

1985 Senate Bill 322

Date of enactment: **November 20, 1985**  
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## 1985 Wisconsin Act **83**

AN ACT *to renumber* 102.03 (1) (c) 2, 102.16 (2), 102.31 (7) and 102.61 (intro.), (1), (2), (3) and (4); *to renumber and amend* 102.13 (3), 102.23 (1) (intro.) and (a) to (d), 102.30 (2) and (3), 102.31 (1) (b), 102.31 (2) to (6),

102.43 (7) (a) (intro.) and 102.43 (7) (a) 1 and 2; *to amend* 102.01 (2) (g), 102.03 (1) (c) 1, 102.07 (13) and (14), 102.11 (1) (intro.), (d) and (f), 102.13 (1) (a), 102.17 (1) (d), 102.18 (2) and (3), 102.22 (title), 102.26 (3), 102.27 (2) (b), 102.28 (7), 102.30 (1), 102.31 (1) (a), 102.37, 102.38, 102.43 (6), 102.43 (7) (b), 102.49 (5) (a) to (c), 102.50 and 102.59 (2); *to repeal and recreate* 102.18 (4) (b); and *to create* 102.03 (3), 102.076, 102.13 (3) (b) and (c), 102.16 (2) (b), 102.17 (7), 102.18 (4) (c) and (d), 102.22 (3), 102.30 (3), 102.43 (8), 102.555 (10) and (11) and 102.61 (3) of the statutes, *relating to* various changes in the worker's compensation laws.

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

SECTION 1. 102.01 (2) (g) of the statutes is amended to read:

102.01 (2) (g) “Time Except as provided in s. 102.555 with respect to occupational deafness, “time of injury”, “occurrence of injury”, or “date of injury” means:

1. In the case of accidental injury, the date of the accident which caused the injury, ~~or in~~

2. In the case of disease, the date of disability or, if that date occurs after the cessation of all employment that contributed to the disability, the last day of work for the last employer whose employment caused disability, ~~except that in case of occupational deafness the definition in s. 102.555 controls.~~

SECTION 2. 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 or her employment. ~~Every~~

2. Any employe going to and from his or her employment in the ordinary and usual way, while on the premises of the 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 the 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 or any fire fighter or municipal utility employe responding to a call for assistance outside the limits of his or her city or village, unless that response is in violation of law, is performing service growing out of and incidental to employment.~~

3. An employe is not performing service growing out of and incidental to his or her employment while going to or from employment in a private or group or employer-sponsored car pool, van pool, commuter bus service or other ride-sharing program in which the employe participates voluntarily and the sole purpose of which is the mass transportation of employes to and from employment. ~~An employe is not performing service growing out of and incidental to employment while engaging in a program designed to improve the physical well-being of the employe, whether or not the program is located on the employer's premises, if participation in the program is voluntary and the employe receives no compensation for participation.~~

4. The premises of the employer ~~shall be deemed to include also~~ the premises of any other person on

whose premises the employe performs service ~~is being performed.~~

SECTION 3. 102.03 (1) (c) 2 of the statutes is renumbered 102.03 (1) (c) 5.

SECTION 4. 102.03 (3) of the statutes is created to read:

102.03 (3) Providing or failing to provide any safety inspection or safety advisory service incident to a contract for worker's compensation insurance or to a contract for safety inspections or safety advisory services does not by itself subject an insurer, an employer, an insurance service organization, a union, a union member or any agent or employe of the insurer, employer, insurance service organization or union to liability for damages for an injury resulting from providing or failing to provide the inspection or services.

SECTION 5. 102.07 (13) and (14) of the statutes are amended to read:

102.07 (13) A child performing uncompensated community service work as a result of an informal disposition under s. 48.245, a consent decree under s. 48.32 or an order under s. 48.34 (9) is an employe of the county in which the court ordering the community service work is located. No compensation may be paid to that employe for temporary disability during the healing period. ~~This subsection does not apply after December 31, 1985.~~

(14) An adult performing uncompensated community service work under s. 971.38, ~~973.05 (3) or 973.09 (7m)~~ is an employe of the county in which the district attorney requiring or the court ordering the community service work is located. No compensation may be paid to that employe for temporary disability during the healing period. ~~This subsection does not apply after December 31, 1985.~~

SECTION 6. 102.076 of the statutes is created to read:

**102.076 Election by corporate officer.** (1) Not more than 2 officers of a corporation having not more than 10 stockholders may elect not to be subject to this chapter. Except as provided in sub. (2), the election shall be made by an endorsement, on the policy of worker's compensation insurance issued to that corporation, naming each officer who has so elected. The election is effective for the period of the policy. An officer who so elects is an employe for the purpose of determining whether the corporation is an employer under s. 102.04 (1) (b).

(2) If a corporation has not more than 10 stockholders, not more than 2 officers and no other employes and is not otherwise required under this chapter to have a policy of worker's compensation

insurance, an officer of that corporation who elects not to be subject to this chapter shall file a notice of that election with the department on a form approved by the department. The election is effective until the officer rescinds it by notifying the department in writing.

(3) Subsections (1) and (2) do not apply after December 31, 1987.

SECTION 7. 102.11 (1) (intro.), (d) and (f) of the statutes are 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, 1982, shall be ~~taken at~~ not less than \$30 nor more than the wage rate which results in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30 of the previous year. The average weekly earnings for permanent partial disability for injuries ~~on or after January 1, 1982, shall be taken at~~ not less than \$30 ~~nor more than \$135, resulting in a weekly maximum compensation rate of \$90.~~ The average weekly earnings for permanent partial disability 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.~~ The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1985, shall be ~~taken at~~ not less than \$30 ~~nor more than \$162, resulting in a maximum compensation rate of \$108.~~ The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1986, shall be not more than \$168, resulting in a maximum compensation rate of \$112. The average weekly earnings for permanent partial disability for injuries occurring on or after January 1, 1987, shall be not more than \$175.50, resulting in a maximum compensation rate of \$117. Between such limits the average weekly earnings shall be determined as follows:

(d) Except in situations where par. (b) applies, average weekly earnings shall in no case be less than actual average weekly earnings of the employe for the 4 calendar weeks during the year quarters before his or her injury within which the employe has been employed in the business, in the kind of employment and for the employer for whom the employe worked when injured. Calendar weeks within which no work was performed shall not be considered under this paragraph. This paragraph applies only if the employe has worked within ~~each week of a total of~~ at least 6 calendar weeks during the year 4 calendar quarters before his or her injury in the business, in the kind of employment and for the employer for whom the employe worked when injured. For purposes of this section, earnings for part-time services performed for a labor organization pursuant to a collective bargaining agreement between the employer and that labor organization shall be considered as part of the total earnings in the preceding ~~52 weeks~~ 4 calendar

quarters, whether payment is made by the labor organization or the employer.

(f) Average weekly earnings shall ~~in no case may not~~ be less than ~~30~~ 24 times the normal hourly earnings at the time of injury. ~~However, this section shall not apply to temporary disability benefits, if the part-time employe restricts his or her availability, on the labor market, to part-time work and is not actively employed full-time elsewhere. In such case the, except that weekly temporary disability benefits shall may not exceed the average weekly wages of the part-time employment.~~

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

102.13 (1) (a) Except as provided in sub. (4), whenever compensation is claimed by an employe, the employe shall, upon the written request of the employe's employer, submit to reasonable examination examinations by a ~~physician, chiropractor or podiatrist, physicians, chiropractors or podiatrists~~ provided and paid for by the employer. No employe who submits to an examination under this paragraph is a patient of the examining physician, chiropractor or podiatrist for any purpose other than for the purpose of bringing an action under ch. 655, unless the employe specifically requests treatment from that physician, chiropractor or podiatrist.

SECTION 9. 102.13 (3) of the statutes is renumbered 102.13 (3) (a) and amended to read:

102.13 (3) (a) 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 or the necessity for further treatment or for a particular type of treatment, 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 if the employe has not returned to work, 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 10. 102.13 (3) (b) and (c) of the statutes are created to read:

102.13 (3) (b) 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 appoint-

ment. If the employe has not returned to work, 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.

(c) Paragraph (a) does not apply after December 31, 1987. Paragraph (b) applies after December 31, 1987.

SECTION 11. 102.16 (2) of the statutes is renumbered 102.16 (2) (a).

SECTION 12. 102.16 (2) (b) of the statutes is created to read:

102.16 (2) (b) A health service provider is bound by the department's determination upon the reasonableness of health service bills and may not bring an action against the employe receiving service, if the health service provider received all of the following:

1. Reasonable notice from the disputing party that the reasonableness of the bill or the reasonableness or necessity of treatment is disputed.

2. Reasonable opportunity to provide to the department a written explanation of the bill.

SECTION 13. 102.17 (1) (d) of the statutes is amended to read:

102.17 (1) (d) The contents of verified medical and surgical reports by physicians, podiatrists, surgeons, dentists, psychologists 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 in them,~~ subject to such any rules and limitations as the department prescribes. Verified reports of physicians, podiatrists, surgeons, dentists, psychologists and chiropractors, wherever licensed and practicing, who have examined or treated the claimant, and of experts, if ~~such the~~ 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 in them.~~ Verified reports by doctors of dentistry shall be ~~are~~ admissible as evidence of the diagnosis and necessity for treatment but not of disability. Physicians, podiatrists, surgeons, dentists, psychologists and chiropractors licensed in and practicing in this state and experts may certify instead of verify ~~such the~~ reports, ~~and such.~~ That certification ~~shall be is~~ equivalent to verification; ~~and any.~~ Any physician, podiatrist, surgeon, dentist, psychologist, chiropractor or expert who knowingly makes a false statement of fact or opinion in such a 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, dentist, psychologist or chiropractor to be ~~such the~~ record of the patient in question, and made in the regular course of examination or treatment of such patient, ~~shall constitute~~ constitutes prima facie evidence in any worker's compensation proceeding as to the matter contained ~~therein in it,~~ ~~insofar as to the extent that~~ 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. 102.17 (7) of the statutes is created to read:

102.17 (7) In a claim under s. 102.44 (2) and (3), testimony or verified reports of expert witnesses on loss of earning capacity may be received in evidence and considered with all other evidence to decide on an employe's actual loss of earning capacity.

SECTION 15. 102.18 (2) and (3) of the statutes are amended to read:

102.18 (2) The department shall have and maintain on its staff such examiners as are necessary to hear and decide disputed claims and to assist in the effective administration of this chapter. These examiners shall be attorneys and may be designated as administrative law judges. These examiners may make findings and orders, and approve, review, set aside, modify or confirm stipulations of settlement or compromises of claims for compensation. ~~Any party who is dissatisfied with the findings and order of an examiner may file a written petition with the department for review by the commission of the findings or order.~~

(3) A party in interest may petition the commission for review of an examiner's decision awarding or denying compensation if the department or commission receives the petition within 21 days after the department mailed a copy of the examiner's findings and order to the party's last-known address. The commission shall dismiss a petition which is not timely filed unless the petition shows probable good cause that the reason for failure to timely file was beyond the petitioner's control. If no petition is filed within 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 the~~ findings or order shall be considered final, unless set aside, reversed or modified by ~~such the~~ examiner within ~~such that~~ 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 a petition ~~with the department shall run from~~ commences with 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~~ the findings or order in whole or in part, or direct the taking of additional evidence. ~~Such~~ This 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 21 days for filing petition with the department.~~

SECTION 16. 102.18 (4) (b) of the statutes is repealed and recreated to read:

102.18 (4) (b) Within 28 days after a decision of the commission is mailed to the last-known address of each party in interest, the commission may, on its own motion, set aside the decision for further consideration.

SECTION 17. 102.18 (4) (c) and (d) of the statutes are created to read:

102.18 (4) (c) On its own motion, for reasons it deems sufficient, the commission may set aside any final order or award of the commission or examiner within one year after the date of the order or award, upon grounds of mistake or newly discovered evidence, and, after further consideration, do any of the following:

1. Affirm, reverse or modify, in whole or in part, the order or award.
2. Reinstate the previous order or award.
3. Remand the case to the department for further proceedings.

(d) While a petition for review by the commission is pending or after entry of an order or award by the commission but before commencement of an action for judicial review or expiration of the period in which to commence an action for judicial review, the commission shall remand any compromise presented to it to the department for consideration and approval or rejection pursuant to s. 102.16 (1). Presentation of a compromise does not affect the period in which to commence an action for judicial review.

SECTION 18. 102.22 (title) of the statutes is amended to read:

**102.22 (title) Penalty for delayed payments; interest.**

SECTION 19. 102.22 (3) of the statutes is created to read:

102.22 (3) If upon petition for review the commission affirms an examiner's order, interest at the rate of 7% per year on the amount ordered by the examiner shall be due for the period beginning on the 21st day after the date of the examiner's order and ending on the date paid under the commission's decision. If upon petition for judicial review under s. 102.23 the court affirms the commission's decision, interest at the rate of 7% per year on the amount ordered by the examiner shall be due up to the date of the commission's decision, and thereafter interest shall be computed under sub. (2).

SECTION 20. 102.23 (1) (intro.) and (a) to (d) of the statutes are renumbered 102.23 (1) (a) to (e), and 102.23 (1) (a) and (b), as renumbered, are amended to read:

102.23 (1) (a) The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered ~~thereon~~ on it or not, is subject to review only ~~in the manner and upon the grounds following as provided in this section~~ and not under ch. 227 or s. 801.02~~2~~. Within 30 days ~~from~~ after the date of an order or award made by the commission either originally or ~~following~~ after the filing of a petition for review with the department under s. 102.18 any party aggrieved thereby may by ~~service serving a complaint as provided in par. (a) (b) and filing the summons and complaint with the clerk of the circuit court~~ commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any finding or order, it may extend the time in which an action may be commenced by an additional 30 days. The proceedings shall be in the circuit court of the county where the ~~petitioner~~ plaintiff resides, except that if the ~~petitioner~~ plaintiff is a state agency, the proceedings shall be in the circuit court of the county where the ~~respondent~~ defendant resides. The proceedings may be brought in any circuit court if all parties stipulate and that court agrees. ~~The judicial review provisions of ch. 227 do not apply to the review proceedings under this subsection.~~

(b) In such an action a complaint shall be served with an authenticated copy of the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon a commissioner or agent authorized by the commission to accept service ~~shall be deemed~~ constitutes complete 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 commission shall mail one copy to each other defendant. ~~If the summons and complaint are not filed within 6 months from date of service, that service is void.~~

SECTION 21. 102.26 (3) of the statutes is amended to read:

102.26 (3) ~~Compensation~~ (a) Except as provided in par. (b), compensation exceeding \$100 in favor of any claimant, which exceeds \$100, shall be made payable to such and delivered directly to the claimant in person; however, in any award the,

(b) 1. The department may upon application of any interested party and subject to ~~the provisions of sub.~~  
(2) fix the fee of ~~his~~ the claimant's attorney or representative and provide in the award for ~~payment of~~

~~such that fee direct to be paid directly to the person entitled thereto attorney or representative.~~

2. At the request of the claimant medical expense, witness fees and other charges associated with the claim may be ordered paid out of the amount awarded.

(c) Payment according to the directions of the award shall protect the employer and ~~his~~ the employer's insurer from any claim of attorney's lien.

SECTION 22. 102.27 (2) (b) of the statutes is amended to read:

102.27 (2) (b) If a governmental unit provides public assistance under ch. 49 to pay medical costs or living expenses related to a claim under this chapter, the employer or insurance carrier owing compensation shall reimburse that governmental unit shall be reimbursed from any compensation awarded or paid if it notifies the governmental unit has given the parties to the claim in writing written notice stating that it provided the assistance and the cost of the assistance provided. Reimbursement shall equal the lesser of either the amount of assistance the governmental unit provided or two-thirds of the amount of the award or payment remaining after deduction of attorney fees and any other fees or costs chargeable under ch. 102.

SECTION 23. 102.28 (7) of the statutes is amended to read:

102.28 (7) INSOLVENT EMPLOYERS; ASSESSMENTS. (a) If an employer who is currently or was formerly exempted by written order of the department under sub. (2) is unable to ~~make payment of pay~~ an award ~~and if~~, judgment is rendered in accordance with s. 102.20 against ~~such~~ that employer and if execution is levied and returned unsatisfied in whole or in part, ~~then~~ payments for ~~such liabilities~~ the employer's liability shall be made from the fund established by under sub. (8). If a currently or formerly exempted employer files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the employer's liability from the fund established under sub. (8). The state treasurer shall proceed to recover such payments from the employer, or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor. The attorney general shall appear on behalf of the state treasurer in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established ~~by~~ under sub. (8).

(b) Each employer exempted by written order of the department under sub. (2) shall pay into the fund established by sub. (8) a sum equal to that assessed against each of the other such exempt employers upon the issuance of an initial order. The order shall provide for a sum sufficient to secure estimated payments of the insolvent exempt employer due for the period

up to the date of the order and for a period of one year following the date of the order and to pay the estimated cost of insurance carrier or insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days. If additional moneys are required, further assessments shall be made based on orders of the department with assessment prorated on the basis of the gross payroll for this state of the exempt employer, reported to the department for the previous calendar year for unemployment compensation purposes under ch. 108. If the exempt employer is not covered under ch. 108, then the department shall determine the comparable gross payroll for the exempt employer. If payment of any assessment made under this subsection is not made within 30 days of the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

(c) The department may retain an insurance carrier or insurance service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the fund as provided under par. (b).

SECTION 24. 102.30 (1) of the statutes is amended to read:

102.30 (1) This chapter ~~shall~~ does not affect the organization of any mutual or other insurance company, ~~nor~~ or the right of the employer to insure in mutual or other companies, against such liability, or against the liability for the compensation provided for by this chapter, ~~or to~~.

(2) An employer may provide by mutual or other insurance, or by arrangement with the employees, or otherwise, for the payment to such those employees, their families, their dependents or their representatives, of sick, accident or death benefits in addition to the compensation provided herein. But liability under this chapter. Liability for compensation shall is not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such that compensation, and the person so entitled shall, irrespective,

(4) Regardless of any insurance or other contract, have the right to an employe or dependent entitled to compensation under this chapter may recover the same compensation directly from the employer; and in addition thereto, the right to may enforce in the person's own name, in the manner provided in this chapter, the liability of any insurance company which may have insured the liability for such that compensation; and the. The appearance, whether general or special, of any such insurance carrier by agent or attorney shall be a constitutes waiver of the service of copy of application and of notice of hearing required by s. 102.17; provided, however, that payment.

(5) Payment of such compensation under this chapter by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided,

~~further, that as.~~ As between the employer and the insurance company, payment by either the employer or the insurance company directly to the employee, or to the person entitled to compensation, shall be is subject to the conditions of the policy.

SECTION 25. 102.30 (2) and (3) of the statutes are renumbered 102.30 (6) and (7) and amended to read:

102.30 (6) The failure of the assured to do or refrain from doing any act required by the policy ~~shall is~~ not be available to the insurance carrier as a defense against the claim of the injured employee or his the injured employee's dependents.

(7) 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, chiropractic or podiatric expense when the claimant consents, or when it is established that ~~such the~~ payments under the nonindustrial insurance policy were improper and no. No attorney fee shall be is due as with respect to such that reimbursement.

SECTION 26. 102.30 (3) of the statutes is created to read:

102.30 (3) Unless an employee elects to receive sick leave benefits in lieu of compensation under this chapter, if sick leave benefits are paid during the period that temporary disability benefits are payable, the employer shall restore sick leave benefits to the employee in an amount equal in value to the amount payable under this chapter. The combination of temporary disability benefits and sick leave benefits paid to the employee may not exceed the employee's weekly wage.

SECTION 27. 102.31 (1) (a) of the statutes is amended to read:

102.31 (1) (a) Every contract for the insurance of ~~the~~ compensation provided for by under this chapter, or against liability therefor, shall be made is subject to this chapter, and provisions inconsistent with this chapter are void. The, unless the department has by written order specifically consented to the issuance of a contract covering that liability.

(b) Except as provided in par. (c), a contract under par. (a) shall be construed to grant full coverage of all liability of the assured under this chapter except for liability.

(c) 1. Liability under s. 102.35 (3) which is the sole liability of the employer, notwithstanding any agreement of the parties to the contrary unless the department has theretofore by written order specifically consented to the issuance of a policy on a part of such liability, except that an.

2. An intermediate agency or publisher referred to in s. 102.07 (6) may, under its own policy contract of insurance, cover liability of its employees as defined in s. 102.07 (6) for an intermediate or independent news agency, provided if the policy contract of insurance of the publisher or intermediate agency is endorsed to

cover such those persons. If the publisher so covers it is not necessary for, the intermediate or independent news agency to need not cover liability for such those persons.

(2) (a) No policy party to a contract of insurance may be canceled by either party cancel it within the policy contract period nor terminated or terminate it upon the expiration date until a notice in writing is given to the other party, fixing the date on which it is proposed to cancel it, proposed date of cancellation or declaring that the party does not intend to renew the policy upon expiration. Such Except as provided in par. (b), such a cancellation or termination is not effective until 30 days after written notice has been given to the department either by personal service of the notice upon the department at its office in Madison or by sending the notice by certified mail addressed to the department at its office in Madison. The department may provide by rule that the notice of cancellation or termination be given by certified mail to the Wisconsin compensation rating bureau, as defined in s. 626.02 (1), rather than to the department. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination. However, the cancellation or termination is effective whether or not the

(b) 1. In the event of a court-ordered liquidation of an insurance company, a contract of insurance issued by that company terminates on the date specified in the court order.

2. Regardless of whether notice has been given to the department, a cancellation or termination is effective upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2).

SECTION 28. 102.31 (1) (b) of the statutes is renumbered 102.31 (1) (d) and amended to read:

102.31 (1) (d) If the insured is A contract procured to insure a partnership, such contract of insurance shall may not be construed to grant coverage of cover the individual liability of the members of such the partnership in the course of a trade, business, profession or occupation conducted by them as individuals, nor shall a. A contract of insurance procured to cover insure an individual liability may not be construed to grant coverage cover the liability of a partnership of which the individual is a member, nor to grant coverage of or to cover the liability of the individual arising as a member of any partnership.

SECTION 29. 102.31 (2) to (6) of the statutes are renumbered 102.31 (3) to (7), and 102.31 (4), (5) and (7), as renumbered, are amended to read:

102.31 (4) If any insurer authorized to transact worker's compensation insurance in this state fails promptly to promptly pay claims for compensation for which it is liable or fails to make reports to the department required by s. 102.38, the department may

recommend to the commissioner of insurance, with detailed reasons, that enforcement proceedings under s. 601.64 be invoked. The commissioner shall ~~thereupon~~ furnish a copy of the recommendation to the insurer and shall set a date for a hearing, at which both the insurer and the department shall be afforded an opportunity to present evidence. If after the hearing the commissioner ~~is satisfied~~ finds that the insurer has failed to ~~live up to all of~~ carry out its obligations under this chapter, the commissioner shall institute enforcement proceedings under s. 601.64; ~~otherwise, If the commissioner does not so find,~~ the commissioner shall dismiss the complaint.

(5) If any employer ~~who has by whom~~ the department ~~been granted exemption~~ exempted from the carrying of compensation insurance shall arbitrarily or unreasonably refuse ~~refuses~~ employment to or shall ~~discharge~~ discharges employes because of a nondisabling physical condition, the department shall revoke the exemption of ~~such that~~ employer.

(7) ~~Where~~ If the department by one or more written orders specifically consents to the issuance of one or more policies contracts covering only the liability incurred on a construction project, and ~~where if~~ the construction project owner designates the insurance carrier and pays for each such policy contract, the construction project owner shall reimburse the department for all ~~of the~~ costs incurred by the department in issuing ~~such the~~ written orders and in ensuring minimum confusion and maximum safety on the construction project.

SECTION 30. 102.31 (7) of the statutes, as affected by 1985 Wisconsin Act 29, is renumbered 102.31 (8).

SECTION 31. 102.37 of the statutes is amended to read:

**102.37 Employers' records.** Every employer of 3 or more persons and every employer who is subject to this chapter shall keep a record of all accidents causing death or disability of any employe while performing services growing out of and incidental to the employment, ~~which.~~ This record shall give the name, address, age and wages of the deceased or injured employe, the time and causes of the accident, the nature and extent of the injury, and such any other information as the department may require by general order. Reports based upon this record shall be furnished to the department at such times and in such manner as it may require by general order, upon forms ~~to be procured from~~ approved by the department.

SECTION 32. 102.38 of the statutes is amended to read:

**102.38 Records of payments; reports thereon.** Every insurance company which transacts the business of compensation insurance, and every employer who is subject to this chapter, but ~~who has whose liability is not insured the employer's liability,~~ shall keep a record of all payments made under this chapter and of the time and manner of making the payments, and shall furnish ~~such~~ reports based upon these records to

the department as it may require by general order, upon forms ~~to be procured from~~ approved by the department.

SECTION 33. 102.43 (6) of the statutes is amended to read:

102.43 (6) ~~Sick~~ No sick leave benefits provided in connection with other employment ~~shall not or wages received from other employment held by the employe when the injury occurred may~~ be considered in computing actual wage loss from the employer in whose employ ~~the employe sustained injury was sustained. Wages received from the employer in whose employ the employe sustained injury or from other employment obtained after the injury occurred shall be considered in computing benefits for temporary disability.~~

SECTION 34. 102.43 (7) (a) (intro.) of the statutes is renumbered 102.43 (7) (a) and amended to read:

102.43 (7) (a) If an employe has a renewed period of temporary total disability commencing more than 2 years after the date of injury and, except as provided in par. (b), the employe returned to work for at least 10 days ~~immediately~~ preceding the renewed period of disability, payment of compensation for the new period of disability shall be made as ~~follows:~~ provided in par. (c).

SECTION 35. 102.43 (7) (a) 1 and 2 of the statutes are renumbered 102.43 (7) (c) 1 and 2 and amended to read:

102.43 (7) (c) 1. If the employe was entitled to maximum weekly benefits at the time of injury, payment for the renewed temporary total disability or the rehabilitative training shall be at the maximum rate in effect at the commencement of the new period.

2. If the employe was entitled to less than the maximum rate, the employe shall receive the same proportion of the maximum which is in effect at the time of the commencement of the renewed period or the rehabilitative training as the employe's actual rate at the time of injury bore to the maximum rate in effect at that time.

SECTION 36. 102.43 (7) (b) of the statutes is amended to read:

102.43 (7) (b) An employe need not return to work at least 10 days preceding a renewed period of temporary total disability to obtain benefits under sub. (5) for rehabilitative training commenced more than 2 years after the date of injury. Benefits for rehabilitative training shall be made as provided in par. (c).

SECTION 37. 102.43 (8) of the statutes is created to read:

102.43 (8) During a compulsory vacation period scheduled in accordance with a collective bargaining agreement:

(a) Regardless of whether the employe's healing period has ended, no employe employed immediately before the compulsory vacation period may receive a



temporary total disability benefit for injury sustained while engaged in employment for that employer.

(b) An employe receiving temporary partial disability benefits immediately before the compulsory vacation period for injury sustained while engaged in employment for that employer shall continue to receive those benefits.

SECTION 38. 102.49 (5) (a) to (c) of the statutes are amended to read:

102.49 (5) (a) In each case of injury resulting in death, ~~leaving one or more persons wholly dependent for support,~~ the employer or insurer shall pay into the state treasury the sum of ~~\$2,500~~ \$5,000.

(b) In addition to the payment required under par. (a), in each case of injury resulting in death leaving no person dependent for support, the employer or insurer shall pay into the state treasury ~~80%~~ the amount of the death benefit otherwise payable, minus any payment made under s. 102.48 (1), in 5 equal annual instalments with the first instalment due as of the date of death.

(c) In addition to the payment required under par. (a), in each case of injury resulting in death, leaving one or more persons partially dependent for support, the employer or insurer shall pay into the state treasury an amount which, when added to the sums paid or to be paid on account of partial dependency and under s. 102.48 (1), shall equal the death benefit payable to a person wholly dependent, ~~plus the amount payable into the state treasury under this subsection where there is a person wholly dependent, such payment to the state treasury in no event to exceed 80% of the amount payable for total dependency.~~

SECTION 39. 102.50 of the statutes is amended to read:

SECTION 44. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
102.29 (1)	102.22, 102.57 or 102.60	102.18 (1)(bp), 101.22, 102.35 (3), 102.57 or 102.60
631.37 (3)	102.31 (1)(a)	102.31 (2)

**102.50 Burial expenses.** 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 ~~\$1,000~~ \$1,500.

SECTION 40. 102.555 (10) and (11) of the statutes are created to read:

102.555 (10) No compensation may be paid for tinnitus unless a hearing test demonstrates a compensable hearing loss other than tinnitus.

(11) Compensation under s. 102.66 for permanent partial disability due to occupational deafness may be paid only if the loss of hearing exceeds 20% of binaural hearing loss.

SECTION 41. 102.59 (2) of the statutes is amended to read:

102.59 (2) In the case of the loss or of the total impairment of a hand, arm, foot, leg or eye, the employer shall pay ~~\$4,000~~ \$7,000 into the state treasury. The payment shall be made in all such cases regardless of whether the employe, the employe's dependent or personal representative commences action against a 3rd party as provided in s. 102.29.

SECTION 42. 102.61 (intro.), (1), (2), (3) and (4) of the statutes are renumbered 102.61 (1) (intro.), (a), (b) and (c) and (2).

SECTION 43. 102.61 (3) of the statutes is created to read:

102.61 (3) Nothing in this section prevents an employer or insurance carrier from providing an employe with the services of a private rehabilitation provider if the employe voluntarily accepts those services.