

Senate Bill 314

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**CHAPTER 350, LAWS OF 1967**

AN ACT to repeal 102.05 (2); to renumber 102.05 (3) and (4); to renumber and amend 102.60 (5); to amend 22.01 (11) (d), 102.04 (1) (b), 102.11 (1) (intro.), 102.17 (1) (a) and (as) and (4) (intro.), 102.31 (1) (a), 102.555 (4) (intro.), 102.57, 102.58 and 102.59 (1); and to repeal and recreate 102.05 (1) and 102.48 (1); and to create 102.60 (5) (b) 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. 22.01 (11) (d) of the statutes is amended to read:

22.01 (11) (d) Employes of municipal and county civil defense units are employes of the municipality or county to which the unit is attached

for purposes of workmen's compensation benefits. Employees of the area and state civil defense units are employees of the state for purposes of workmen's compensation benefits. Volunteer civil defense workers are employees of the civil defense unit with whom duly registered in writing for purposes of workmen's compensation benefits. A civil defense employe or volunteer who engages in civil defense activities upon order of any echelon in the civil defense organization other than that which carries his workmen's compensation coverage shall be eligible for the same benefits as though employed by the governmental unit employing him. Any employment which is part of a civil defense program including but not restricted because of enumeration, test runs and other activities which have a training objective as well as civil defense activities during an emergency proclaimed by the ~~governor~~ *in accordance with this chapter* and which grows out of, and is incidental to, such civil defense activity is covered employment. Members of a civil defense unit who are not acting as employes of a private employer during civil defense activities are employees of the civil defense unit for which acting. If no pay agreement exists or if the contract pay is less, pay for workmen's compensation purposes shall be computed at ~~\$2,080 per annum~~ *in accordance with s. 102.11.*

SECTION 2. 102.04 (1) (b) of the statutes is amended to read:

102.04 (1) (b) 1. Every person who usually employs 3 or more employes, whether in one or more trades, businesses, professions or occupations, and whether in one or more locations.

2. *Every person who usually employs less than 3 employes, provided he has paid wages of \$500 or more in any calendar quarter for services performed in this state. Such employer shall become subject as of the first day of the calendar year next succeeding such quarter.*

3. This paragraph shall not apply to farmers or ~~to~~ farm labor.

SECTION 3. 102.05 (1) of the statutes is repealed and recreated to read:

102.05 (1) An employer who has had no employe at any time within a continuous period of 2 years shall be deemed to have effected withdrawal, which shall be effective on the last day of such period. An employer who has not usually employed 3 employes and who has not paid wages of at least \$500 for employment in this state in any calendar quarter in a calendar year may file a withdrawal notice with the commission, which withdrawal shall take effect 30 days after the date of such filing or at such later date as is specified in the notice.

SECTION 4. 102.05 (2) of the statutes is repealed.

SECTION 5. 102.05 (3) and (4) of the statutes are renumbered 102.05 (2) and (3).

SECTION 6. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability shall be taken at not less than \$12.50, nor more than ~~\$97.15~~ *\$104.29*, resulting in a maximum weekly compensation rate of ~~\$68~~ *\$73*; for permanent total disability or death at not less than \$20, nor more than ~~\$97.15~~ *\$104.29*, resulting in a maximum weekly compensation rate of ~~\$68~~ *\$73* for permanent total disability and of ~~\$48.57 1/2~~ *\$52.145* for death benefits; and for permanent partial disability at not less than \$20, nor more than ~~\$65.72~~ *\$67.86*, resulting in a maximum weekly compensation rate of ~~\$46~~ *\$47.50*. Between said limits the average weekly earnings shall be determined as follows:

SECTION 7. 102.17 (1) (a) and (as) and (4) of the statutes are amended to read:

102.17 (1) (a) 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 40 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 10 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 or certified 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, within or without the state. The commission may also arrange to have hearing held by the commission, officer, or tribunal having authority to hear cases arising under the workmen's compensation law of any other state, of the District of Columbia, or of any territory of the U.S., the testimony and proceedings at any such hearing to be reported to the commission and to be part of the record in the case. Any evidence so taken shall be subject to rebuttal upon final hearing before the commission.

(as) The contents of verified medical and surgical reports, by physicians and surgeons licensed in and practicing in Wisconsin, presented by claimants for compensation shall constitute prima facie evidence as to the matter contained therein, subject to such rules and such limitations as the commission prescribes. ~~So, also, shall such~~ *Verified* reports of physicians and surgeons, wherever licensed and practicing, to whom the claimant had been sent for examination or treatment by the employer or insurer, ~~provided that if~~ *such doctor consents to subject himself 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 and surgeons licensed in and practicing in ~~Wisconsin~~ *this state* may certify instead of verify such reports, and such certification shall be equivalent to verification; and any physician or surgeon who knowingly makes a false statement of fact or opinion in such certified report may be fined or imprisoned or both under s. 943.39. The record of a hospital or sanatorium in ~~Wisconsin~~ *this state* operated by any department, agency, or municipality of the federal or state government, or if any other hospital or sanatorium in ~~Wisconsin~~ *this state* which is satisfactory to the commission, established by certificate, affidavit, or testimony of the supervising officer or other person having charge of such records, or of a physician 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 compensation proceeding as to the matter contained therein, insofar as it is otherwise competent and relevant.

(4) The right of an employe, his 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 case of injury or death caused by exposure to ionized radiation the right to proceed hereunder shall be subject to no time limitations. *Payment of wage 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 the employer knew of the employe's condition and its alleged relation to the employment.*

SECTION 8. 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, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with the act shall be void. Such contract shall be construed to grant full coverage of all liability of the assured under and according to the provisions of this act, notwithstanding any agreement of the parties to the contrary unless the commission 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 said s. 102.07 (6) for an intermediate or independent news agency, provided the policy of insurance of such publisher or intermediate agency is indorsed to cover such persons. If the publisher so covers it shall be necessary for the intermediate or independent news agency to cover liability for such persons. No policy shall be canceled by either party within the policy period nor terminated upon expiration date until a notice in writing shall be 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 commission 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 commission shall be served personally or by registered or certified mail on the commission 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.

SECTION 9. 102.48 (1) of the statutes is repealed and recreated to read:

102.48 (1) An unestranged surviving parent or parents to whose support the deceased has contributed less than \$500 in the 52 weeks next preceding the injury causing death shall receive a death benefit of \$2,000. If the parents are not living together, the commission shall divide this sum in such proportion as it deems to be just, considering their ages and other facts bearing on dependency.

SECTION 10. 102.555 (4) (intro.) of the statutes is amended to read:

102.555 (4) (intro.) Subject to the limitations herein contained and the provisions of s. 102.53 (2) there shall be payable for total occupational deafness of one ear, 36 weeks of compensation; for total occupational deafness of both ears, 216 weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided. *The reduction of the periods for which indemnity is paid made because of age under s. 102.53 (2) shall not apply in cases of occupational deafness; however, a reduction of the period shall be made at the rate of one-half per cent for each year that the age of such employe exceeds 50 in recognition of the loss attributable to presbycusis.* In cases covered by this subsection "time of injury," "occurrence of injury," or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employe:

SECTION 11. 102.57 and 102.58 of the statutes are amended to read:

102.57 Where injury is caused by the failure of the employer to comply with any statute or any lawful order of the commission, compensation and death benefits as provided in this chapter shall be increased 15% *but not more than a total increase of \$7,500*. Failure of an employer reasonably to enforce compliance by employes with such statute or order of the commission shall constitute failure by the employer to comply with such statute or order.

102.58 Where injury is caused by the 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 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% *but the total reduction shall not exceed \$7,500*.

SECTION 12. 102.59 (1) of the statutes is amended to read:

102.59 (1) If an employe has at the time of injury permanent disability which if it had resulted from such injury would have entitled him to indemnity for ~~250~~ 200 weeks less 2½% thereof for each year of age above 50 years with no reduction in excess of 50%, and, as a result of such injury, incurs further permanent disability, which entitles him to indemnity for ~~250~~ 200 weeks less 2½% thereof for each year of age above 50 years with no reduction in excess of 50%, he shall be paid from the funds provided in this section additional compensation equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser, ~~provided, that~~. If said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury. Such additional compensation shall accrue from the end of the period for which compensation for permanent disability resulting from such injury is payable by the employer, and shall be subject to ~~the provisions of s. 102.32~~ (6) and (7).

SECTION 13. 102.60 (5) of the statutes is renumbered 102.60 (5) (a) and amended to read:

102.60 (5) (a) A permit *or certificate of age* unlawfully issued by an officer specified in ch. 103, or unlawfully altered after issuance, without fraud on the part of the employer, shall be deemed a permit within the provisions of this section.

SECTION 14. 102.60 (5) (b) of the statutes is created to read:

102.60 (5) (b) If the employer is misled in employing a minor illegally because of fraudulent written evidence of age presented to him by the minor, the increased compensation provided by this section shall not be paid to the employe, but shall be paid into the fund established by s. 102.49.

SECTION 15. EFFECTIVE DATES. SECTIONS 1 and 6 to 14 shall take effect July 1, 1967 or the first day of the month following publication, whichever is later. SECTIONS 2, 3, 4 and 5 shall take effect July 1, 1968.

Approved January 23, 1968.