

1981 Senate Bill 625

Date published: November 27, 1981

## CHAPTER 92 , Laws of 1981

AN ACT to repeal 102.75 (4); to renumber 102.01 (2) (f) and 102.13 (2); to renumber and amend 102.13 (1m); to amend 20.445 (1) (ha) and (2) (ha), 102.01 (2) (c), 102.03 (1) (c) 1, 102.11 (1) (intro.), 102.13 (1), 102.16 (1), 102.17 (1) (b) and (d), 102.18 (3) and (4) (b), 102.22 (2), 102.28 (6), 102.44 (5) (a), 102.46, 102.51 (4) and (5), 102.555 (5), 102.57, 102.58, 102.59 (1), 102.63 and 102.75 (1); and to create 102.01 (2) (f), 102.13 (2) and (3), 102.18 (1) (bp), 102.29 (6) and 102.31 (7) of the statutes, relating to revising the worker's compensation laws and making an appropriation.

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

SECTION 1. 20.445 (1) (ha) and (2) (ha) of the statutes, as created by chapter 20, laws of 1981, are amended to read:

20.445 (1) (ha) *Worker's compensation operations.* The amounts in the schedule for the administration of the worker's compensation program by the department. ~~As provided~~ All moneys received under s. 102.75 (4), for the department's activities shall be credited to this appropriation shall be financed from program revenues. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation.

(2) (ha) *Worker's compensation operations.* The amounts in the schedule for the worker's compensation activities of the labor and industry review commission. ~~As provided~~ All moneys received under s. 102.75 (4), for the commission's activities shall be credited to this appropriation shall be financed from program revenues.

SECTION 3. 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 emotional stress or strain without physical trauma, if it arises from exposure to conditions or circumstances beyond those common to daily life.

SECTION 4. 102.01 (2) (f) of the statutes is renumbered 102.01 (2) (g).

SECTION 5. 102.01 (2) (f) of the statutes is created to read:

102.01 (2) (f) "Temporary help agency" means an employer who places its employe with another employer who controls the employe's work activities and compensates the first employer for the employe's services.

SECTION 6. 102.03 (1) (c) 1 of the statutes is amended to read:

102.03 (1) (c) 1. 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; so shall any employe going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way; and so shall any fireman or municipal utility employe responding to a call for assistance outside the limits of his city or village, unless such response is in violation of law; so shall an employe going to and from his or her employment utilizing transportation organized or financed by or a vehicle owned or leased by an employer, if the employer undertakes to provide the transportation or vehicle as part of the contract of hire; and so shall an employe going to or from his or her employment if he or she is paid wages or salary for that travel time. 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 7. 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, ~~1980~~ 1982, shall be taken at not less than \$30 nor more than such wage rate as will result in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30, 1979. ~~The maximum weekly compensation rate after December 31, 1980, is 100% of the average weekly earnings determined as of June 30, 1980 of the previous year.~~ The average weekly earnings for permanent partial disability for injuries on or after January 1, ~~1980~~ 1982, shall be taken at not less than \$30 nor more than ~~\$105~~ \$135, resulting in a weekly maximum compensation rate of ~~\$70~~ \$90. The average weekly earnings for injuries occurring on or after January 1, 1984, shall be taken at not less than \$30 nor more than \$150, resulting in a maximum compensation rate of \$100. Between such limits the average weekly earnings shall be determined as follows:

SECTION 8. 102.13 (1) of the statutes is amended to read:

102.13 (1) Except as provided in sub. ~~(1m)~~ (4), whenever compensation is claimed by an employe, the employe shall, upon the written request of the employe's employer, submit to reasonable examination by a physician, chiropractor or podiatrist, provided and paid for by the employer, and shall submit to examination by any physician, chiropractor or podiatrist selected by the commission or an examiner. An employer who requests that an employe submit to reasonable examination shall tender to the employe, before examination, all necessary expenses including transportation expenses. The employe shall be entitled to have a physician, chiropractor or podiatrist, provided by himself or herself, present at any such examination. So long as the employe, after such written request of the

employer, refuses to submit to such examination, or in any way obstructs the examination, the employe's right to begin or maintain any proceeding for the collection of compensation shall be suspended, except as provided in sub. ~~(1m)~~ (4). If the employe refuses to submit to such examination after direction by the department or an examiner, or in any way obstructs such examination, the employe's right to the weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction, shall be barred, except as provided in sub. ~~(1m)~~ (4). Any physician, chiropractor or podiatrist who is present at any such examination may be required to testify as to the results thereof. Any physician, chiropractor or podiatrist who attended an employe may be required to testify before the department when it so directs. Notwithstanding any other statutory provisions, any physician, chiropractor or podiatrist attending a worker's compensation claimant may furnish to the employe, employer, worker's compensation insurer, or the department information and reports relative to a compensation claim. The testimony of any physician, chiropractor or podiatrist, who is licensed to practice where he or she resides or practices outside the state, may be received in evidence in compensation proceedings.

SECTION 9. 102.13 (1m) of the statutes is renumbered 102.13 (4) and 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 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. 102.13 (2) of the statutes is renumbered 102.13 (5).

SECTION 11. 102.13 (2) and (3) of the statutes are created to read:

102.13 (2) An employe who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient privilege. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employe, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employe claims compensation.

(3) If 2 or more physicians, chiropractors or podiatrists disagree as to the extent of an injured employe's temporary disability, the end of an employe's healing period or an employe's ability to return to work at suitable available employment, the department may appoint another physician, chiropractor or podiatrist to examine the employe and render an opinion as soon as possible. The department shall promptly notify the parties of this appointment. Payment for temporary disability shall continue until the department receives the opinion. The employer or its insurance carrier or both shall pay for the examination and opinion. The employer or insurance carrier or both shall receive appropriate credit for any overpayment to the employe determined by the department after receipt of the opinion.

SECTION 12. 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 the department 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 department within one year from the date such compromise is filed with the department, or from the date an award has been entered, based thereon, or the department 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 or dependent under s. 102.51 (5) shall have equal rights with the employe to have review of a compromise. Upon petition filed by the employer ~~or~~, insurer or department [dependent] under s. 102.51 (5) with the department within one year from any award upon a stipulation of settlement the department shall have power to set aside said award or otherwise determine the rights of the parties.

SECTION 13. 102.17 (1) (b) and (d) of the statutes are amended to read:

102.17 (1) (b) In any dispute or controversy pending before the department, the department may direct the parties to appear before an examiner for a conference to consider the clarification of issues, the joining of additional parties, the necessity or desirability of amendments to the pleadings, the obtaining of admissions of fact or of documents, records, reports and bills which may avoid unnecessary proof and such other matters as may aid in disposition of the dispute or controversy. After this conference the department may issue an order requiring disclosure or exchange of any information or written material which it considers material to the timely and orderly disposition of the dispute or controversy. If a party fails to disclose or exchange within the time stated in the order, the department may issue an order dismissing the claim without prejudice or excluding evidence or testimony relating to the information or written material. The department shall provide each party with a copy of any order.

(d) The contents of verified medical and surgical reports, by physicians, podiatrists, surgeons and chiropractors licensed in and practicing in this state and of verified reports by experts concerning loss of earning capacity under s. 102.44 (2) and (3), presented by a party for compensation shall constitute prima facie evidence as to the matter contained therein, subject to such rules and limitations as the department prescribes. Verified reports of physicians, podiatrists, surgeons and chiropractors, wherever licensed and practicing, who have examined or treated the claimant and of experts, if such practitioner or expert consents to subject himself or herself to cross-examination shall also constitute prima facie evidence as to the matter contained therein and verified reports by doctors of dentistry shall be admissible as evidence of the diagnosis and necessity for treatment but not of disability. Physicians, podiatrists, surgeons, dentists and chiropractors licensed in and practicing in this state and experts may certify instead of verify such reports, and such certification shall be equivalent to verification; and any physician, podiatrist, surgeon, dentist ~~or~~, chiropractor or expert who knowingly makes a false statement of fact or opinion in such certified report may be fined or imprisoned, or both, under s. 943.395. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, or of any other hospital or sanatorium in this state which is satisfactory to the department, established by certificate, affidavit or testimony of the supervising officer or other person having charge of such records, or of a physician, podiatrist 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 worker's compensation proceeding as to the matter contained therein, insofar as it is otherwise competent and relevant. The department may, by rule, establish the qualifications of, and the form used for verified reports submitted by, experts who provide information concerning loss of earning capacity under s. 102.44 (2) and (3).

SECTION 14. 102.18 (1) (bp) of the statutes is created to read:

102.18 (1) (bp) The department may include a penalty in its final award to an employe if it determines that the employer'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 15. 102.18 (3) and (4) (b) of the statutes are amended to read:

102.18 (3) If no petition is filed within ~~20~~ 21 days from the date that a copy of the findings or order of the examiner is mailed to the last-known address of the parties in interest, such findings or order shall be considered final, unless set aside, reversed or modified by such examiner within such time. If the findings or order are set aside by the 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 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 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 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~~ 21 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 an examiner or by the commission, at any time within ~~20~~ 21 days from the date thereof if it discovers any mistake therein, or upon the grounds of newly discovered evidence. Unless an order granting or denying a motion based upon the grounds of newly discovered evidence is made by the commission within such ~~20-day~~ 21-day period, the motion is deemed denied. The commission may on its own motion, for reasons it deems sufficient, set aside any final order or award of the commission or examiner 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 or remand the case to the department for further proceedings.

SECTION 16. 102.22 (2) of the statutes is amended to read:

102.22 (2) If the sum ordered by the department to be paid is not paid when due, such sum shall bear interest at the rate of ~~7%~~ 10% per year. The state is liable for such interest on awards issued against it under this chapter. The department has jurisdiction to issue award for payment of such interest at any time within one year of the date of its order, or upon appeal within one year after final court determination.

SECTION 17. 102.28 (6) of the statutes is amended to read:

102.28 (6) **REPORTS BY EMPLOYER.** Every employer shall upon request of the department report to it the number of employees and the nature of their work and also the name of the insurance company with whom the employer has insured liability under this chapter and the number and date of expiration of such policy. Failure to furnish such report within 10 days from the making of a request by ~~registered~~ certified mail shall constitute presumptive evidence that the delinquent employer is violating sub. (2).

SECTION 18. 102.29 (6) of the statutes is created to read:

102.29 (6) No employe of a temporary help agency who makes a claim for compensation may make a claim or maintain an action in tort against any employer who compensates the temporary help agency for the employe's services.

SECTION 19. 102.31 (7) of the statutes is created to read:

102.31 (7) The Wisconsin compensation rating bureau shall provide the department with any information it requests relating to worker's compensation insurance coverage, including but not limited to the names of employers insured and any insured employer's address, business status, type and date of coverage, manual premium code, and policy

information including numbers, cancellations, terminations, endorsements and reinstatement dates.

SECTION 20. 102.44 (5) (a) of the statutes is amended to read:

102.44 (5) (a) For each dollar that the total monthly benefits payable under this chapter, excluding attorney fees and costs, plus the monthly benefits payable under the social security act for disability exceed 80% of the employe's average current earnings as determined by the social security administration, the benefits payable under this chapter shall be reduced by the same amount so that the total benefits payable shall not exceed 80% of the employe's average current earnings. However, no total benefit payable under this chapter and under the federal social security act may be reduced to an amount less than the benefit payable under this chapter.

SECTION 21. 102.46 of the statutes is amended to read:

**102.46 Death benefit.** Where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit shall equal 4 times his or her average annual earnings, but when added to the disability indemnity paid and due at the time of death, shall not exceed ~~70%~~ two-thirds of weekly wage for the number of weeks set out in s. 102.44 (3).

SECTION 22. 102.51 (4) and (5) of the statutes are amended to read:

102.51 (4) **DEPENDENCY AS OF DATE OF INJURY.** Questions as to who ~~constitute~~ constitutes dependents and the extent of their dependency shall be determined as of the date of the injury to the employe, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependents entitled thereto or their legal guardians or trustees; in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the benefit as is then unpaid shall be payable to the dependent's personal representatives in gross, unless the department determines that the unpaid benefit shall be reassigned, under sub. (6), and paid to any other dependent who is physically or mentally incapacitated or a minor. A posthumous child conceived prior to the date of injury is for the purpose of this subsection a dependent as of the date of injury.

(5) **WHEN NOT INTERESTED.** No dependent of an injured employe shall be deemed a party in interest to any proceeding by ~~him~~ the employe for the enforcement of ~~his~~ the employe's claim for compensation, nor as respects with respect to the compromise thereof by such employe. Subject to s. 102.16 (1), a ~~A~~ compromise of all liability entered into by an employe shall be binding upon his dependents, except that any dependent of a deceased employe may submit the compromise for review under s. 102.16 (1).

SECTION 23. 102.555 (5) of the statutes is amended to read:

102.555 (5) No claim under sub. (4) may be filed until ~~14~~ 7 consecutive days of removal from noisy employment after the time of injury except that under sub. (4) (d) the ~~14~~ 7 consecutive days' period may commence within the last 2 months of layoff.

SECTION 24. 102.57 and 102.58 of the statutes are amended to read:

**102.57 Violations of safety provisions, penalty.** Where injury is caused by the failure of the employer to comply with any statute or any lawful order of the department, compensation and death benefits as provided in this chapter shall be increased 15% but not more than a total increase of ~~\$7,500~~ \$10,000. Failure of an employer reasonably to enforce compliance by employes with such statute or order of the department shall constitute failure by the employer to comply with such statute or order.

**102.58 Decreased compensation.** Where injury is caused by the failure of the employe to use safety devices where provided in accordance with any statute or lawful order of the department and adequately maintained, and their use is reasonably enforced by the employer, or where injury results from the employe's failure to obey any reasonable rule

adopted and reasonably enforced by the employer for the safety of the employe and of which the employe has notice, or where injury results from the intoxication of the employe, the compensation and death benefit provided herein shall be reduced 15% but the total reduction shall not exceed ~~\$7,500~~ \$10,000.

SECTION 25. 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% thereof for each year of age above 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% thereof for each year of age above 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).

SECTION 26. 102.63 of the statutes is amended to read:

**102.63 Refunds by state.** Whenever the department shall certify to the state treasurer that excess payment has been made under s. 102.59 or under s. 102.49 (5) either because of mistake or otherwise, the state treasurer shall within 5 days after receipt of such certificate draw an order against the fund in the state treasury into which such excess was paid, reimbursing such payor of such excess payment, together with interest actually earned thereon if the excess payment has been on deposit for at least 6 months.

SECTION 27. 102.75 (1) of the statutes, as affected by chapter 20, laws of 1981, is amended to read:

102.75 (1) The department shall assess upon and collect from each licensed worker's compensation insurance carrier and from each employer exempted under s. 102.28 (2) by special order or by rule, the proportion of total costs and expenses incurred by the council on worker's compensation for travel and research and by the department and the commission in the administration of this chapter for the current fiscal year plus any deficiencies in collections and anticipated costs from the previous fiscal year, that the total indemnity paid or payable under this chapter by each such carrier and exempt employer in worker's compensation cases initially closed during the preceding calendar year, other than for increased, double or treble compensation bore to the total indemnity Paid in cases closed the previous calendar year under this chapter by all carriers and exempt employers other than for increased, double or treble compensation. The council on worker's compensation and the commission shall annually certify its any costs and expenses for worker's compensation activities to the department at such time as the secretary requires.

SECTION 28. 102.75 (4) of the statutes, as created by chapter 20, laws of 1981, is repealed.

SECTION 29. **Appropriation changes.** The appropriation to the department of industry, labor and human relations under section 20.445 (1) (ha) of the statutes, as affected by the laws of 1981, is increased by \$5,000 for fiscal year 1981-82 and by \$5,000 for fiscal year 1982-83 to provide for payment of expenses for travel and research by the council on worker's compensation.