

No. 522, A.]

[Published September 3, 1929.

CHAPTER 452.

AN ACT to renumber subsection (7) of section 70.13, section 70.18 and subsections (1) and (2) of section 70.205, and to amend subsections (6) and (7) of section 70.30 of the statutes, relating to taxation.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsection (7) of section 70.13 is renumbered to be subsection (37) of section 70.11 of the statutes.

SECTION 2. Section 70.18 is renumbered to be subsection (1) and subsections (1) and (2) of section 70.205 are renumbered to be subsections (2) and (3), respectively, of said section 70.18 of the statutes. Said section shall be given the section heading "Personal property, to whom assessed" in the publication of the statutes of 1929.

SECTION 3. Subsections (6) and (7) of section 70.30 of the statutes are amended to read: (70.30) (6) The value of * * * *merchants' stock.*

(7) The value of * * * *manufacturers' stock.*

SECTION 4. This act shall take effect upon passage and publication.

Approved August 30, 1929.

No. 753, A.]

[Published September 3, 1929.

CHAPTER 453.

AN ACT to renumber paragraphs (d), (e) and (f) of subsection (6) of section 102.09 to be, respectively, paragraphs (b), (c) and (d) of said section; the second paragraph of paragraph (c) and paragraph (d) of subsection (7) of section 102.09 to be, respectively, paragraphs (e) and (f) of said subsection; and subsections (4), (5) and (6) of section 102.11 to be, respectively, subsections (4s), (4t) and (4u) of section 102.09; to repeal the introductory paragraph and paragraph (a) of subsection (6) of section 102.09; subsection (3) of section 102.11, and subsection (4) of section 102.31; to amend subsections (2) and (3) of section 102.05; section 102.06; subsection (4) of section 102.07; paragraphs (a), (b) and (e) of subsection (1); subdivision "sixth" of paragraph (d) of sub-

section (2); subsection (4a); paragraph (f) of subsection (4m) and, as renumbered, subsection (4u) all of section 102.09; section 102.12; subsection (1) of section 102.17; subsection (1) of section 102.23; subsection (2) of section 102.28; subsections (1), (2) and (4) of section 102.29; subsection (3) of section 102.31, and section 102.40; and to create subsections (4p) and (4r), paragraph (a) of subsection (6) and paragraph (d) of subsection (7) of section 102.09; and subsection (5) of section 102.23 of the statutes, relating to workmen's compensation.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Paragraphs (d), (e) and (f) of subsection (6) of section 102.09 are renumbered to be, respectively, paragraphs (b), (c) and (d) of said subsection; the second paragraph of paragraph (c) and paragraph (d) of subsection (7) of section 102.09 are renumbered to be, respectively, paragraphs (e) and (f) of said subsection; and subsections (4), (5) and (6) of section 102.11 of the statutes are renumbered to be, respectively, subsections (4s), (4t) and (4u) of section 102.09.

SECTION 2. The introductory paragraph and paragraph (a) of subsection (6) of section 102.09; subsection (3) of section 102.11, and subsection (4) of section 102.31 of the statutes are repealed.

SECTION 3. Subsections (2) and (3) of section 102.05; section 102.06; subsection (4) of section 102.07; paragraphs (a), (b) and (e) of subsection (1); subdivision "sixth" of paragraph (d) of subsection (2); subsection (4a); paragraph (f) of subsection (4m) and, as renumbered, subsection (4u) all of section 102.09; section 102.12; subsection (1) of section 102.17; subsection (1) of section 102.23; subsection (2) of section 102.28; subsections (1), (2) and (4) of section 102.29; subsection (3) of section 102.31, and section 102.40 of the statutes are amended to read: (102.05) (2) If any employer shall at any time * * * have three or more employes * * * he shall be deemed to have elected to accept the provisions of sections 102.03 to * * * 102.35, * * * unless prior to that * * * time such employer shall have filed with the industrial commission a notice in writing to the effect that he elects not to accept the provisions hereof. * * * Such employer may withdraw from the provisions of sections 102.03 to * * * 102.35 * * * in the manner provided in subsection (1) of section 102.05. The pro-

visions of this subsection shall not apply to farmers or to farm labor. In determining the number of employes * * * of an employer not engaged in farming, farmers or farm laborers working along with the employes of an employer not engaged in farming shall be counted. Members of partnerships shall not be counted as employes under this subsection.

(3) Any employer who shall enter into a contract for the insurance of the compensation provided for in sections 102.03 to 102.35, * * * or against liability therefor, shall be deemed thereby to have elected to accept the provisions of sections 102.03 to 102.35, and such election shall include farm laborers, * * * domestic servants *and employes not in the course of a trade, business, profession or occupation of the employer* if such intent is * * * shown by the terms of the policy. Such election shall remain in force until withdrawn in the manner provided in subsection (1) of this section.

102.06 An employer subject to the provisions of section 102.03 to 102.34 * * * shall be liable for compensation to an employe of a contractor or subcontractor under him who is not subject to sections 102.03 to 102.34, * * * or who has not complied with the conditions of subsection (2) of section 102.28 in any case where such employer would have been liable for compensation if such employe had been working directly for such employer. The contractor or subcontractor shall also be liable for such compensation, but the employe shall not recover compensation for the same injury from more than one party. *In the same manner, under the same conditions, and with like right of recovery, as in the case of an employe of a contractor or subcontractor, described above, an employer subject to the provisions of sections 102.03 to 102.35 shall also be liable for compensation to an employe who has been loaned by him to another employer.* The employer who shall become liable for and pay such compensation may recover the same from such contractor, * * * subcontractor or other employer (whether or not such contractor, subcontractor or other employer is an employer as defined in section 102.04) for whom the employe was working at the time of the accident. * * *

(102.07) (4) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, all helpers and assistants of employes, whether paid by the employers or employe, if employed with the knowledge, actual or constructive, of the employer, and also including

minors * * * (*who shall have the same power of contracting as adult employes*), but not including *farm laborers, domestic servants and any person whose employment is not in the * * * course of * * * a trade, business, profession, or occupation of his employer, unless such employer has * * * elected to include such farm laborers, domestic servants or * * * other employes under coverage of the act.* A working member of a partnership receiving wages irrespective of profits from such partnership shall be deemed an employe within the meaning of sections 102.03 to 102.35 * * *.

(102.09) (1) (a) Such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, *artificial members* and * * * *appliances*, or, at the option of the employe, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required for ninety days immediately following the accident, to cure and relieve from the effects of the injury, and for such additional period of time as in the judgment of the commission will tend to lessen the period of compensation disability, or in the case of permanent total disability for such period of time as the commission may deem advisable, * * * *not to exceed the period for which indemnity is payable*, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employe in providing the same.

(b) The employe shall have the right to make choice of his attending physician from a panel of physicians to be named by the employer. Where the employer has knowledge of the injury and the necessity for treatment, his 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, ready to undertake the treatment of the employe, and to permit the employe to make choice of his attendant from among them, shall constitute neglect and refusal to furnish such attendance and treatment. *The commission may upon summary hearing permit an injured employe to make selection of a physician not on the panel.*

(e) In determining the reasonableness of the size of the medical panel, the commission shall take into account the number of competent physicians immediately available to the community in

which the medical service is required, and where only one such physician is available in such community, the tender of attention by such physician shall be construed as a compliance with the provisions of this section *unless specialized or extraordinary treatment is necessary*. In no event shall the employer be required to maintain a panel of more than five such physicians. In such panel, partners and clinics shall be deemed as one physician. Every employer shall post a list of the names and addresses of the physicians on his panel in such manner as to afford his employes reasonable notice thereof.

(2) (d) (Sixth.) * * * *Where the only permanent disability is covered by the provisions of subsections (5) and (6) of this section, such subsections shall govern; provided, that in no case shall the percentage of permanent total disability be taken as more than one hundred per cent.*

(4a) * * * *If the deceased employe leaves no one wholly dependent upon him for support, * * * partial dependency and death benefits therefor shall be as follows:*

(a) *An unestranged surviving parent or parents, residing within any of the states or District of Columbia of the United States, shall receive a death benefit of twelve hundred dollars.*

(b) *In all other cases the death benefit shall be such sum as the commission shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employe but for the * * * injury * * *. To establish anticipation of support and dependency, it shall not be essential that the deceased employe made any contribution to support prior to the accident or death. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or four times the contributions of the deceased to the support of such dependents during the year immediately preceding his death, * * * whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in this section shall include contributions to the capital fund of the dependents, for their necessary comfort.*

(4m) (f) *In each case of injury resulting in death, leaving no person wholly dependent for support, the employer or insurer*

shall pay into the state treasury such an amount, when added to the sums paid or to be paid on account of partial dependency, as shall equal * * * *the death benefit payable to a person or persons wholly dependent*, such payment to the state treasury in no event to exceed sixteen hundred dollars. The payment into the state treasury so provided shall be made in all such cases regardless of whether the dependents or personal representatives of the deceased employe commence action against a third party as provided in subsection (2) of section 102.29.

(4u) No dependent of an injured employe shall be deemed * * * a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employe. *Subject to the provisions of section 102.16 (1), a compromise of all liability entered into by an employe shall be binding upon his dependents.*

102.12 No claim to recover compensation under sections 102.03 to * * * 102.35 * * * shall be maintained unless, within thirty days after the occurrence of the * * * *injury or within thirty days after the employe knew or ought to have known the nature of his disability and its relation to his employment*, actual notice * * * was * * * *received by the employer or * * * by any 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 deemed proper notice under this section. Absence of notice shall not be a bar to recovery* if it is found that there was no intention to mislead the employer, and that he was not in fact misled thereby * * *. *Regardless of whether or not notice was received if no payment of compensation (other than medical treatment or burial expense) is made, and no application filed with the industrial commission within two years from the date of the * * * injury or death, or from the date the employe or his 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 wholly barred. * * * In no event shall the right of an employe, his legal representative or dependent, to proceed under section 102.17 extend beyond six years from the date of injury or death or from the date that compensation (other than medical treatment or burial expenses) was*

last paid, whichever date is most recent. Nothing contained in this section shall be construed to limit the period of time in which the state may maintain an action for the payment into the state treasury of the amounts specified in sections 102.09 (4m) (f) and 102.09 (6) (b).

(102.17) (1) Upon the filing with the commission by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall mail a copy of such application to all other parties in interest and the insurance carrier shall be deemed a party in interest. The commission may bring in additional parties by service of a copy of the application. The commission shall fix a time for the hearing on such application which shall not be more than forty days after the filing of such application. The commission shall cause notice of such hearing, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. *In case a party in interest is located without the state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post-office address of such party. Such filing and mailing shall constitute sufficient service, with the same force and effect as if served upon a party located within this state.* Such hearing may be adjourned from time to time in the discretion of the commission, and hearings may be held at such places as the commission shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the commission; but the commission 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, or the time books and pay roll of the employer to be examined by any member of the commission or any examiner appointed by it, and may from time to time direct any employe claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the commission for its consideration upon final hearing. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have opportunity to rebut the same on final hearing.

(102.23) (1) The findings of fact made by the commission acting within its power shall, in the absence of fraud, be conclusive; and the order or award, either interlocutory or final, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within thirty days from the date of the order or award, any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the commission for the review of such order or award, in which action the adverse party shall also be made defendant. In such action a complaint, *which need not be verified, but which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the commission, or any member of the commission, shall be deemed completed 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 commission shall mail one such copy to each other defendant.* The commission shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint, *which answer may, by way of counterclaim or cross-complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if such party had commenced a separate action for the review thereof.* With its answer, the commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, findings and award. Such return of the commission when filed in the office of the clerk of the circuit court shall, with the papers mentioned in section 270.72, constitute a judgment roll in such action; and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

(a) That the commission acted without or in excess of its powers.

(b) That the order or award was procured by fraud.

(c) That the findings of fact by the commission do not support the order or award.

(102.28) (2) An employer liable under this act to pay compensation shall insure payment of such compensation in some company authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the industrial commission. An employer desiring to be exempt from insuring his liability for compensation shall make application to the industrial commission showing his financial ability to pay such compensation, and agreeing as a condition for the granting of the exemption to faithfully report all injuries under compensation according to law and the requirements of the commission and to comply with the provisions of sections 102.03 to 102.34, * * * and the rules of the commission pertaining to the administration thereof, whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon ten days' notice in writing, for financial reasons or for failure of the employer to faithfully discharge his obligations according to the agreements contained in his application for exemption, revoke its order granting such exemption, in which case such employer shall immediately insure his liability. As a condition for the granting of an exemption the commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the commission may at any time either before or after the entry of an award, upon at least ten days' notice and opportunity to be heard require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. Where an employer procures an exemption as herein provided and thereafter enters into any form of agreement for insurance coverage with an insurance company or interinsurer not licensed to operate in this state, his conduct shall automatically operate as a revocation of such exemption. *An order exempting an employer from insuring his liability for compensation*

shall be null and void if the application contains a financial statement which is false in any material respect.

(102.29) (1) (a) *Except in those cases provided for in paragraph (b) of this subsection, the making of a lawful claim against an employer or compensation insurer for compensation under sections 102.03 to 102.34 * * * for the injury or death of an employe shall operate as an assignment of any cause of action in tort which the employe or his personal representative may have against any other party for such injury or death; and such employer or insurer may enforce in their own name or names the liability of such other party for their benefit as their interests may appear.* If a recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary or beneficiaries shall be entitled to any amount recovered over and above the amount that the employer or insurer, or both, have paid or are liable for in compensation to such beneficiary or beneficiaries, after deducting reasonable cost of collection, and in no event shall the beneficiary receive less than one-third the amount recovered from the third party, less the reasonable cost of collection. Settlements of such claims and the distribution of the proceeds therefrom must have the approval of the court wherein the litigation is pending, or if not in suit, of the industrial commission. The beneficiary shall be entitled to reasonable notice and opportunity to be present in person or by counsel at the approval proceedings. The failure of the employer or compensation insurer in interest to pursue his remedy against the third party within ninety days after written demand by a compensation beneficiary, shall entitle such beneficiary or his representatives to enforce liability in his own name, accounting of the proceeds to be made on the basis above provided.

(b) If the insurance carrier of the employer and of the third party shall be the same or if there is common control of the insurer of each, the insurance carrier of the employer shall promptly notify the parties in interest and the industrial commission of that fact; likewise, if the employer has assumed the liability of the third party he shall give similar notice; and, in default of such notice, any settlement with an injured employe or beneficiary shall be void.

(2) The commencement of an action by an employe or his dependent against a third party for damages by reason of an accident covered by sections 102.03 to * * * 102.35, * * *

or the adjustment of any such claim, shall operate as a waiver of any claim for compensation against the employer, *unless such action is dismissed without prejudice and before trial, in which case the status of all the parties shall be the same as if action had never been commenced, except that all compensation benefits, indemnity and medical, accruing prior to the time such action is dismissed shall be forfeited.* The amount accruing to any dependent from any damage had or recovered by the personal representative of such employe from a third party shall discharge in equal amount the liability for compensation to such dependent.

(4) Nothing in sections 102.03 to 102.34 * * * shall prevent an employe from taking the compensation he may be entitled to under said sections and also maintaining a civil action against any physician or surgeon for malpractice. The measure of damages, if any be recovered in such action, shall be the amount of damages found by the jury less the compensation * * * payable to the employe under said sections, due to such malpractice.

(102.31) (3) The industrial commission, by itself or its employes, may examine from time to time the books and records of any liability insurance company insuring liability or compensation for an employer in this state. Any such company that shall refuse or fail to allow the industrial commission to examine its books and records * * * shall have its license to do business in the state revoked.

102.40 Reports furnished to the industrial commission pursuant to the requirements of * * * sections 102.37 and 102.38 of the statutes shall not be admissible as evidence in any action arising out of the death or accident reported.

SECTION 4. Two new subsections are added to section 102.09, a new paragraph is added to subsection (6) and a new paragraph is added to subsection (7) of section 102.09 and a new subsection is added to section 102.23 of the statutes to be numbered and to read: (102.09) (4p) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employe: A wife upon a husband with whom she is living at the time of his death; a husband upon a wife with whom he is living at the time of her death; a child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent,

there being no surviving dependent parent. In case of divorce the charging of the full support and maintenance of a child upon one of the divorced parents shall be held to constitute a living with the parent so charged.

(4r) If there is more than one person wholly dependent, the death benefit shall be divided between such dependents in such proportion as the commission shall determine to be just, considering their ages and other facts bearing on such dependency, and persons partially dependent, if any, shall receive no part thereof.

(6) (a) If an employe has present at the time of injury permanent disability consisting of twenty-five per cent or more loss or impairment of a hand, arm, foot, leg, ear or eye, and, as a result of such injury, incurs further permanent disability consisting of twenty-five per cent or more loss or impairment of a hand, arm, foot, leg, ear or eye, (not previously disabled), he shall be paid from the funds provided in this subsection additional compensation as specified in item 16, paragraph (a), subsection (5) of this section.

(7) (d) Treble the amount otherwise recoverable, if the injured employe is a minor under permit age and illegally employed.

(102.23) (5) The commencement of action for review shall not relieve the employer from paying compensation as directed, when such action involves only the question of liability as between the employer and one or more insurance companies or as between several insurance companies.

SECTION 5. This act shall take effect upon passage and publication.

Approved August 30, 1929.