

1973 Assembly Bill 952

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CHAPTER 150, Laws of 1973

AN ACT to renumber 102.23 (1) (a), (b) and (c); to amend 66.191 (4), 102.17 (4), 102.18 (1) (b), (2), (3) and (4) (b), 102.23 (1) (intro.), 102.28 (1) and (3), 102.30 (3), 102.42 (1) and (8), 102.43 (intro.) and (1), 102.44 (3) (intro.), (a) and (b), 102.45, 102.52 (intro.), 102.53 (2), 102.555 (4) (intro.) and 102.59 (1); and to repeal and recreate 102.11 (1) (intro.) of the statutes, relating to changes in workmen's compensation law recommended by the council on workmen's compensation.

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

SECTION 1. 66.191 (4) of the statutes is amended to read:

66.191 (4) This section shall be administered by the department of industry, labor and human relations, which may adopt necessary rules relating to ~~hearings~~, investigations and other matters in connection with applications for benefits under this section. In case of dispute the procedure for hearing, award and appeal shall be as set forth in ss. 102.16 to 102.26.

SECTION 2. 102.11 (1) (intro.) of the statutes is repealed and recreated to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability and permanent total disability shall be taken at not less than \$30 nor more than \$142.86, resulting in a maximum weekly compensation rate of \$100 for temporary disability

and for permanent total disability. The average weekly earnings for death benefits shall be taken at not less than \$30 nor more than \$150, resulting in a maximum weekly rate of \$75 and a maximum total death benefit of \$30,000. The average weekly earnings for temporary disability, permanent total disability or death benefits for injury on or after January 1, 1975, shall be taken at not less than \$30 nor more than the state's average weekly earnings as determined by the department under s. 108.05 (2) for the base year ending June 30, 1974. The average weekly earnings for permanent partial disability shall be taken at not less than \$30 nor more than \$75.71 until January 1, 1975, and \$79.50 thereafter, resulting in a weekly maximum compensation rate of \$53. Between said limits the average weekly earnings shall be determined as follows:

SECTION 3. 102.17 (4) of the statutes is amended to read:

102.17 (4) The right of an employee, 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 lung disease or by exposure to a toxic substance the time limit shall be 12 years and 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 employee's condition and its alleged relation to the employment.

SECTION 4. 102.18 (1) (b), (2), (3) and (4) (b) of the statutes are amended to read:

102.18 (1) (b) After final hearing the department shall make and file its findings upon the ultimate facts involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the department may in its discretion after any hearing make interlocutory findings, orders and awards which may be enforced in the same manner as final awards. The department may include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it finds that noncompliance was not in good faith, not exceeding 25% of each amount which shall not have been paid as directed thereby. Where there is a finding that the employee is in fact suffering from an occupational disease caused by the employment of the employer against whom the application is filed, a final award dismissing such application upon the ground that the applicant has suffered no disability from said disease shall not bar any claim he may thereafter have for disability sustained after the date of the award.

(2) The department may authorize ~~a commissioner or~~ an examiner to make findings and orders, and to review, set aside, modify or confirm compromises of claims for compensation under rules to be adopted by the department. Any party in interest who is dissatisfied with the findings or order of ~~a commissioner or~~ an examiner may file a written petition with the department for review by the commission of the findings or order.

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(3) If no petition is filed within 20 days from the date that a copy of the findings or order of the ~~commissioner or examiner~~ was mailed to the ~~last-known~~ last-known address of the parties in interest, such findings or order shall be considered the findings or order of the commission, unless set aside, reversed or modified by such ~~commissioner or examiner~~ within such time. If the findings or order are set aside by the ~~commissioner or examiner~~ the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the ~~commissioner or examiner~~ the time for filing petition with the department shall run from the date that notice of such reversal or modification is mailed to the ~~last-known~~ last-known address of the parties in interest. The commission shall either affirm, reverse, set aside or modify such findings or order in whole or in part, or direct the taking of additional ~~testimony~~ evidence. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing petition with the department.

(4) (b) On motion, the commission may set aside, modify or change any order, findings or award, whether made by ~~a commissioner~~, an examiner or by the commission, at any time within 20 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. The commission may on its own motion, for reasons it deems sufficient, set aside any final order or award within one year from the date thereof upon grounds of mistake or newly discovered evidence, and after extending an opportunity for hearing may make new findings and order, or it may reinstate the previous findings and order or award.

SECTION 5. 102.23 (1) (intro.) of the statutes is amended to read:

102.23 (1) (intro.) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive; ~~and the~~ The order or award, either interlocutory or final, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within 30 days from the date of an order or award ~~originally~~ made by the commission or following the filing of petition for review with the department under s. 102.18 any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the department for the review of such order or award, in which action the adverse party shall also be made defendant.

(a) In such action a complaint, which need not be verified, but which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the executive secretary of the department, or any commissioner, shall be deemed completed service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the department shall mail one such copy to each other defendant. If the circuit court is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 30 days in which such action may be commenced.

(b) The department shall serve its answer within 20 days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to the complaint, which answer may, by way of counterclaim or cross complaint, ask for the review of the order or award referred to in the complaint, with the same effect as if such party had commenced a separate action for the review thereof.

(c) The department shall make return to the court of all documents and papers on file in the matter, and of all testimony which has been taken therein, and of the

commission's order, findings and award. Such return of the department when filed in the office of the clerk of the circuit court shall, with the papers mentioned in supreme court Rule 251.25 constitute a judgment roll in such action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before said court upon such record by either party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(d) Upon such hearing, the court may confirm or set aside such order or award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

SECTION 6. 102.23 (1) (a), (b) and (c) of the statutes are renumbered 102.23 (1) (d) 1, 2 and 3, respectively.

SECTION 7. 102.28 (1) and (3) of the statutes are amended to read:

102.28 (1) The whole claim for compensation for the injury or death of any employe or any award or judgment thereon, and any claim for unpaid compensation insurance premiums ~~shall be~~ are entitled to ~~the same~~ preference in bankruptcy or insolvency proceedings as is given creditors' actions except as denied or limited by any law of this state or by the federal bankruptcy act ~~to claims for labor~~, but this section shall not impair the lien of any judgment entered upon any award.

(3) An employer who ~~shall fail~~ fails to comply with s. 102.28 (2) shall be fined not less than \$10 nor more than \$100 or imprisoned not less than 30 days nor more than 6 months, or both. Each day's failure shall be a separate offense. Upon In a separate action upon complaint of the department, the fines specified in this section may be collected by the state in an action in debt.

SECTION 8. 102.30 (3) of the statutes is amended to read:

102.30 (3) 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 expense when the claimant consents, or when it is established that such payments under the nonindustrial insurance policy were improper and no attorney fee shall be due as to such reimbursement.

SECTION 9. 102.42 (1) and (8) of the statutes are amended to read:

102.42 (1) TREATMENT OF EMPLOYEE. The employer shall supply such medical, surgical 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 hereinafter provided, 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 his 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 the same. The employer shall also be liable for reasonable expense incurred by the employe for necessary treatment to cure and relieve him from the effects of

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occupational disease prior to the time that the employee knew or should have known the nature of his disability and its relation to employment, and as to such treatment ~~the provisions of section s. 102.42 (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 employee or to maintain the existing status of such condition whether or not healing is completed.

(8) **MEDICAL EXPENSES OF STATE EMPLOYEE.** In the event of a claim by a state employee under the conditions enumerated in s. 102.03, involving only payment of medical expense of not to exceed a gross of ~~\$50~~ \$500, plus compensation for not to exceed 3 weeks of temporary disability, the employing department may approve payment of such reasonable medical expense for necessary medical treatment to whomsoever owing and compensation for not to exceed 3 weeks of temporary disability, subject to subsequent review by the department. If the employing department rejects the claim, the employee may make claim to the department. Payment shall be charged to the appropriate fund, as provided by s. 20.865 (1) (d).

SECTION 10. 102.43 (intro.) and (1) of the statutes are amended to read:

102.43 Weekly compensation schedule. (intro.) If the injury causes disability, an indemnity shall be due as wages commencing the ~~fourth~~ 4th calendar day from the commencement of the day the scheduled work shift began, exclusive of Sundays only, excepting where such employees work on Sunday, after the employee leaves work as the result of the injury, and shall be payable weekly thereafter, during such disability. If the disability ~~shall exist~~ exists after 10 calendar days from the date the employee leaves work as a result of the injury and only if it so exist indemnity shall also be due and payable for the first 3 calendar days, exclusive of Sundays only, excepting where such employees work on Sunday. Said weekly indemnity shall be as follows:

(1) If the injury causes total disability, ~~seventy per cent~~ 70% of the average weekly earnings during such total disability. For an injury on or after January 1, 1975, two-thirds of the average weekly earnings during such total disability as computed in s. 102.11 (1).

SECTION 11. 102.44 (3) (intro.), (a) and (b) of the statutes are amended to read:

102.44 (3) (intro.) For permanent partial disability not covered by ~~the provisions of sections ss. 102.52 to 102.56~~ the aggregate number of weeks of indemnity shall bear such relation to the number of weeks set out in ~~paragraphs~~ pars. (a) and (b) as the nature of the injury bears to one causing permanent total disability and shall be payable at the rate of 70 ~~per cent~~ % of the average weekly earnings of the employee to January 1, 1975, and two-thirds of such earnings thereafter, the earnings to be computed as provided in ~~section s. 102.11.~~ Such weekly indemnity shall be in addition to compensation for healing period and shall be for the period that he may live, not to exceed, ~~however, these named limitations, to wit:~~

(a) One thousand weeks for all persons ~~50~~ 52 years of age or less.

(b) For each successive yearly age group, beginning with ~~51~~ 53 years, the maximum limitation shall be reduced by ~~2-1/2 per cent~~ 2-1/2% per year, with no reduction in excess of 50 ~~per cent~~ %.

SECTION 12. 102.45 of the statutes is amended to read:

102.45 Benefits payable to minors; how paid. Compensation and death benefit payable to an employee or dependent who was a minor when his right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company,

trustee, parent or guardian, for the use of such employe or dependent as may be found best calculated to conserve his interests. Such employe or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from his ~~twenty-first~~ 18th birthday.

SECTION 13. 102.52 (intro.) of the statutes is amended to read:

102.52 Permanent partial disability schedule. (intro.) In cases included in the following schedule of permanent partial disabilities indemnity shall be paid for the healing period, and in addition thereto, where the employe is ~~50~~ 52 years of age or less, for the period specified, at the rate of ~~70 per cent~~ % of the average weekly earnings of the employe, and for an injury occurring on or after January 1, 1975, at the rate of two-thirds of the average weekly earnings of the employe, to be computed as provided in ~~section s.~~ section s. 102.11:

SECTION 14. 102.53 (2) of the statutes is amended to read:

102.53 (2) In cases where the injured employe is above ~~50~~ 52 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 s.~~ section s. 102.52 by ~~2-1/2 per cent~~ 2-1/2% for each year that the age of such employe exceeds ~~50~~ 52, with no reduction in excess of ~~50 per cent~~ %.

SECTION 15. 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 apply in cases for occupational deafness under par. (a); such reduction shall not apply in claims for occupational deafness under pars. (b), (c) and (d), and in lieu thereof a reduction shall be made at the rate of one-half per cent for each year that the age of the employe exceeds ~~50~~ 52. In cases covered by this subsection "time of injury", "occurrence of injury", or "date of injury" shall, at the option of the employe, be the date of occurrence of any of the following events to an employe:

SECTION 16. 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 200 weeks less ~~2-1/2%~~ 2-1/2% thereof for each year of age above ~~50~~ 52 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 200 weeks less ~~2-1/2%~~ 2-1/2% thereof for each year of age above ~~50~~ 52 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. 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 s. 102.32 (6) and (7).

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SECTION 17. **Effective date.** This act shall take effect January 1, 1974, or the first day of the month following passage and publication, whichever is later.
