), (3) and (6) of the statutes are amended to read:

102.32 (1) By depositing the present value of the total unpaid compensation upon a ~~3%~~ 7% interest discount basis with ~~such~~ any bank or trust company ~~as may be designated by the department;~~ or

(3) By making payment in gross upon a ~~3%~~ 7% interest discount basis to be approved by the department; and

(6) ~~Any time after 6 months from the date of the injury, the department may direct payment in gross or in such manner as it may determine to the best interest of the injured employe or his or her dependents~~ If compensation is due for permanent disability follow-

ing an injury or if death benefits are payable, payments shall be made to the employe or dependent on a monthly basis. The department may direct an advance on a payment of unaccrued compensation or death benefits if it determines that the advance payment is in the best interest of the injured employe or his or her dependents. In directing the payment advance, the department shall give the employer or the employer's insurer an interest credit against its liability. The credit shall be computed at 7%.

SECTION 20. 102.43 (7) (intro.) of the statutes is renumbered 102.43 (7) (a) and amended to read:

102.43 (7) (a) If an employe has a renewed period of temporary total disability commencing more than 2 years after the date of injury and, except as provided in par. (b), the employe returned to work for at least 10 days immediately preceding the renewed period of disability, payment of compensation for the new period of disability shall be made as follows:

SECTION 21. 102.43 (7) (a) and (b) of the statutes are renumbered 102.43 (7) (a) 1 and 2.

SECTION 22. 102.43 (7) (b) of the statutes is created to read:

102.43 (7) (b) An employe need not return to work at least 10 days preceding a renewed period of temporary total disability to obtain benefits under sub. (5) for rehabilitative training commenced more than 2 years after the date of injury.

SECTION 23. 102.44 (1) (intro.) of the statutes is amended to read:

102.44 (1) (intro.) Notwithstanding any other provision of this chapter, every employe who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, 1976, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier, or in the case of benefits payable to an employe under s. 102.66, shall be paid by the department out of the fund created under s. 102.65. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, 1978, and shall continue during the period of such total disability subsequent to that date.

SECTION 24. 102.47 (1) and (2) of the statutes are amended to read:

102.47 (1) Where the injury proximately causes permanent total disability, they shall be the same as if the injury had caused death, except that the burial expense allowance shall be included in the items subject to the limitation stated in s. 102.46. The amount available shall be applied toward burial expense before any is applied toward death benefit. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.49 (5) (b), to the fund created under s. 102.65.

(2) Where the injury proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed \$1,000, any remaining sum to be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there shall be no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments. If there are no surviving dependents the amount payable to dependents shall be paid, as provided in s. 102.49 (5) (b), to the fund created under s. 102.65.

SECTION 25. 102.475 (title) and (1) (a) of the statutes are amended to read:

102.475 (title) Death benefit; law enforcement and correctional officers, fire fighters, rescue squad members, national or state guard members and emergency government personnel. (1) (a) If the deceased employe is a law enforcement officer, correctional officer, fire fighter, rescue squad member or national or state guard member on state active duty as described in s. 102.07 (9) or if a deceased person is an employe or volunteer performing emergency government activities under ch. 166 during a state of emergency or a circumstance described in s. 166.04, who sustained an accidental injury so that benefits

are payable under s. 102.46 or 102.47 (1), the department shall voucher and pay from the appropriation under s. 20.445 (1) (aa) a sum equal to 75% of the primary death benefit as of the date of death, but not less than \$50,000 to the persons wholly dependent upon the deceased. For purposes of this subsection, dependency shall be determined under ss. 102.49 and 102.51.

SECTION 26. 102.51 (4) of the statutes is amended to read:

102.51 (4) **DEPENDENCY AS OF DATE OF INJURY.** Questions as to who ~~constitutes dependents~~ is a dependent and the extent of ~~their~~ his or her dependency shall be determined as of the date of the ~~injury to death~~ of the employe, and their the dependent's right to any death benefit ~~shall become~~ becomes ~~fixed as of such at that time, irrespective regardless~~ of any subsequent change in conditions; and the. The death benefit shall be directly recoverable by and payable to the dependents entitled thereto or their legal guardians or trustees; ~~in.~~ In case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the benefit as is then unpaid ~~shall be~~ is payable to the dependent's personal representatives in gross, unless the department determines that the unpaid benefit shall be reassigned, under sub. (6), and paid to any other dependent who is physically or mentally incapacitated or a minor. A posthumous child ~~conceived prior to the date of injury~~ is for the purpose of this subsection a dependent as of the date of injury death.

SECTION 27. 102.555 (4) (b) of the statutes is amended to read:

102.555 (4) (b) **Retirement** The last day actually worked before retiring, regardless of vacation pay or time, sick leave or any other benefit to which the employe is entitled;

SECTION 28. 102.57 of the statutes is amended to read:

102.57 Violations of safety provisions, penalty. ~~Where~~ If injury is caused by the failure of the employer to comply with any statute or any lawful order of the department, compensation and death benefits ~~as provided in this chapter shall be increased 15% but not more than a~~ the total increase of \$10,000 may not exceed \$15,000. Failure of an employer reasonably to enforce compliance by employes with ~~such~~ that statute or order of the department ~~shall constitute~~ constitutes failure by the employer to comply with ~~such~~ that statute or order.

SECTION 29. 102.58 of the statutes is amended to read:

102.58 Decreased compensation. ~~Where~~ If injury is caused by the failure of the employe to use safety devices ~~where~~ which are provided in accordance with any statute or lawful order of the department and are adequately maintained, and ~~their~~ the use of which is reasonably enforced by the employer, or ~~where~~ if injury results from the employe's failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employe and of which the employe has notice, or ~~where~~ if injury results from the intoxication of the employe, the compensation and death benefit provided ~~herein in this chapter~~ shall be reduced 15% but the total reduction shall may not exceed \$10,000 \$15,000.

SECTION 30. 102.64 (2) of the statutes is amended to read:

102.64 (2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59 or 102.66. The department of justice may compromise claims in such proceedings, but the compromises are subject to review by the department of industry, labor and human relations. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

SECTION 31. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
20.445 (1)(t)	102.63 and 102.66	102.63, 102.64 (2) and 102.66
102.05 (3)	102.04 (1)(c) and (d)	102.04 (1)(c) and (e)
102.65 (1) and (3)	102.49 and 102.59	102.47, 102.49 and 102.59

SECTION 32. Initial applicability. The treatment of section 102.475 (title) and (1) (a) of the statutes by this act applies to accidental injuries sustained on or after the effective date of this act.

SECTION 33. Effective date. This act takes effect on January 1, 1984.
