

No. 288, S.]

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### CHAPTER 328

AN ACT to repeal 102.44 (1), 102.49 (9) and 102.565 (5); to renumber 102.565 (6); to amend 20.07 (3), 102.03 (1) (c), 102.07 (9), 102.11 (1) (introductory paragraph), 102.16 (1), 102.17 (4), 102.47 (2), 102.49 (1) and (5), 102.50, 102.52 (17) and (18), 102.565 (1), (2), (3) and (4), 102.57, 102.59 (1) and (2), and 102.64 (1); and to create 102.565 (6) of the statutes, relating to compensation for injuries under workmen's compensation and making an appropriation.

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

SECTION 1. 20.07 (3) of the statutes is amended to read:

20.07 (3) Annually, such sums as may be necessary for payments as provided in ch. 102, and under s. 56.21, except that payments of \* \* \* increased compensation payable under ss. 102.57 and 102.60, shall be paid from the appropriation covering the salary or maintenance of the person injured, provided such appropriation has not been exhausted; otherwise payments shall be made from the general fund *and the first \$200 of compensation thus paid from the general fund in the case of any person whose work was financed from a segregated fund or account shall be charged to that fund or account.*

SECTION 2. 102.03 (1) (c) of the statutes is amended to read:

102.03 (1) (c) Where, at the time of the injury, the employe is performing service growing out of and incidental to his employment. Every employe going to and from his

employment in the ordinary and usual way, while on the premises of his employer, or while in the immediate vicinity thereof if the injury results from an occurrence on the premises, shall be deemed to be performing service growing out of and incidental to his employment; and so shall any fireman responding to a call for assistance outside the limits of his city or village, unless such response is in violation of law. The premises of his employer shall be deemed to include also the premises of any other person on whose premises service is being performed.

SECTION 3. 102.07 (9) of the statutes is amended to read:

102.07 (9) Members of the national and state guards, when in state service performing official duty under direction of appropriate authority, but only in case federal laws, rules or regulations provide no benefits substantially equivalent to those provided in this chapter.

SECTION 4. 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 \* \* \* \$60; \* \* \* for permanent total disability or death \* \* \* at not less than \$20 nor more than \* \* \* \$60; and for permanent partial disability at not less than \$20 nor more than \$52.86. Between said limits the average weekly earnings shall be determined as follows:

SECTION 5. 102.16 (1) of the statutes is amended to read:

102.16 (1) Any controversy concerning compensation, including any in which the state may be a party, shall be submitted to said commission in the manner and with the effect provided in this chapter. Every compromise of any claim for compensation may be reviewed and set aside, modified or confirmed by the commission within one year from the date such compromise is filed with the commission, or from the date an award has been entered, based thereon, or the commission may take such action upon application made within such year. Unless the word "compromise" appears in a stipulation of settlement, the settlement shall not be deemed a compromise, and further claim shall not be barred except as provided in s. 102.17 (4) irrespective of whether award is made. The employer or insurer shall have equal rights with the employe to have review of a compromise. Upon petition filed by the employer or insurer with the commission within one year from any award upon a stipulation of settlement the commission shall have power to set aside said award or otherwise determine the rights of the parties.

SECTION 6. 102.17 (4) of the statutes is amended to read:

102.17 (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.

SECTION 7. 102.44 (1) of the statutes is repealed.

SECTION 8. 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 \* \* \* \$350, any remaining sum to be paid to dependents, as provided in this section and ss. 102.46 and 102.48 and there shall be no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments.

SECTION 9. 102.49 (1) and (5) of the statutes are amended to read:

102.49 (1) Where the beneficiary under s. 102.46 or s. 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 sub. (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 \* \* \*  $1-1/15$  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-sixteenth part of such sum, with no allowance for any child over \* \* \* 16 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.

(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 \* \* \* \$4,000. 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 s. 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 10. 102.49 (9) of the statutes is repealed.

SECTION 11. 102.50 of the statutes is amended to read:

102.50 In all cases where death of an employe proximately results from the injury the employer or insurer shall pay the reasonable expense for burial, not exceeding \* \* \* \$350.

SECTION 12. 102.52 (17) and (18) are amended to read:

102.52 (17) Total deafness *from accident or sudden trauma*, 333½ weeks;

(18) Total deafness of one ear *from accident or sudden trauma*, 50 weeks.

SECTION 13. 102.565 (1), (2), (3) and (4) of the statutes are amended to read:

102.565 SILICOSIS, NONDISABLING; LOSS OF HEARING DUE TO INDUSTRIAL NOISE; MEDICAL EXAMINATION; CONDITIONS OF LIABILITY. (1) When an employe working subject to this chapter is, because he has a nondisabling silicosis or a loss of hearing due to prolonged exposure to noise in his employment, discharged or transferred 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 or such impairment of his hearing to continue in it, and suffers wage loss by reason of such discharge, transfer 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, *without other adequate cause for discharge*, shall be primary, and the liability of the insurer shall be secondary, under the same procedure and to the same effect as provided by s. 102.62.

(2) Upon application of any employer or employe the commission may direct any employe of such employer or such employe who, in the course of his employment, has been exposed to the inhalation of silica or to industrial noise, to submit to examination by a physician or physicians to be appointed by the industrial commission to determine whether such employe has silicosis or an occupational loss of hearing, and the degree thereof. The cost of such medical examination shall be borne by the person making application. The results of such examination shall be submitted by the physician to the industrial commission, which shall submit copies of such reports to the employer and employe, who shall have opportunity to rebut the same provided request therefor is made to the commission within 10 days from the mailing of such report to the parties. The commission shall make its findings as to whether or not it is inadvisable for the employe to continue in his employment.

(3) If an employe 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 compensation under this section shall be barred.

(4) No payment shall be made to an employe under this section unless he shall have worked for the employer from whom he claims compensation in work exposing him to inhalation of silicon or to industrial noise for a total period of at least 90 days.

SECTION 14. 102.565 (5) of the statutes is repealed.

SECTION 15. 102.565 (6) of the statutes is renumbered 102.565 (5).

SECTION 16. 102.565 (6) of the statutes is created to read:

102.565 (6) Ss. 102.44 and 102.52 of this chapter shall not apply to loss of hearing due to prolonged exposure to industrial noise, but shall apply only to deafness due to accident or sudden trauma.

SECTION 17. 102.57 of the statutes is 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 per cent. *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.*

SECTION 18. 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 \* \* \* 250 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 \* \* \* 250 weeks less  $2\frac{1}{2}$  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, 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).

(2) In the 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 \* \* \* \$400 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 s. 102.29.

SECTION 19. 102.64 (1) of the statutes is amended to read:

102.64 (1) The attorney-general shall represent the state in all cases involving payment into or out of the state treasury under \* \* \* s. 20.07 (3) \* \* \* or ss. 102.49 \* \* \* or 102.59. He shall have power to compromise the amount of such payments but such compromises shall be subject to review by the commission. *If the wife or husband of the deceased employe compromises her or his claim for primary death benefit, the claim of the children of such employe under s. 102.49 shall be compromised on the same pro rata basis subject to approval by the commission.*

SECTION 20. This act shall take effect on the first day of the month next following passage and publication.

Approved June 26, 1953.

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