

No. 243, S.]

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CHAPTER 382.

AN ACT to amend 102.01 (2), 102.11 (1) (introductory paragraph), 102.12, 102.13 (1), 102.17 (1) (a), 102.17 (1) (as), 102.29 (1), 102.35 (2), 102.42 (7), 102.44 (2), 102.44 (3) (a) and (b), 102.47 (introductory paragraph) and (1), 102.48 (1), 102.49 (1), 102.49 (5), 102.51 (1), 102.53 (2), 102.59 (1) and (2), 102.62; to repeal and recreate 102.18 (5); and to create 102.17 (6), 102.18 (6), 102.29 (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. 102.01 (2) of the statutes is amended to read:

102.01 (2) "Act" as used in this chapter means "chapter"; "compensation" means workmen's compensation; "primary compensation and death benefit" mean compensation or indemnity for disability, or death benefit, other than increased, double or treble compensation or death benefit; "injury" is mental or physical harm to an employe caused by accident or disease, and also damage to or destruction of artificial members, dental appliances * * *, teeth, and eyeglasses, but, in the case of 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); and "municipality" includes county, city, town, village, school district, sewer district, drainage district, and other public or quasi public corporations; and "commission" means the industrial commission of Wisconsin. "Time of injury", "occurrence of injury", "date of injury" is the date of the accident which caused the injury, or in the case of disease, the last day of work for the last employer whose employment caused disability.

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 * * * \$52.86, and for permanent disability or death shall be taken at not less than \$20 nor more than * * * \$52.86. 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 * * * claim 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 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 commission within 2 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 * * * the injury on which claim is based. 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 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. *The testimony of any physician or surgeon who is licensed to practice where he resides or practices outside the state, may be received in evidence in compensation proceedings.*

SECTION 5. 102.17 (1) (a) and (as) 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 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 United States, 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 may prescribe. *So, also, shall such 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 such doctor consents to subject himself to cross-examination. The record of a hospital or sanatorium in Wisconsin operated by any department, agency, or municipality of the federal or state government, or of any other hospital or sanatorium in Wisconsin 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 may otherwise be competent and relevant.*

SECTION 6. 102.17 (6) of the statutes is created to read:

102.17 (6) If an employe or dependent shall, at the time of injury, or at the time of his right accrues, be under 21 years of age, the limitations of time within which he may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after he attains the age of 21 years. If, within any part of the last year of any such period of limitation, an employe, his personal representative, or surviving dependent be insane or on active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation

would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

SECTION 7. 102.18 (5) of the statutes is repealed and recreated to read:

102.18 (5) If it shall appear to the commission that a mistake may have been made as to cause of injury in the findings, order, or award upon an alleged injury based on accident, when in fact the employe was suffering from an occupational disease, the commission may upon its own motion, with or without hearing, within 3 years from the date of such hearing, within 3 years from the date of such findings, order, or award, set aside such findings, order, or award, or the commission may take such action upon application made within such 3 years. Thereafter, and after opportunity for hearing, the commission may, if in fact the employe is suffering from disease arising out of the employment, make new findings and award, or it may reinstate the previous findings, order, or award.

SECTION 8. 102.18 (6) of the statutes is created to read:

102.18 (6) In case of disease arising out of the employment, the commission may from time to time review its findings, order, or award, and make new findings, order, or award, based on the facts regarding disability or otherwise as they may then appear. This subsection shall not affect the application of the limitation in 102.17 (4).

SECTION 9. 102.29 (1) of the statutes is amended to read:

102.29 (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 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, *except that it shall not be reimbursed for any payments of increased compensation made or to be made under the provisions of 102.22, 102.57 or 102.60.* 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.

SECTION 10. 102.29 (5) of the statutes is created to read:

102.29 (5) 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, and the insurer fails to commence a third party action, or file a statutory notice of claim, the 2 year statute within which a notice of injury to the person must be served under section 330.19 (5), shall not be pleaded as a bar in any action commenced by the injured employe herein against any such third party subsequent to 2 years from the date of injury, but prior to 6 years from such date of injury, provided that any recovery in such action shall be lim-

ited to the insured liability of the third party. In any such action commenced by the injured employe subsequent to the 2 year period, the insurance carrier of the employer shall forfeit all right to participate in such action as a complainant and to recover any payments made under the workmen's compensation act. This subsection shall not apply if the insurance carrier has complied with subsection (4).

SECTION 11. 102.35 (2) of the statutes is amended to read:

102.35 (2) Any employer, or duly authorized agent thereof, *who, without reasonable cause, refuses to rehire an employe injured in the course of employment, or who, because of a claim or attempt to claim compensation benefits from such employer, shall discriminate or threaten to discriminate against an employe as to his employment, shall forfeit to the state not less than \$50 nor more than \$500 for each offense. No action under this subsection shall be commenced except upon request of the industrial commission.*

SECTION 12. 102.42 (7) of the statutes is amended to read:

102.42 (7) *Unless the employe shall have elected Christian Science treatment in lieu of medical, surgical, hospital, or sanatorium treatment, no compensation shall be payable for the death or disability of an employe, * * * if his death be caused * * *, or insofar as his disability may be aggravated, caused or continued (a) by an unreasonable refusal or neglect to submit to or follow any competent and reasonable medical or surgical treatment, (b) or, in the case of tuberculosis, by his refusal or neglect to submit to or follow hospital or sanatorium treatment when found by the commission to be necessary * * *. The right to compensation accruing during a period of refusal or neglect under item (b) shall be barred, irrespective of whether disability was aggravated, caused or continued thereby.*

SECTION 13. 102.44 (2) and (3) (a) and (b) of the statutes are amended to read:

102.44 (2) In case of permanent total disability aggregate indemnity shall be weekly indemnity for the period that he may live. Total * * * *impairment for industrial use* of both eyes, or the loss of both arms at or near the shoulder, or of both legs at or near the hip, or of one arm at the shoulder and one leg at the hip, shall constitute permanent total disability. This enumeration shall not be exclusive but in other cases the commission shall find the facts.

(3) (a) One thousand weeks for all persons * * * *50 years of age or less.*

(b) For each successive yearly age group, beginning with * * * *51 years*, the maximum limitation shall be reduced by * * * *2½ per cent per year, with no reduction in excess of 50 per cent.*

SECTION 14. 102.47 (introductory paragraph) and (1) of the statutes are amended to read:

102.47 (introductory paragraph) If death occurs to an injured employe other than as a proximate result of the injury, before disability indemnity ceases, death benefit *and burial expense allowance* shall be as follows:

(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 102.46. The amount available shall be applied toward burial expense before any is applied toward death benefit.*

SECTION 15. 102.48 (1) of the statutes is amended to read:

102.48 (1) 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 * * * *\$2,000*. If the parents are not living together, the commission shall divide this sum in such proportion as it shall determine to be just, considering their ages and other facts bearing on dependency.

SECTION 16. 102.49 (1) of the statutes is amended to read:

102.49 (1) Where the beneficiary under section 102.46 or section 102.47 (1) is the wife or husband of the deceased employe and is wholly dependent for support, an additional death benefit shall be paid from the funds provided by subsection (5) for each child by their marriage living at the time of the death of the employe, and who is likewise wholly dependent upon him for support. Such additional benefit shall be computed from the date of the death of the employe as follows: For the child one year of age or under (including a posthumous child), a sum equal to *1½ times* the average annual earnings of the deceased employe. For children in each successive yearly age group the amount allowed shall be reduced by * * * *one-eighteenth part of such * * * sum*, with no allowance for any child over *18 years of age* at the death of the employe unless such child be physically or mentally incapacitated from earning, in which case the commission shall make such allowance as the equities and the necessities of the case merit, not more, however, than the amount payable on account of a child under one year of age.

SECTION 17. 102.49 (5) of the statutes is amended to read:

102.49 (5) 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 wholly dependent, such payment to the state treasury in no event to exceed * * * \$3,000. The payment into the state treasury 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 section 102.29. If such payment is not made within 20 days after the commission makes request therefor, any sum payable shall bear interest at the rate of 6 per cent per annum.

SECTION 18. 102.51 (1) of the statutes is amended to read:

102.51 (1) 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 under the age of 18 years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he is living at the time of the death of such parent, there being no surviving dependent parent. Where a dependent entitled to the presumption in this subsection survives the deceased employe, all other dependents shall be excluded. * * * The charging of any portion of the support and maintenance of a child upon one of the * * * parents, or any voluntary contribution toward the support of a child by * * * a parent, or an obligation to support a child by * * * a parent shall * * * constitute a living with * * * any such parent * * * within the meaning of this section.

SECTION 19. 102.53 (2) of the statutes is amended to read:

102.53 (2) In cases where the injured employe is above 50 years of age when injured the periods for which indemnity shall be payable, in addition to the healing period, shall be reduced from those specified in section 102.52 by * * * 2½ per cent for each year that the age of such employe exceeds 50, with no reduction in excess of 50 per cent.

SECTION 20. 102.59 (1) and (2) of the statutes are 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 150 weeks less 2½ per cent thereof for each year of age above 50 years with no reduction in excess of 50 per cent, and, as a result of such injury, incurs further permanent disability * * * , which entitles him to indemnity for 150 weeks less 2½ per cent thereof for each year of age above 50 years with no reduction in excess of 50 per cent, 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, however, 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 section 102.32 (6) and (7).

(2) In case of the loss or of the total impairment of a hand, arm, foot, leg, ear or eye, the employer shall be required to pay * * * \$150 into the state treasury. The payment shall be made in all such cases regardless of whether the employe, his dependents or personal representatives, commence action against a third party as provided in section 102.29.

SECTION 21. 102.62 of the statutes is amended to read:

102.62 In case of liability for the increased compensation or increased death benefits provided for by section 102.57, or included in section 102.60, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. In case proceedings are had before the commission for the recovery of such increased compensation or increased death benefits the commission shall set forth in its award the amount and order of liability as herein provided. Execution shall not be issued against the insurance carrier to satisfy any judgment covering such increased compensation or increased death benefits until execution has first been issued against the employer and has been returned unsatisfied as to any part thereof. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for such increased compensation or * * * increased death benefits shall be void. In case the employer shall have been adjudged bankrupt, or have made an assignment for the benefit of creditors, or if the employer, other than an individual, have gone out of business or have been dissolved, or if a corporation, its charter have been forfeited or

revoked, the insurer shall be liable for the payment of increased compensation and death benefits without judgment or execution against the employer, but without altering the primary liability of the employer.

SECTION 22. This act shall take effect on the first day of the month next following passage and publication.

Approved June 12, 1951.
