

No. 432, S.]

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CHAPTER 387

AN ACT to renumber 102.04 (intro. par.) and (1); to renumber and amend 102.04 (2), (3) and (4); to amend 101.01 (1), 102.07 (4), 331.37 (3) and 340.01 (18); and to create 102.04 (1) (c), (2) and 102.07 (5) of the statutes, relating to workmen's compensation applicable to agriculture.

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

SECTION 1. 101.01 (1) of the statutes is amended to read:

101.01 (1) The phrase "place of employment" * * * includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but * * * *does* not include any place where persons are employed in (a) private domestic service which does not involve the use of mechanical power or (b) farming. The term "farming" includes those activities specified in s. 102.04 * * * (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or his employes for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production.

SECTION 2. 102.04 (intro. par.) and (1) of the statutes are renumbered 102.04 (1) and (a), respectively.

SECTION 3. 102.04 (2) and (3) of the statutes are renumbered 102.04 (1) (b) and (d), respectively and amended to read:

102.04 (1) (b) 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. * * * This * * * *paragraph* shall not apply to farmers or to farm labor. * * *

(d) Every person * * * to whom * * * *pars. (a), (b) and (c)* are not applicable, who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the injury to the employe for which compensation may be claimed, shall, * * * as provided in s. 102.05, have elected to become subject to the provisions of this chapter, and who shall not, prior to such accident, have effected a withdrawal of such election * * *.

SECTION 4. 102.04 (1) (c) of the statutes is created to read:

102.04 (1) (c) Every person engaged in farming who on any 20 consecutive or nonconsecutive days during a calendar year employs 6 or more employes, whether in one or more locations. The provisions of this chapter shall apply to such employer 10 days after the twentieth such day.

SECTION 5. 102.04 (2) of the statutes is created to read:

102.04 (2) Members of partnerships shall not be counted as employes. Except as provided in s. 102.07 (5) (a), a person under contract of hire for the performance of any service for any employer subject to this section (1961) shall not constitute an employer of any other person

with respect to such service and such other person shall, with respect to such service, be deemed to be an employe only of such employer for whom the service is being performed.

SECTION 6. 102.04 (4) of the statutes is renumbered 102.04 (3) and amended to read:

102.04 (3) As used in this chapter "farming" means the operation of farm premises owned or rented by the operator. "Farm premises" means areas used for operations herein set forth, but * * * *does* not include other areas, greenhouses or other similar structures unless used principally for the production of food and farm plants. "Farmer" means any person * * * engaged in farming as defined. Operation of farm premises shall be deemed to be the planting and cultivating of the soil thereof; the raising and harvesting of agricultural, horticultural or arboricultural crops thereon; the raising, breeding, tending, training and management of livestock, bees, poultry, fur bearing animals, wildlife or aquatic life, or their products, thereon; the processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above-named commodities, substantially all of which have been planted or produced thereon; the clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an accessory to other farming operations; the managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements * * * *thereon* and the exchange of labor, services or the exchange of use of equipment with other farmers in pursuing such activities. *The operation for not to exceed 30 days during any calendar year, by any person deriving his principal income from farming, of farm machinery in performing farming services for other farmers for a consideration other than exchange of labor shall be deemed farming.* Operation of such premises shall be deemed to include also any other activities commonly considered to be farming whether conducted on or off such premises by the farm operator.

SECTION 7. 102.07 (4) of the statutes is amended to read:

102.07 (4) Every person in the service of another under any contract of hire, express or implied, all helpers and assistants of employes, whether paid by the employer or employe, if employed with the knowledge, actual or constructive, of the employer, including minors (who shall have the same power of contracting as adult employes), but not including (a) * * * domestic servants, * * * (b) any person whose employment is not in the course of a trade, business, profession or occupation of his employer, unless as to any of said classes, such employer has elected to include them. Item * * * (b) shall not operate to exclude an employe whose employment is in the course of any trade, business, profession or occupation of his employer, however casual, unusual, desultory or isolated any such trade, business, profession or occupation may be.

SECTION 8. 102.07 (5) of the statutes is created to read:

102.07 (5) For the purpose of determining the number of employes to be counted under s. 102.04 (1) (c), but for no other purpose, the following definitions shall apply:

(a) Farmers or their employes working on an exchange basis shall not be deemed employes of a farmer to whom their labor is furnished in exchange.

(b) The parents, spouse, child, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a farmer shall not be deemed his employes.

SECTION 9. 331.37 (3) of the statutes is amended to read:

331.37 (3) * * * Subsection (1) (a), (b) and (c) shall not apply to farm labor, *except such farm labor as is subject to ch. 102.*

SECTION 10. 340.01 (18) of the statutes is amended to read:

340.01 (18) "Farm truck" means a motor truck owned and operated by a farmer and used primarily for the transportation of supplies, farm equipment and products on the owner's farm or between his farms, the transportation of farm products from the owner's farm to market, and the transportation of supplies to his farm. As used in this subsection, the term "farmer" includes persons who are engaged in those activities specified in the definition of "operation of farm premises" contained in s. 102.04 * * * (3), provided that such activities are directly or indirectly for the purpose of producing a commodity or commodities for market, or as an accessory to such production.

SECTION 11. This act shall take effect January 1, 1962.

Approved August 7, 1961.
