

No. 116, A.]

[Published May 17, 1949.

CHAPTER 107.

AN ACT to amend 102.11 (1) (introductory paragraph), 102.12, 102.13 (1), 102.17 (1) (bm), 102.23 (3), 102.42 (1) and (2), 102.51 (2) (c), 102.58, 102.61 (introductory paragraph), (1) and (3); to repeal and recreate 102.03 (1) (f), 102.29, 102.565 (1); and to create 102.43 (5) of the statutes, relating to compensation for injuries under workmen's compensation.

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

SECTION 1. 102.03 (1) (f) of the statutes is repealed and recreated to read:

102.03 (1) (f) Every employe whose employment requires him to travel shall be deemed to be performing service growing out of and incidental to his employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of his employment.

SECTION 2. 102.11 (1) (Introductory paragraph) of the statutes is amended to read:

102.11 (1) (Introductory paragraph) The average weekly earnings for temporary disability shall be taken at not less than \$12.50 nor more than * * * \$46.50, and for permanent disability or death shall be taken at not less than \$20 nor more than * * * \$46.50. Between said limits the average weekly earnings shall be determined as follows:

SECTION 3. 102.12 of the statutes is amended to read:

102.12 No claims for compensation shall 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 disability and its relation to his 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 sufficient. Absence of notice shall 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 filed with the 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 barred, except that the right to compensation shall not be barred if the employer knew or should have known, within the 2-year period, that the employe had sustained or probably would sustain * * * disability. *Issuance of notice of a hearing on the commission's own motion shall have the same effect for the purposes of this section as the filing of an application.*

SECTION 4. 102.13 (1) of the statutes is amended to read:

102.13 (1) Whenever compensation is claimed by any employe, he shall, upon the written request of his employer, submit to a reasonable examination by a physician,

provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by said commission, or a member or examiner thereof. The employe shall be entitled to have a physician, provided by himself, present at any such examination. So long as the employe, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the commission, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employe may be required to testify before the commission when it shall so direct. *Notwithstanding any other statutory provisions, any physician attending a workmen's compensation claimant may furnish to the employe, employer, workmen's compensation insurance carrier, or the commission information and reports relative to a compensation claim.*

SECTION 5. 102.17 (1) (bm) of the statutes is amended to read:

102.17 (1) (bm) The provisions of section 326.12 shall not be applicable to proceedings under this act, *except as to a witness who is beyond reach of the subpoena of a commissioner or examiner, or in the situations presented in subsections (2), (3), or (4) of section 326.07.*

SECTION 6. 102.23 (3) of the statutes is amended to read:

102.23 (3) The record in any case shall be transmitted to the commission within * * * 5 days after *expiration of the time for appeal from the order or judgment of the court, unless appeal shall be taken from such order or judgment.*

SECTION 7. 102.29 of the statutes is repealed and recreated to read:

102.29 **THIRD PARTY LIABILITY.** (1) The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employe shall not affect the right of the employe, his 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 third party; nor shall the making of a claim by any such person against a third party for damages by reason of an injury to which sections 102.03 to 102.64 are applicable, or the adjustment of any such claim, affect the right of the injured employe or his 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 right to make a 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 industrial commission of Wisconsin shall become the agent of such party for the giving of a notice as required herein and the notice, when given to the industrial commission, 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 the industrial commission. If notice is given as herein provided, the liability of the tortfeasor 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 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 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. Any balance remaining shall be paid to the employe or his personal representative or other person entitled to bring action. If both the employe or his 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 industrial commission. A settlement of any third 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 the industrial commission.

(2) In the case of liability of the employer or insurer to make payment into the state treasury under the provisions of section 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 for reimbursement for any sum so paid into the state treasury, which right may be enforced either by joining in the action mentioned in subsection (1), or by independent action. Any action brought under this subsection may, upon order of the court, be consolidated and tried together with any action brought under subsection (1) hereof.

(3) Nothing in this act shall prevent an employe from taking the compensation he may be entitled to under it and also maintaining a civil action against any physician or surgeon 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 or surgeon for malpractice.

(4) 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. Nothing contained in this subsection shall prevent the employer or compensation insurer from sharing in the proceeds of any third party claim or action, as set forth in subsection (1).

SECTION 8. 102.42 (1) and (2) of the statutes are amended to read:

102.42 (1) The employer shall supply such medical, surgical 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, 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 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 reasonable expense incurred by or on behalf of the employe in providing the same. The employer shall also be liable for reasonable expense incurred by the employe for necessary treatment to cure and relieve him from the effects of occupational disease prior to the time that the employe knew or should have known the nature of his disability and its relation to employment, and as to such treatment the provisions of section 102.42 (2) and (3) shall not apply.

(2) 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. *Nothing contained in this section shall limit the right of the employe to make a second choice of physician from the panel of physicians named by the employer.* The commission may upon summary hearing permit an injured employe to make selection of a physician not on the panel.

SECTION 9. 102.43 (5) of the statutes is created 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 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.

SECTION 10. 102.51 (2) (e) of the statutes is amended to read:

102.51 (2) (e) No person who is a nonresident alien shall be found to be either totally or partially dependent on a deceased employe for support who cannot establish dependency by proving contributions from the deceased employe by written evidence or tokens of the transfer of money, such as drafts, letters of credit, cancelled checks, or receipts for the payment to any bank, express company, United States post office, or other agency commercially engaged in the transfer of funds from one country to another, for transmission of funds on behalf of said deceased employe to such nonresident alien claiming dependency. *This provision shall not be applicable unless the employe has been continuously in the United States for at least one year prior to his injury, and has been remuneratively employed therein for at least 6 months.*

SECTION 11. 102.565 (1) of the statutes is repealed and recreated to read:

102.565 (1) When an employe working subject to this chapter is, because he has a nondisabling silicosis, discharged from the employment in which he is engaged, or when an employe ceases such employment and it is in fact inadvisable for him on account of a

nondisabling silicosis to continue in it, and suffers wage loss by reason of such discharge or such cessation, the commission may allow such compensation on account thereof as it may deem just, not exceeding \$3,500. In case of such discharge prior to a finding by the industrial commission that it is inadvisable for him to continue in such employment, the liability of the employer who shall so discharge his employe shall be primary, and the liability of the insurer shall be secondary, under the same procedure and to the same effect as provided by section 102.62.

SECTION 12. 102.58 of the statutes is amended to read:

102.58 Where injury is caused by the wilful failure of the employe to use safety devices where provided *in accordance with any statute or lawful order of the commission* and adequately maintained, and their use is reasonably enforced, by the employer, or where injury results from the employe's wilful failure to obey any reasonable rule adopted by the employer for the safety of the employe and of which the employe has notice, or where injury results from the intoxication of the employe, the compensation, and death benefit provided herein shall be reduced 15 per cent.

SECTION 13. 102.61 (introductory paragraph), (1) and (3) of the statutes are amended to read:

102.61 (introductory paragraph) An employe who is entitled to *receive and has received compensation pursuant to this chapter, and who is entitled to* and is receiving * * * *instructions pursuant to* * * * *the provisions of the Act of Congress known as the Vocational Rehabilitation Act, and amendments thereto, (Public Law 113-78th Congress) as administered by the state in which he holds residence or in which he resided at the time of becoming physically handicapped,* shall, in addition to his other indemnity, be paid * * * *his actual and necessary expenses of travel and, if he receives such instructions elsewhere than at the place of his residence, his actual and necessary costs of maintenance, during rehabilitation, subject to the following conditions and limitations:*

(1) He must undertake the course of instruction within 60 days from the date when he has sufficiently recovered from his injury to permit of his so doing, or as soon thereafter as the * * * *officer or agency having charge of his instruction* shall provide opportunity for his rehabilitation.

(3) He may not have *expenses of travel and costs of maintenance* * * * *on account of training* * * * for a * * * period in excess of * * * 40 weeks in all.

SECTION 14. This act shall take effect on the first day of the month next following passage and publication.

Approved May 13, 1949.
