

1987 Wisconsin Act 179

AN ACT to repeal 102.13 (3) (b) and (c); to renumber 102.13 (3) (a) and 102.56; to renumber and amend 102.11 (1) (f), 102.30 (7) and 102.43 (6); to amend 102.01 (2) (c), 102.11 (1) (intro.), 102.13 (1) (a), (b) (intro.) and (c), 102.13 (4), 102.18 (1) (bp), 102.28 (2) (a) and (b), 102.29 (3), 102.31 (1) (a) and (b), 102.31 (3), 102.42 (1), 102.43 (7) (a), (b) and (c) 1, 102.43 (8) (a), 102.47 (2) and 102.58; and to create 102.076 (3m), 102.11 (1) (f) 2, 102.18 (1) (bw), 102.30 (7) (b), 102.43 (6) (b), 102.56 (2) and 102.59 (1m) of the statutes, relating to various changes in the workers compensation laws.

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

SECTION 1. 102.01 (2) (c) of the statutes is amended to read:

102.01 (2) (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 occupational or nonoccupational life.

SECTION 2. 102.076 (3m) of the statutes is created to read:

102.076 (3m) This section does not apply after December 31, 1989.

SECTION 3. 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 not less than \$30 nor more than the wage rate 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 shall be not less than \$30. ~~The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1984, shall be not 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 not more than \$162, resulting in a maximum compensation rate of \$108.~~ The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1986 the first day of the first month beginning after the effective date of this subsection [revisor inserts date], shall be not more than

~~\$168~~ \$181.50, resulting in a maximum compensation rate of ~~\$142~~ \$121. The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, ~~1987~~ 1989, shall be not more than ~~\$175.50~~ \$187.50, resulting in a maximum compensation rate of ~~\$147~~ \$125. Between such limits the average weekly earnings shall be determined as follows:

SECTION 4. 102.11 (1) (f) of the statutes is renumbered 102.11 (1) (f) 1 and amended to read:

102.11 (1) (f) 1. Average Except as provided in subd. 2, average weekly earnings may not be less than 24 times the normal hourly earnings at the time of injury, ~~except that weekly temporary disability benefits may not exceed the average weekly wages of part-time employment.~~

SECTION 5. 102.11 (1) (f) 2 of the statutes is created to read:

102.11 (1) (f) 2. The weekly temporary disability benefits for a part-time employe who restricts his or her availability in the labor market to part-time work and is not employed elsewhere may not exceed the average weekly wages of the part-time employment.

SECTION 6. 102.13 (1) (a), (b) (intro.) and (c) of the statutes are 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 or worker's compensation insurer, submit to reasonable examinations by physicians, chiropractors or podiatrists provided and paid for by the employer or insurer. 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) (intro.) An employer or insurer 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 is entitled to have a physician, chiropractor or podiatrist provided by himself or herself present at the examination. The

employer's or insurer's written request for examination shall notify the employe of all of the following:

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

SECTION 7. 102.13 (3) (a) of the statutes is renumbered 102.13 (3).

SECTION 8. 102.13 (3) (b) and (c) of the statutes are repealed.

SECTION 9. 102.13 (4) of the statutes is amended to read:

102.13 (4) The rights of employes to begin or maintain proceedings for the collection of compensation and to receive weekly indemnities which accrue and become payable shall not be suspended or barred under sub. (1) when an employe refuses to submit to a physical examination, upon the request of the employer or worker's compensation insurer or at the direction of the department or an examiner, which would require the employe to travel a distance of 100 miles or more from his or her place of residence, unless the department or examiner determines that circumstances warrant the examination.

SECTION 10. 102.18 (1) (bp) of the statutes is amended to read:

102.18 (1) (bp) The department may include a penalty in its final an 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 11. 102.18 (1) (bw) of the statutes is created to read:

102.18 (1) (bw) If an insurer or self-insured employer pays compensation to an employe in excess of its liability and another insurer is liable for all or part of the excess payment, the department may order the insurer or self-insured employer that is liable to reimburse the insurer or self-insured employer that made the excess payment.

SECTION 12. 102.28 (2) (a) and (b) of the statutes are 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, as described in s. 102.04 (1),~~ 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.

(b) *Exemption from duty to insure.* The department may grant a written order of exemption to an employer who shows its financial ability to pay the amount of compensation, agrees to report faithfully all compensable injuries and agrees to comply with this chapter and the rules of the department. The department may condition the granting of an exemption upon the employer's furnishing of satisfactory security to guarantee payment of all claims under compensation. The department may require that bonds or other personal guarantees be enforceable against sureties in the same manner as an award may be enforced. The department may from time to time require proof of financial ability of the employer to pay compensation. Any exemption shall be void if the application for it contains a financial statement which is false in any material respect. An employer who files an application containing a false financial statement remains subject to par. (a).

SECTION 13. 102.29 (3) of the statutes is amended to read:

102.29 (3) Nothing in this 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 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 podiatrist for malpractice.~~

SECTION 14. 102.30 (7) of the statutes is renumbered 102.30 (7) (a) and amended to read:

102.30 (7) (a) 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~~ expenses compensable under s. 102.42 when the claimant consents or when it is established that the payments under the nonindustrial insurance policy were improper. No attorney fee is due with respect to that reimbursement.

SECTION 15. 102.30 (7) (b) of the statutes is created to read:

102.30 (7) (b) An insurer who issues a nonindustrial insurance policy described in par. (a) may not intervene as a party in any proceeding under this chapter for reimbursement under par. (a).

SECTION 16. 102.31 (1) (a) and (b) of the statutes are amended to read:

102.31 (1) (a) Every contract for the insurance of compensation provided under this chapter or against liability therefor is subject to this chapter and provisions inconsistent with this chapter are void, ~~unless the department has by written order specifically consented to the issuance of a contract covering that liability.~~

(b) Except as provided in par. (c), a contract under par. (a) shall be construed to grant full coverage of all liability of the assured under this chapter unless the department specifically consents by written order to the issuance of a contract providing divided insurance or partial insurance.

SECTION 17. 102.31 (3) of the statutes is amended to read:

102.31 (3) The department may examine from time to time the books and records of any insurer insuring liability or compensation for an employer in this state. The department may require an insurer to designate one mailing address for use by the department and to respond to correspondence from the department within 30 days. Any such insurer that refuses or fails to answer correspondence from the department or to allow the department to examine its books and records is subject to enforcement proceedings under s. 601.64.

SECTION 18. 102.42 (1) of the statutes is amended to read:

102.42 (1) TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical, chiropractic, podiatric, dental 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 provided in sub. (4), 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 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 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 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.

SECTION 19. 102.43 (6) of the statutes is renumbered 102.43 (6) (a) and amended to read:

102.43 (6) (a) ~~No~~ Except as provided in par. (b), no sick leave benefits provided in connection with other employment or wages received from other employment held by the employe when the injury occurred may be considered in computing actual wage loss from the employer in whose employ the employe sustained injury.

(c) Wages received from the employer in whose employ the employe sustained injury or from other employment obtained after the injury occurred shall be considered in computing benefits for temporary disability.

SECTION 20. 102.43 (6) (b) of the statutes is created to read:

102.43 (6) (b) Wages received from other employment held by the employe when the injury occurred shall be considered in computing actual wage loss from the employer in whose employ the employe sustained the injury, if the employe's weekly temporary disability benefits are calculated under s. 102.11 (1) (a).

SECTION 21. 102.43 (7) (a), (b) and (c) 1 of the statutes are 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 preceding the renewed period of disability, payment of compensation for the new period of disability shall be made as provided in par. (c).

(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. Benefits for rehabilitative training shall be made as provided in par. (c).

(c) 1. If the employe was entitled to maximum weekly benefits at the time of injury, payment for the renewed temporary ~~total~~ disability or the rehabilitative training shall be at the maximum rate in effect at the commencement of the new period.

SECTION 22. 102.43 (8) (a) of the statutes is amended to read:

102.43 (8) (a) Regardless of whether the employe's healing period has ended, no employe ~~employed~~ employed at work immediately before the compulsory vacation period may receive a temporary total disability benefit for injury sustained while engaged in employment for that employer.

SECTION 23. 102.47 (2) of the statutes is amended to read:

102.47 (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~~ the amount specified in s. 102.50. Any remaining sum ~~to~~ shall be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there ~~shall be~~ is 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 24. 102.56 of the statutes is renumbered 102.56 (1).

SECTION 25. 102.56 (2) of the statutes is created to read:

102.56 (2) Notwithstanding sub. (1), if an employee who claims compensation under this section returns to work for the employer who employed the employee at the time of the injury at the same or a higher wage, the employee may not be compensated unless the employee shows that he or she probably has lost or will lose wages due to the disfigurement.

SECTION 26. 102.58 of the statutes is amended to read:

102.58 Decreased compensation. If injury is caused by the failure of the employee to use safety devices

which are provided in accordance with any statute or lawful order of the department and are adequately maintained, and the use of which is reasonably enforced by the employer, or if injury results from the employee's failure to obey any reasonable rule adopted and reasonably enforced by the employer for the safety of the employee and of which the employee has notice, or if injury results from the intoxication of the employee by alcohol beverages as defined in s. 125.02 (1) or use of a controlled substance as defined in s. 161.01 (4), the compensation and death benefit provided in this chapter shall be reduced 15% but the total reduction may not exceed \$15,000.

SECTION 27. 102.59 (1m) of the statutes is created to read:

102.59 (1m) A compromise order issued under s. 102.16 (1) may not be admitted as evidence in any action or proceeding for benefits compensable under this section.

SECTION 28. **Effective date.** This act takes effect on February 1, 1988, or the first day of the first month beginning after publication, whichever is later.