

No. 380, S.]

[Published July 7, 1931.

CHAPTER 403.

AN ACT to revise chapter 102 of the statutes relating to workmen's compensation act.

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

SECTION 1. The title of chapter 102 of the statutes shall read:

CHAPTER 102.**WORKMEN'S COMPENSATION ACT.**

SECTION 2. A new section is added to the statutes to be numbered 102.01 and to read:

102.01 DEFINITIONS. (1) The provisions of this chapter may be known, cited and referred to as the "Workmen's Compensation Act" and allowances, recoveries and liabilities under or pursuant to this act constitute and may be known, designated and referred to as "Workmen's Compensation."

(2) "Act" as used in this chapter means "chapter;" "compensation" means workmen's compensation; "injury" is mental or physical harm to an employe and is extended to and includes diseases growing out of an incidental to the employment; and "municipality" includes county, city, town, village, school district, sewer district, drainage district and other public or quasi-public corporations; and "commission" means the industrial commission of Wisconsin. "Time of injury," "occurrence of injury," "date of injury" is the date of the accident which caused the injury or the date when the disability from the occupational disease first occurs.

SECTION 3. Section 102.01 of the statutes is renumbered section 331.36 and amended to read:

331.36 ABROGATION OF DEFENSES. * * * (1) In any action to recover damages for a personal injury sustained within this state by an employe while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want or ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employe either expressly or impliedly assumed the risk of the hazard complained of.

(b) When such employer has at the time of the injury in a common employment three or more employes, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

(c) When such employer has at the time of the injury in a common employment three or more employes, that the injury or death was caused in whole or in part by the want of ordinary care of the injured employe, where such want of ordinary care was not wilful.

(2) Any employer who has elected to pay compensation as * * * provided in *chapter 102* shall not be subject to the provisions of this section.

(3) Paragraphs (a), (b) and (c) of subsection (1) * * * shall not apply to farm labor, except that in determining the number of employes in common employment of an employer not engaged in farming, farmers or farm laborers working along with the employes of *such* an employer * * * shall be counted.

SECTION 4. Section 102.02 of the statutes is renumbered subsection (4) of section 331.36 and amended to read:

(331.36) (4) * * * No contract, rule, or regulation, shall exempt the employer from any of the provisions of *this* section.
* * *

SECTION 5. Section 102.03 of the statutes is amended to read:

102.03 CONDITIONS OF LIABILITY. (1) Liability for * * * compensation * * * shall exist against an employer for any * * * *disability* sustained by his employe, and for his death, in * * * cases where the following conditions of compensation concur:

(a) * * * Where, at the time of the * * * *injury*, both the employer and employe are subject to the provisions of * * * *this chapter*.

(b) * * * 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, 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*.

(c) * * * Where the injury is * * * not intentionally self-inflicted.

(2) * * * Where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of * * * *this chapter* shall be the exclusive remedy against the employer. * * *

SECTION 6. Section 102.04 of the statutes is amended to read:
102.04 EMPLOYER DEFINED. The following * * * *are* employers * * * within the meaning of section 102.03:

(1) The state, * * * *and each municipality.*

(2) Every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, * * * and who, * * * prior to the time of the * * * *injury* to the employe for which compensation * * * may be claimed, shall * * * have elected to become subject to the provisions of * * * *this chapter*, and who shall not, prior to such * * * *injury*, have * * * *withdrawn* such election. * * *

SECTION 7. Section 102.05 of the statutes is amended to read:
102.05 ELECTION BY EMPLOYER, WITHDRAWAL. (1) Such election *to become subject to the act* on the part of the employer shall be made by filing with the * * * commission, a written statement * * * that he accepts the provisions of * * * *this chapter*. The filing of * * * *such* statement shall operate * * * to subject such employer to * * * *its* provisions, * * * unless * * * *he* shall, at least thirty days prior to * * * July of any year, file in the office of said commission a notice * * * that he desires to withdraw his election, * * * *which withdrawal shall take effect on the first day of July.*

(2) If any employer shall at any time have three or more employes he shall be deemed to have elected to accept the provisions of * * * *this chapter*, unless prior to that time such employer shall have filed with the * * * commission a notice in writing * * * that he elects not to accept the provisions hereof. Such employer may withdraw * * * in the manner provided in subsection (1). * * * This subsection shall not apply to farmers or to farm labor. In determining the number of employes of an employer not engaged in farming, farmers or farm laborers working along with the employes of *such* an employer

* * * shall be counted. Members of partnerships shall not be counted as employes under this subsection.

(3) Any employer who shall enter into a contract for the insurance of * * * compensation, * * * or against liability therefor, shall be deemed thereby to have elected to accept the provisions of * * * *this chapter*, and such election shall include farm laborers, domestic servants and employes not in the course of a trade, business, profession or occupation of the employer if such intent is shown by the terms of the policy. Such election shall remain in force until withdrawn in the manner provided in subsection (1). * * *

SECTION 8. Section 102.06 of the statutes is amended to read:
 102.06 JOINT LIABILITY OF EMPLOYER AND CONTRACTOR. An employer * * * shall be liable for compensation to an employe of a contractor or subcontractor under him who is not subject to * * * *this chapter*, or who has not complied with the conditions of subsection (2) of section 102.28 in any case where such employer would have been liable for compensation if such employe had been working directly for * * * *him*. The contractor or subcontractor shall also be liable for such compensations, but the employe shall not recover compensation for the same injury from more than one party. In the same manner, under the same conditions, and with like right of recovery, as in the case of an employe of a contractor or subcontractor, described above, an employer * * * shall also be liable for compensation to an employe who has been loaned by him to another employer. The employer who shall become liable for and pay such compensation may recover the same from such contractor, subcontractor or other employer (whether or not such contractor, subcontractor or other employer is an employer as defined in section 102.04) for whom the employe was working at the time of the * * * *injury*.

SECTION 9. Section 102.07 of the statutes is amended to read:
 102.07 EMPLOYE DEFINED. * * * "Employee" as used in * * * *this chapter means:*

(1) Every person (*except officials*) in the service of the state, or of any * * * *municipality* therein under any appointment, or contract of hire, express or implied. * * * No officer of the state who is subject to the direction and control of any superior, * * * and except as provided in * * * *subsec-*

tion (2) no officer of any * * * *municipality*, who is subject to the direction and control of a superior officer * * * *thereof*, while engaged in the performance of duties for which * * * *his only* remuneration is received from * * * the state, or from such * * * *municipality*, shall * * * be deemed an official. The state and any * * * *municipality* may require a bond from a contractor to protect * * * *it* against compensation to employes of such contractor or employes of a subcontractor under him.

(2) Sheriffs, deputy sheriffs, constable, marshals, policemen and firemen shall be deemed employes within the meaning of * * * *subsection* (1); * * * provided, that any policeman or fireman claiming compensation * * * shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or other benefit fund to which the municipality may contribute; provided further that any *other* peace officer * * * shall be considered an employe while engaged in the enforcement of peace or in * * * the pursuit and capture of those charged with crime.

(3) Nothing herein contained shall * * * prevent * * * municipalities from paying teachers, policemen, firemen and other employes full salaries during disability, nor * * * interfere * * * with any pension funds, * * * nor * * * prevent payment to teachers, policemen or firemen therefrom.

(4) Every person in the service of another under any contract of hire, express or implied, * * * all helpers and assistants of employes, whether paid by the employer * * * or employe, if employed with the knowledge, actual or constructive, of the employer, * * * including minors (who shall have the same power of contracting as adult employes), but not including farm laborers, domestic servants and any person whose employment is not in the course of a trade, business, profession, or occupation of his employer, unless such employer has elected to include * * * *them*.

(5) A working member of a partnership receiving wages irrespective of profits from such partnership shall be deemed an employe. * * *

SECTION 10. Section 102.08 of the statutes is amended to read:
102.08 ELECTION BY EMPLOYE. (1) Any employe

* * * (except policemen and firemen) * * * as defined in * * * *subsection (1)* of section 102.07 shall be subject to * * * *this chapter*. Policemen and firemen and any employe as defined in * * * *subsection (4)* of section 102.07, shall be deemed to have accepted and shall * * * be subject to * * * *this chapter* if, at the time of the * * * *injury* for which * * * *compensation* is claimed:

(a) * * * The employer charged with such liability is subject to * * * *this chapter*, whether the employe has actual notice thereof or not; and

(b) * * * Such employe shall not have given to his employer notice in writing that he elects not to be subject to the provisions of * * * *this chapter*. * * *

(2) *When an employe gives notice that he elects to come under or not to come under the workmen's compensation act, his employer shall immediately file a copy of such notice with the commission.*

(3) Any employe who has * * * given or may * * * give notice to his employer that he elects not to be subject to * * * *this chapter*, may elect to become subject * * * *thereto* by giving to his employer notice in writing. * * *

(4) * * * *This chapter* shall not apply to employes operating, running or riding upon, or switching freight or other trains, engines or cars for a railroad company operating a steam railroad as a common carrier, unless both employer and employe shall, * * * in writing, have voluntarily accepted the provisions of said sections, and have filed notice thereof with the industrial commission, and shall not apply to employes of such common carriers injured or killed while the common carrier and the employe are engaged in interstate commerce.

(5) Epileptics and persons who are totally blind may elect not to be subject to * * * *this chapter*, for injuries resulting because of such epilepsy or blindness and still remain subject to * * * *its provisions* * * * for all other injuries.

(6) Except as provided in subsection (5), * * * any non-election by an employe which was procured by his employer as a condition of employment, or by solicitation, coercion or fraud shall be void, and shall not affect the right of such employe or his dependents to the benefits provided by * * * *this chapter*.

SECTION 12. Section 102.11 of the statutes is amended to read:
102.11 EARNINGS, METHOD OF COMPUTATION. (1) The average weekly earnings * * * shall be one-fiftieth of the average annual earnings of the employe.

(2) The average annual earnings for employes shall be taken at not less than five hundred twenty-five dollars nor more than one thousand five hundred dollars per annum. Between said limits such average annual earnings shall be determined as follows:

(a) If the * * * employe has worked in the employment in which he was working at the time of the * * * *injury*, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the * * * employe has not so worked in such employment during substantially the whole of such * * * preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employe of the same class working substantially the whole of such * * * year in the same or a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the * * * employe cannot reasonably and fairly be applied, such average annual earnings shall be taken at such sum as, having regard to the previous earnings of the * * * employe, and of other employes of the same or most similar class, working in the same or most similar employment, in the same or a neighboring locality, shall reasonably represent the average annual earning capacity of the injured employe at the time of the * * * *injury*.

(d) In determining average daily wage, no day during which an employe has worked less than eight hours shall be taken into consideration unless by agreement or custom a lesser number of hours' work constitutes the full day's service for such day. Subject to the maximum limitation the average annual earnings shall in no case be taken at less than the actual annual earnings.

(3) * * * If an employe is under * * * *twenty-seven* years of age and is permanently disabled his weekly earnings

on which to compute the indemnity accruing to him for permanent disability shall be determined on the basis of the earnings that such employe, if not disabled, probably would earn after attaining the age of twenty-seven years. Unless otherwise established his earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable.

(4) * * * The fact that an employe has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of the previous provisions of this section.

(5) * * * The weekly loss in wages referred to in sections * * * 102.52 to 102.55 shall consist of such percentage of the average weekly earnings of the injured employe, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the * * * injury, and other suitable employments, the same to be fixed as of the time of the * * * injury, but to be determined in view of the nature and extent of the injury.

SECTION 13. Section 102.12 of the statutes is amended to read:
 102.12 NOTICE OF INJURY, EXCEPTION, LACHES.
 No claim * * * for compensation * * * shall be maintained unless, within thirty days after the occurrence of the injury or within thirty days after the employe knew or ought to have known the nature of his disability and its relation to his employment, actual notice was received by the employer or by * * * an officer, manager or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be * * * sufficient. Absence of notice shall not * * * bar * * * recovery if it is found that there was no intention to mislead the employer, and that he was not * * * misled thereby. Regardless of whether * * * notice was received, if no payment of compensation (other than medical treatment or burial expense) is made, and no application

filed with the * * * commission within two years from the date of the injury or death, or from the date the employe or his dependent knew or ought to have known the nature of the disability and its relation to the employment, the right to compensation therefor shall be * * * barred. * * *

SECTION 14. Section 102.13 of the statutes is amended to read:

102.13 EXAMINATION BY PHYSICIAN. COMPETENT WITNESS, EXCLUSION OF EVIDENCE, AUTOPSY. (1) Whenever * * * the right to compensation * * * exists in favor of any employe, he shall, upon the written request of his employer, submit from time to time to examination by a * * * practicing physician, * * * provided and paid for by the employer, and shall likewise submit to examination from time to time by any * * * physician selected by said * * * commission, or a member or examiner thereof. The employe shall be entitled to have a physician, provided * * * by himself, present at any such examination. So long as the employe, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he 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 the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall * * * be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employe * * * may be required to testify before the commission when it shall so direct.

(2) The commission may refuse to receive testimony as to conditions determined from an autopsy if it appears (a) that the party offering the testimony *had procured the autopsy and had failed to make reasonable effort to notify at least one party in adverse interest or the * * * commission * * * at least twelve hours before said autopsy of the time and place it would be performed, or* (b) that the autopsy was performed by or at the direction of the coroner for * * * purposes * * * not authorized by chapter 366. * * * The commission may in

its discretion withhold findings until an autopsy is held in accordance with its directions.

SECTION 15. Section 102.14 of the statutes is amended to read:
 102.14 JURISDICTION OF COMMISSION. * * * *This chapter* shall be administered by the * * * commission.
 * * *

SECTION 16. Section 102.15 of the statutes is amended to read:
 102.15 RULES OF PROCEDURE, SEAL, TRANSCRIPTS.
 (1) Subject to the provisions of * * * *this chapter*, the commission may adopt its own rules of procedure and may change the same from time to time. * * *

(2) The commission may provide by rule the * * * conditions under which transcripts of testimony and proceedings shall be furnished.

SECTION 17. Section 102.16 of the statutes is amended to read:
 102.16 SUBMISSION OF DISPUTES, CONTRIBUTIONS BY EMPLOYEES. (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. * * *

(2) The * * * commission shall have jurisdiction to pass upon the reasonableness of medical and hospital bills in all cases of dispute where compensation is paid, in the same manner and to the same effect as it passes upon compensation.

(3) No employer subject to the provisions of * * * *this chapter* shall solicit, receive or collect any money from his employes or make any deduction from their wages, either directly or indirectly, for the purpose of discharging any liability under the provisions * * * *thereof*; nor shall any such employer sell to an employe, or solicit or require him to purchase medical or hospital tickets or contracts for medical, surgical, or hospital treatment required to be furnished by such employer. * * *

(4) Any employer violating * * * subsection (3) * * * shall be subject to the penalties provided in subsection (3) of section 102.28, and, in addition thereto, shall be liable to an in-

jured employe for the reasonable value of the necessary services rendered to such employe pursuant to any arrangement made in violation of subsection (3) of this section without regard to said employe's actual disbursements for the same.

SECTION 18. Section 102.17 of the statutes except subsection (3) is amended to read:

102.17 PROCEDURE; NOTICE OF HEARING; WITNESSES, CONTEMPTS; TESTIMONY, MEDICAL EXAMINATION. (1) Upon the filing with the commission by any party in interest of any application in writing stating the general nature of any claim as to which any * * * controversy may have arisen, it shall mail a copy of such application to all other parties in interest * * * *including* the insurance carrier. * * * The commission may bring in additional parties by service of a copy of the application. The commission shall fix a time for the hearing on such application which shall not be more than forty days after the filing * * * *thereof*; and shall cause notice of such hearing, to be * * * *served on* each party interested, * * * personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. In case a party * * * is located without the state, and has no post-office address within this state, the copy of the application and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last known post-office address of such party. Such filing and mailing shall constitute sufficient service, with the same * * * effect as if served upon a party * * * within this state. Such hearing may be adjourned * * * in the discretion of the commission, and hearings may be held at such places as the commission shall designate. Either party * * * *may* be present at any hearing, in person or by attorney, or any other agent, and * * * present * * * *pertinent* testimony; * * * but the commission may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the commission or any examiner appointed by it, and may from time to time direct any employe claiming compensation to be examined by a * * * physician; the testimony so taken, and the results of * * * such inspection or exami-

nation * * * shall be reported to the commission for its consideration upon final hearing. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have opportunity to rebut the same. * * *

(2) If the commission shall have reason to believe that * * * the payment of * * * compensation * * * has not * * * been made, * * * it may on its own motion give notice * * * to the parties, in the manner provided for the service of an application, of a time and place when * * * a hearing will be had for the purpose of determining the facts. Such notice shall contain a * * * statement of the matter to be considered. Thereafter all other provisions governing proceedings on application shall attach in so far as the same may be applicable. * * *

(3) * * * Any person who shall wilfully and unlawfully fail or neglect to appear or to testify or to produce books, papers and records as required, shall be * * * fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days. Each day such person shall so refuse or neglect shall constitute a separate offense.

* * *

(4) *The right of an employe, his legal representative or dependent to proceed under this section shall not extend beyond six 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, whichever date is latest.*

(5) *This section does not limit the time within which the state may bring an action to recover the amounts specified in subsection (5) of section 102.49 and section 102.59.*

SECTION 18a. Subsection (3) of section 102.17 of the statutes is renumbered subsection (1a) of section 101.10 and is re-enacted.

SECTION 19. Section 102.18 of the statutes is amended to read:
102.18 FINDINGS AND AWARD. After final hearing * * * the commission * * * shall make and file * * * its findings upon all the facts involved in the controversy, and * * * its award, which shall state its determination as to the rights of the parties. Pending the final determination of any controversy before it, the commission * * * may after any hearing * * * make interlocutory findings, orders and

awards which may be enforced in the same manner as final awards. The commission * * * *may* include in its final award, as a penalty for noncompliance with any such interlocutory order or award, if it shall find that noncompliance was not in good faith, not exceeding twenty-five per cent of each amount which shall not have been paid as directed thereby. The commission may on its own motion, set aside, modify or change its order, findings or award at any time within twenty days from the date thereof if it shall discover any mistake therein, or upon the grounds of newly discovered evidence. Unless the liability under * * * section 102.10 and sections 102.60 and 102.61 is specifically mentioned, the order, findings or award shall be deemed not to affect such liability.

SECTION 20. Section 102.19 of the statutes is amended to read:

102.19 ALIEN DEPENDENTS; PAYMENTS THROUGH CONSULAR OFFICERS. In case a deceased employe, for whose injury or death compensation is payable, leaves surviving him * * * alien dependents residing outside of the United States, the duly accredited consular officer of the country of which such dependents are citizens * * * or his designated representative * * * residing within the state * * * shall, except as otherwise determined by the * * * commission, be the sole * * * representative of such deceased employe and of such dependents in all matters pertaining to their claims for compensation. The receipt by such officer or agent of * * * compensation funds * * * and the distribution thereof * * * shall be made only upon order of the * * * commission, and payment to such officer or agent pursuant to any such order * * * shall be a * * * full * * * discharge of the benefits or compensation. * * * Such consular officer or his representative shall furnish, if required by the * * * commission, a * * * bond * * * to be approved by * * * *it*, conditioned upon the proper application of all moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the commission a verified account of the items of his receipts and disbursements of such compensation. Such consular officer or representative shall make interim reports to the * * * commission * * * as it may require.

SECTION 21. Section 102.20 of the statutes is amended to read:
 102.20 JUDGMENT ON AWARD. Either party may present a certified copy of the award to the circuit court for any county, whereupon said court shall, without notice, render * * * judgment in accordance therewith; * * * *such* judgment * * * shall have the same effect as though * * * rendered in an action * * * tried and determined by said court, and shall, with like effect, be entered and docketed.

SECTION 22. Section 102.21 of the statutes is amended to read:
 102.21 PAYMENT OF AWARDS BY MUNICIPALITIES. Whenever an award is made by the commission against any * * * *municipality*, the person in whose favor it is made shall file a certified copy thereof with the * * * *municipal* clerk. * * * Within twenty days thereafter, unless an appeal is taken, such clerk shall draw an order on the * * * *municipal* treasurer * * * for the payment of the * * * award. If upon appeal such award is affirmed in whole or in part the order for payment shall be drawn within ten days after a certified copy of such judgment is filed with the proper clerk. If more than one payment is provided for in the award or judgment, orders shall be drawn as the payments become due. * * * No statute relating to the filing of claims against, and the auditing, allowing and payment of claims by * * * *municipalities* shall * * * apply to the payment of an award or judgment under the provisions of this section.

SECTION 23. Section 102.22 of the statutes is amended to read:
 102.22 PENALTY FOR DELAYED PAYMENTS. If the sum * * * ordered by the commission to be paid shall not be paid when due, such sum shall bear interest at the rate of six per cent per annum. Where the employer or his insurer is guilty of inexcusable delay in * * * making * * * payments, the payments as to which such delay is found shall be increased by ten per cent. Where such delay is chargeable to the employer and not to the insurer, the provisions of * * * section * * * 102.62 shall be applicable and the relative liability of the parties shall be fixed and discharged as therein provided. * * *

SECTION 24. Section 102.23 of the statutes is re-enacted.

SECTION 25. Section 102.24 of the statutes is renumbered subsection (1) thereof and re-enacted.

SECTION 26. Subsection (1) of section 102.25 of the statutes is re-enacted; and subsection (3) of section 102.25 is renumbered subsection (2) thereof and re-enacted.

SECTION 27. Subsection (2) of section 102.25 of the statutes is renumbered subsection (2) of section 102.24 and is re-enacted.

SECTION 28. Section 102.26 of the statutes is amended to read:

102.26 FEES AND COSTS. (1) No fees shall be charged by the clerk of any court for the performance of any * * * service required by * * * *this chapter*, except for the docketing of judgments and for certified * * * transcripts thereof. In proceedings to review an order or award, costs as between the parties shall be * * * in the discretion of the court, but no costs shall be taxed against * * * *the commission*. * * *

(2) Unless previously authorized by the commission, no contingent fee shall be charged or received for the enforcement or collection of any claim for compensation, nor shall any contract therefor be enforceable, where such fee, inclusive of all taxable attorney's fees paid or agreed to be paid for such enforcement or collection, exceeds ten per cent of the amount at which such claim shall be compromised * * * or of the amount awarded, adjudged or collected, or where such fee computed upon such percentage basis shall exceed in gross the sum of one hundred dollars. The limitation as to contingent fees shall apply to the combined charges of attorneys, solicitors, representatives and adjusters who knowingly combine their efforts toward the enforcement or collection of any compensation claim.

(3) * * * Compensation in favor of any claimant, which * * * exceeds one hundred dollars, shall be made payable to such claimant in person; provided, however, that in any award the commission shall upon application of any interested party and subject to the provisions of subsection (2) * * * fix the * * * fee * * * of his attorney or representative and provide in the award for payment of such fee direct to the person * * * entitled thereto. Payment according to the directions of the award shall protect the employer and his insurer from any claim of attorney's lien.

(4) The charging * * * or receiving of any fee in violation of * * * this section shall be * * * unlawful, and the attorney or other person guilty thereof shall forfeit double

the * * * amount retained by him, the same to be collected by the state in an action in debt, upon complaint of the commission. Out of the sum recovered the court shall direct payment to the injured party of the amount of the overcharge.

SECTION 29. Section 102.27 of the statutes is amended to read:

102.27 CLAIMS UNASSIGNABLE, AND EXEMPT. No claim for compensation * * * shall be assignable, * * * but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, * * * or paid, be * * * taken for the debts of the party entitled thereto.

SECTION 30. Section 102.28 of the statutes is amended by substituting "this act" for "the provisions of sections 102.03 to 102.34" and as so amended is re-enacted.

SECTION 31. Section 102.29 of the statutes is amended to read:

102.29 LIABILITY OF THIRD PARTIES AFFECTED.

(1) (a) Except in * * * *the* cases provided for in paragraph (b) of this subsection, the making of a lawful claim against an employer or compensation insurer for compensation under * * * *this act* for the injury or death of an employe shall operate as an assignment of any cause of action in tort which the employe or his personal representative may have against any other party for such injury or death; and such employer or insurer may enforce in their own name or names the liability of such other party for their benefit as their interests may appear. If a recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary or beneficiaries shall be entitled to any amount recovered over and above the amount that the employer or insurer, or both, have paid or are liable for in compensation to such beneficiary or beneficiaries, after deducting reasonable cost of collection, and in no event shall the beneficiary receive less than one-third the amount recovered from the third party, less the reasonable cost of collection. Settlements of such claims and the distribution of the proceeds therefrom must have the approval of the court wherein the litigation is pending * * * or * * * if not in suit, of the * * * commission. The beneficiary shall be entitled to reasonable notice and opportunity to be present in person or by counsel at the approval proceedings. The failure of the employer or compensation insurer * * * to pursue his remedy against the third party

within ninety days after written demand by a compensation beneficiary, shall entitle such beneficiary or his representatives to enforce liability in his own name, accounting of the proceeds to be made on the basis above provided.

(b) If the insurance carrier of the employer and of the third party shall be the same or if there is common control of the insurer of each, the insurance carrier of the employer shall promptly notify the parties in interest and the * * * commission of that fact; likewise, if the employer has assumed the liability of the third party he shall give similar notice; and, in default of such notice, any settlement with an injured employe or beneficiary shall be void.

(2) The commencement of an action by an employe or his dependent against a third party for damages by reason of an * * * *injury* covered by * , * * *this act*, or the adjustment of any such claim, shall operate as a waiver of any claim for compensation against the employer, unless such action is dismissed without prejudice and before trial, in which case the status of all the parties shall be the same as if action had never been commenced, except that all compensation benefits, indemnity and medical, accruing prior to the time of such action is dismissed shall be forfeited. The amount accruing to any dependent from any damage had or recovered by the personal representative of such employe from a third party shall discharge in equal amount the liability for compensation to such dependent.

(3) In the case of liability of the employer or insurer to make payment into the state treasury under the provisions of * * * *section 102.49 or 102.59*, if the injury or death was due to the *actionable* act, neglect, or default of a third party, * * * the employer or insurer shall have a right of action against such third party for reimbursement for any sum so paid into the state treasury, which right may be enforced either by joining in the action mentioned in subsection (1) or (2), * * * or by independent action.

(4) Nothing in * * * *this act* shall prevent an employe from taking the compensation he may be entitled to under * * * *it* and also maintaining a civil action against any physician or surgeon for malpractice. The measure of damages, * * * in such action, shall be the amount of damages found

by the jury less the compensation payable to the employe.
* * *

SECTION 32. Section 102.30 of the statutes is amended to read:

102.30 OTHER INSURANCE NOT AFFECTED; LIABILITY OF INSURED EMPLOYER. (1) * * * *This act shall not affect the organization of any mutual or other insurance company, * * * nor 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 act, or to provide by mutual or other insurance, or by arrangement with his employes, or otherwise, for the payment to such employes, their families, dependents or representatives, of sick, accident or death benefits in addition to the compensation provided * * * herein. But liability for compensation * * * shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in * * * this act, the liability of any insurance company which may have insured the liability for such compensation, and the appearance, whether general or special, of any such insurance carrier by agent or attorney shall be a waiver of the service of copy of application and of notice of hearing required by section 102.17; provided, however, that payment * * * of such compensation 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 between the employer and the insurance company, payment by either directly to the employe, or to the person entitled to compensation, shall be subject to the conditions of the * * * policy.*

(2) The failure of the assured to do or refrain from doing any act required by the policy shall not be available to the insurance carrier as a defense against the claim of the injured employe or his dependents.

SECTION 33. Section 102.31 of the statutes is amended to read:
102.31 LIABILITY INSURANCE; POLICY REGULA-

TIONS. (1) Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of * * * *this act*, and provisions thereof inconsistent with * * * *the act* shall be void. Such contract shall be construed to grant full coverage of all liability of the assured under and according to the provisions of * * * *the act*, notwithstanding any agreement of the parties to the contrary unless the * * * commission has theretofore by written order specifically consented to the issuance of a * * * *policy* on a part of such liability. No such * * * *policy* shall be canceled * * * within the policy period until a notice in writing shall be given to the * * * commission, fixing date on which it is proposed to cancel * * * *it*, such notice to be served personally or by registered mail on the * * * commission at its office in the state capitol. No such cancellation * * * shall be effective as against the claim of an injured employe until ten days after the service of such notice, unless the employer has obtained other insurance coverage for the protection of such employe, prior to the time of the injury for which claim is made. Every * * * *policy* shall be written for * * * not less than one year.

(2) * * * Each employe shall constitute a separate risk. * * * Five employers * * * *or more may* join in the organization of a mutual company under * * * *subsection* (5) of section 201.04 and no such company organized by employers shall be * * * authorized to effect such insurance unless * * * *it* shall have in force or put in force simultaneously insurance on at least one thousand five hundred separate risks.

(3) The * * * commission * * * may examine from time to time the books and records of any * * * insurance company insuring liability or compensation for an employer in this state. Any such company that shall refuse or fail to allow the * * * commission to examine its books and records shall have its license * * * revoked.

(5) Two or more * * * companies, licensed to carry on the business of workmen's compensation insurance in this state, may with the approval of the commissioner of insurance, form a corporation for the purpose of insuring special risks under the workmen's compensation act. * * * The articles of incorpo-

ration * * * shall contain a declaration that the various company members shall contribute such amounts as may be necessary to meet any deficit of such corporation, such declaration to be in lieu of all capital, surplus and other requirements for the organization of companies and the transaction of the business of workmen's compensation insurance in this state. Such * * * corporation shall be owned, operated and controlled by its company members as may be provided in the articles of incorporation.

SECTION 34. Section 102.32 of the statutes is amended to read:

102.32 CONTINUING LIABILITY; GUARANTEE SETTLEMENT, GROSS PAYMENT. In any case in which compensation payments have extended or will extend over * * * six months or more from the date of the injury (or at any time in death benefit cases), any party in interest may, in the discretion of the * * * commission, be discharged from, or compelled to guarantee, future compensation payments as follows:

(1) By depositing the present value of the total unpaid compensation upon a three per cent interest discount basis with such bank or trust company as may be designated by the commission; or

(2) By purchasing an annuity within the limitations provided by law, in such insurance company granting annuities and licensed in this state, as may be designated by the commission; or

(3) By payment in gross upon a three per cent interest discount basis to be approved by the commission; and

(4) In cases where the time for making payments or the amounts thereof cannot be definitely determined, by furnishing a bond, or other security, satisfactory to the * * * commission for the payment of such compensation as may be due or become due. The acceptance of such bond, or other security, and the form and sufficiency thereof, shall be subject to the approval of the * * * commission. If the employer or insurer is unable or fails to immediately procure such bond, then, in lieu thereof, deposit shall be made with such bank or trust company, as may be designated by the commission, of the maximum amount that may reasonably become payable in such cases, * * * to be determined by the commission at amounts consistent with the extent of the injuries and the provisions of the law. Such bonds and deposits are to be reduced only to satisfy such claims and withdrawn only after the claims which they are to guarantee are

fully satisfied or liquidated under the provisions of subsection (1), (2) or (3); * * * and

(5) Any insured employer may, within the discretion of the * * * commission, compel the insurer to discharge, or to guarantee payment of its liabilities in any such case under the provisions of this section and thereby release himself from compensation liability therein, but if for any reason a bond furnished or deposit made under subsection (4) * * * does not fully protect, the compensation insurer or uninsured employer, as the case may be, shall still be liable to the beneficiary thereof.

SECTION 35. Paragraph (1) of subsection (5) of section 102.09 of the statutes is renumbered subsection (6) and (7) of section 102.32 and is amended to read:

(102.32) (6) * * * Any time after six months * * * from the date of the injury, the commission may order payment in gross or in such manner as it may determine to the best interest of the * * * *injured employe or his dependents*. When payment in gross is ordered, the commission shall fix the gross amount to be paid based on the present worth of partial payments, considering interest at three per cent per annum.

(7) *No lump sum settlement shall be allowed in any case of permanent total disability upon an estimated life expectancy, except upon consent of all parties, after hearing and finding by the commission that the interests of the injured employe will be conserved thereby.*

SECTION 36. The first sentence of section 102.33 of the statutes is renumbered 102.33 and amended to read:

102.33 BLANKS AND RECORDS. The commission shall * * * print * * * and furnish * * * free * * * to any employer or employe such blank forms as it shall deem requisite to facilitate * * * efficient administration of * * * *this act*; it shall * * * *keep* such * * * record books or records as it shall deem required for the proper and efficient administration of * * * *this act*. * * *

SECTION 37. Section 102.33 of the statutes (except the first sentence thereof) is renumbered 102.34 and amended to read:

102.34 NONELECTION, NOTICE BY EMPLOYER. * * * Knowledge of the fact *that an employer is subject to this act* shall conclusively be imputed to all employes. Every employer *who would be subject to this act but for the fact that he has* * * *

elected not to accept * * * *its* provisions * * * *thereof*, shall post and maintain printed notices of such nonelection on * * * *his* premises, of such design, in such numbers, and at such places as the commission, shall, by order, determine to be necessary to give information to * * * *his* employes.

SECTION 38. Section 102.34 of the statutes is repealed.

SECTION 39. Section 102.35 of the statutes is repealed.

SECTION 40. Section 102.36 of the statutes is repealed.

SECTION 41. Section 102.37 of the statutes is re-enacted.

SECTION 42. Section 102.38 of the statutes is re-enacted.

SECTION 43. Section 102.39 of the statutes is amended to read:

102.39 GENERAL ORDERS; APPLICATION OF STATUTES. The provisions of * * * *chapter 101*, relating to the adoption, publication, modification and court review of general orders of the * * * commission shall apply to all general orders adopted pursuant to *this* chapter. * * *

SECTION 44. Section 102.40 of the statutes is amended to read:

102.40 REPORTS NOT EVIDENCE IN ACTIONS. Reports furnished to the * * * commission pursuant to * * * sections 102.37 and 102.38 * * * shall not be admissible as evidence in any action arising out of the death or accident reported.

SECTION 45. Section 102.41 of the statutes is renumbered section 102.35 and amended to read:

102.35 PENALTIES. * * * Every employer and every insurance company that fails to keep the records or to make the reports required by chapter 102 * * * or that knowingly falsifies such records or makes false reports shall forfeit * * * to the state * * * not less than ten dollars nor more than one hundred dollars for each offense.

SECTION 46. The introduction to section 102.09 of the statutes is repealed.

SECTION 47. Subsection (1) of section 102.09 of the statutes is renumbered section 102.42 and is amended to read:

102.42 INCIDENTAL COMPENSATION. (1) * * * TREATMENT. *The employer shall supply* such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, 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 for ninety days immediately following the * * * *injury* to cure and relieve from the effects of the injury, and for such additional period of time as in the judgment of the commission will tend to lessen the period of compensation disability, or in the case of permanent total disability for such period of time as the commission may deem advisable, not to exceed the period for which indemnity is payable, and in case of his neglect or refusal seasonably to do so, the employer * * * *shall* be liable for the reasonable expense incurred by or on behalf of the employe in providing the same.

(2) * * * **PHYSICIAN, SELECTION.** The employe shall have the right to make choice of his attending physician from a panel of physicians to be named by the employer. Where the employer has knowledge of the injury and the necessity for treatment, his failure to tender the same shall constitute such neglect or refusal. Failure of the employer to maintain a reasonable number of competent and impartial physicians, ready to undertake the treatment of the employe, and to permit the employe to make choice of his attendant from among them, shall constitute neglect and refusal to furnish such attendance and treatment. The commission may upon summary hearing permit an injured employe to make selection of a physician not on the panel.

(3) * * * **MEDICAL PANEL.** In determining the reasonableness of the size of the medical panel, the commission shall take into account the number of competent physicians immediately available to the community in which the medical service is required, and where only one such physician is available, * * * the tender of attention by such physician shall be construed as a compliance with * * * this section unless specialized or extraordinary treatment is necessary. * * * The employer *shall not* be required to maintain a panel of more than five * * * physicians. In such panel, partners and clinics shall be deemed as one physician. Every employer shall post * * * the names and addresses of the physicians on his panel in such manner as to afford his employes reasonable notice thereof.

(4) * * * **PREJUDICED PHYSICIAN.** Whenever in the opinion of the * * * commission a panel physician has not impartially estimated the degree of permanent disability or the ex-

tent of temporary disability of any injured employe, the commission * * * *may* cause such employe to be examined by a physician selected by * * * *it*, and to obtain from * * * *him* a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the panel physician has not been impartial from the standpoint of such employe, the commission * * * *may* in its discretion * * * charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(5) * * * CHRISTIAN SCIENCE. Any employer may elect not to be subject to the provision for Christian Science treatment provided for in this * * * section by filing written notice of such election with the * * * commission.

(6) * * * ARTIFICIAL MEMBERS. Artificial members furnished at the end of the healing period need not be duplicated.

(7) TREATMENT REJECTED BY EMPLOYE. No compensation shall be payable for the death or disability of an employe, if his death be caused by or insofar as his disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable surgical treatment.

SECTION 48. The introduction to and paragraphs (a), (b) and (c) of subsection (2) of section 102.09 of the statutes are renumbered section 102.43 and amended to read:

102.43 WEEKLY COMPENSATION SCHEDULE. * * *
If the * * * *injury* causes disability, an indemnity * * * shall be payable as wages on the eighth day after the * * * employe leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(1) * * * If the * * * *injury* causes total disability, sixty-five per cent of the average weekly earnings during * * * such total disability.

(2) * * * If the * * * *injury* causes partial disability, during the * * * partial disability, such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employe bears to his average weekly wage at the time of his injury.

(3) * * * If the disability caused by the * * * *injury* is at times total and at times partial, the weekly indemnity during * * * each * * * total or partial disability shall

be in accordance with * * * subsections (1) and (2), respectively.

SECTION 49. Paragraph (d) of subsection (2) of section 102.09 is renumbered sections 102.44 and 102.45 of the statutes and amended to read:

102.44 MAXIMUM LIMITATIONS. * * * *Section 102.43* shall be subject to the following limitations:

(1) * * * In case of temporary disability aggregate indemnity * * * shall not exceed four times the average annual earnings of such employe.

(2) * * * In case of permanent total disability aggregate indemnity * * * shall be weekly indemnity for the period that he may live, not to exceed, however, these named limitations, to wit:

(a) * * * One thousand weeks for all persons under thirty-one years of age.

(b) * * * For each successive yearly age group, beginning with thirty-one years, the maximum limitation shall be reduced by eighteen weeks, until a minimum limit of two hundred and eighty weeks shall be reached.

(3) * * * *For permanent partial disability not covered by the provisions of sections 102.52 to 102.56* aggregate weekly indemnity shall bear such relation to the aggregate weekly indemnity for permanent total disability as the nature of the injury bears to one causing permanent total disability. *Such weekly indemnity shall be payable for the same number of weeks as if the injury had caused permanent total disability and shall be in addition to compensation for healing period.*

(4) * * * Where the * * * permanent disability is covered by the provisions of * * * sections 102.52 and 102.56, such * * * sections shall govern; provided, that in no case shall the percentage of permanent total disability be taken as more than one hundred per cent.

* * *

(5) * * * Total blindness of both eyes, or the loss of both arms at or near the shoulder, or of both legs at or near the hip, or of one arm at the shoulder and one leg at the hip, shall constitute permanent total disability. This enumeration shall not be exclusive but in other cases the commission shall find the facts.

102.45 WAITING PERIOD. * * * The weekly indemnity due on the eighth day after the employe leaves work as the result of the injury may be withheld until the twenty-second day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-second day and be paid therewith. * * * If the period of disability does not last more than one week from the day the employe leaves work as a result of the injury, no indemnity whatever shall be recoverable.

SECTION 50. Subsection (3) of section 102.09 of the statutes is renumbered section 102.46 and 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 for support, the death benefit shall * * * equal * * * four times his average annual earnings, but * * * when added to the disability indemnity paid and due at the time of death, shall not exceed the maximum amount which might have accrued to him for permanent total disability if death had not ensued.

SECTION 51. Subsection (4) of section 102.09 of the statutes is renumbered section 102.47 and is amended to read:

102.47 DEATH BENEFIT, CONTINUED. * * * If death occurs to an injured employe other than as a proximate result of the * * * *injury*, before disability indemnity ceases, death benefit shall be as follows:

(1) * * * Where the * * * *injury* proximately causes permanent total disability, it shall be the same as if the * * * *injury* had caused death.

(2) * * * Where the * * * *injury* proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed two hundred dollars, any remaining sum to be paid to dependents, as provided in * * * this section *and section 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 52. Subsection (4a) and paragraph (b) of subsection (4n) of section 102.09 of the statutes are consolidated and renumbered section 102.48 and amended to read:

102.48 DEATH BENEFIT, CONTINUED. * * * If the deceased employe leaves no one wholly dependent upon him for support, partial dependency and death benefits therefor shall be as follows:

(1) * * * An unestranged surviving parent or parents, residing within any of the states or District of Columbia of the United States, shall receive a death benefit of twelve hundred dollars.

(2) * * * In all other cases the death benefit shall be such sum as the commission shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employe but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employe made any contribution to support. * * * The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or four times the contributions of the deceased to the support of such dependents during the year immediately preceding his death, whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in * * * sections 102.42 to 102.63 shall include contributions to the capital fund of the dependents, for their necessary comfort.

(3) * * * Death benefit, other than burial expenses, except otherwise provided, shall be paid in weekly instalments corresponding in amount to sixty-five per cent of the weekly earnings of the employe, until otherwise ordered by the commission.

SECTION 53. Subsection (4m) of section 102.09 of the statutes is renumbered section 102.49 and is amended to read:

102.49 ADDITIONAL DEATH BENEFIT FOR CHILDREN, STATE FUND. (1) * * * Where the beneficiary under * * * section 102.46 or subsection (1) of section 102.47 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 * * * subsection (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 the average annual earnings of the deceased employe. For children in each successive yearly age group the amount allowed shall be reduced by one-fifteenth part of such average annual earnings, with no allowance for any child over fifteen 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.

(2) * * * A child lawfully adopted by the deceased employe and the surviving spouse, prior to the time of the injury, and a child not his own by birth or adoption but living with him as a member of his family at the time of the injury shall for the purpose of this * * * section be taken as a child by their marriage.

(3) * * * Where the employe leaves a wife or husband wholly dependent and also a child or children by a former marriage or adoption, likewise wholly dependent, aggregate benefits shall be the same in amount as if the children were the children of such surviving spouse, and the entire benefit shall be apportioned to the dependents in such amounts as the commission shall determine to be just, considering their ages and other facts bearing on dependency. The benefit awarded to the surviving spouse shall not exceed four times the average annual earnings of the deceased employe.

(4) * * * Dependency of any child for the purposes of this * * * section shall be determined according to the provisions of subsection * * * (1) of section * * * 102.51, in like manner as would be done if there was no surviving dependent parent.

(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 sixteen hundred dollars. 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 subsection (2) of section 102.29.

(6) * * * The moneys paid into the state treasury pursuant to * * * subsection (5) with all accrued interest is hereby appropriated to the * * * commission for the discharge of all liability for additional death benefits accruing under this * * * section.

(7) * * * The additional benefits for account of each child shall accrue at the rate of ten per cent of the surviving parent's weekly indemnity. The commission shall have authority to award such benefits to the surviving parent of such child, to his guardian or to such other person, bank or trust company for his use as may be found best calculated to conserve the interest of the child.

(8) * * * For the proper administration of the funds available under * * * subsections (5) and (6) the commission shall, by order, set aside in the state treasury suitable reserves to carry to maturity the liability for additional death benefit. Such moneys shall be invested by the state annuity and investment board, in the securities authorized in section 206.34.

(9) * * * The benefits payable under this * * * section when added to the indemnity paid and due at the time of death and those benefits payable to the surviving spouse shall not in the aggregate exceed the maximum amount that might have accrued to the injured employe for permanent total disability if death had not ensued.

SECTION 54. Paragraph (a) of subsection (4n) of section 102.09 of the statutes is renumbered section 102.50 and is amended to read:

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 two hundred dollars.

SECTION 55. Subsections (4p) to (4u) of section 102.09 of the statutes are renumbered subsections (1) to (5) of section 102.51 and amended to read:

102.51 DEPENDENTS. (1) WHO ARE. * * * The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employe: A wife upon a

husband with whom she is living at the time of his death; a husband upon a wife with whom he is living at the time of her death; a child * * * under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he * * * is living at the time of the death of such parent, there being no surviving dependent parent. In case of divorce the charging of any portion of the support and maintenance of a child upon one of the divorced parents, or any voluntary contribution toward the support of a child by such divorced parent, or an obligation to support a child by such divorced parent shall be held to constitute a living with the parent so charged.

(2) WHO ARE NOT. * * * No person shall be considered a dependent unless a member of the family * * * or a spouse, or a divorced spouse who has not remarried, * * * or lineal descendant or ancestor, or brother or sister of the deceased employe.

(3) DIVISION AMONG DEPENDENTS. * * * If there * * * be more than one person wholly dependent, the death benefit shall be divided between such dependents in such proportion as the commission shall determine to be just, considering their ages and other facts bearing on such dependency; and persons partially dependent, if any, shall receive no part thereof.

(4) DEPENDENCY AS OF DATE OF INJURY, ALIENS. * * * Questions as to who constitute 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 same as is then unpaid shall be * * * payable to his personal representatives in gross. * * *

(5) WHEN NOT INTERESTED. * * * No dependent of an injured employe shall be deemed a party in interest to any proceeding by him for the enforcement * * * of * * * his claim for compensation, nor as respects the compromise thereof by such employe. Subject to the provisions of section 102.16 (1), a compromise of all liability entered into by an employe shall be binding upon his dependents.

SECTION 56. Paragraph (a) of subsection (5) of section 102.09 of the statutes is renumbered section 102.52 and is amended to read:

102.52 MAJOR PERMANENT PARTIAL DISABILITY SCHEDULE. * * * The specific * * * *disabilities* described in the following schedule are declared to be major permanent partial * * * *disabilities*. The percentage assigned in such schedule shall represent the relation of the permanent disability in wage loss caused by such an injury to an employe aged thirty years when compared with an injury causing permanent total disability to an employe of the same yearly age group, namely: **MAJOR PERMANENT PARTIAL * * * DISABILITY SCHEDULE.**

1. The loss of an arm at the shoulder, fifty per cent;
2. The loss of an arm at the elbow, forty-two and one-half per cent;
3. The loss of a hand, thirty-three and one-third per cent;
4. The loss of a palm where the thumb remains, twenty-two and one-half per cent;
5. The loss of a thumb at the proximal joint, ten per cent;
6. The loss of a thumb and the metacarpal bone thereof, twelve and one-half per cent;
7. The loss of all the fingers of one hand where the thumb and palm remain, fourteen per cent;
8. The loss of a leg at the hip joint, fifty per cent;
9. The loss of a leg at the knee, forty-two and one-half per cent;
10. The loss of a foot at the ankle, twenty-five per cent;
11. The loss of the great toe with the metatarsal bone thereof, eight and one-third per cent;
12. The loss of an eye by enucleation or evisceration, twenty-seven and one-half per cent;
13. Total impairment of one eye for industrial use, twenty-five per cent;
14. Total deafness of both ears, thirty-three and one-third per cent;
15. Total deafness of one ear, five per cent;
16. In case an * * * *injury* causes more than one permanent * * * *disability* specified in this * * * *section*, the * * * allowance for the lesser * * * *disability* shall

be increased by twenty per cent, except in the case of * * * *disabilities* to both eyes, when the * * * allowance for the lesser * * * *disability* shall be trebled.

SECTION 57. Paragraphs (b) to (dn) of subsection (5) of section 102.09 of the statutes are renumbered subsections (1) to (7) of section 102.53 and amended to read:

102.53 VARIATION OF MAJOR SCHEDULE ACCORDING TO AGE. * * * (1) For the loss of an arm at the shoulder by an employe thirty years of age and under thirty-one years, the indemnity to be paid for his permanent disability shall be fifty per cent of such weekly indemnity as would have accrued to him for total disability, for the period of one thousand weeks.

(2) * * * For each yearly age group under thirty years the percentage shall be reduced by two-thirds of one per cent with no reduction below forty per cent for the child fifteen years or under. For each later yearly age group beginning with thirty-one the percentage shall be increased by seven-eighths of one per cent with no increase beyond eighty-five per cent for age seventy group.

(3) * * * For the loss of an arm at the shoulder by an employe of any other yearly age group the weekly indemnity shall be determined by application of the percentage allowance developed for such yearly age group to the weekly indemnity for total disability, and shall be paid * * * *as* an indemnity to be determined in the manner provided in * * * section 102.44 pertaining to permanent total disability.

(4) * * * The weekly indemnity to be paid for the permanent disability resulting for each of the other schedule * * * *disabilities* shall bear such relationship to that payable under * * * *subsections (1), (2) and (3)* for loss of an arm at the shoulder as the percentage assigned *under section 102.52* to such other * * * *disability* bears to that assigned *under section 102.52* to the loss of an arm at the shoulder, and the indemnity period shall also be determined in the manner provided in * * * section 102.44.

(5) * * * Where injuries to two or more of the members specified in the schedule in * * * section 102.54 produce permanent disability entitling the employe to compensation for a period in excess of fifty weeks the injured employe shall be entitled to have his disability and resultant indemnity determined on the basis of the foregoing provisions applicable to major perma-

nent partial * * * *disabilities*. Indemnity in such case shall bear such relation to the indemnity payable for the most similar * * * disability specified in the schedule in * * * section 102.52 as the nature of the * * * *disability* under consideration bears to such schedule * * * *disability*.

(6) * * * Healing period in case of major permanent partial * * * *disabilities* shall be compensated for as a liability distinct from that for the permanent disability.

(7) * * * The * * * commission shall prepare supplemental tables in which there shall be extended such figures as may be sufficient to render them convenient for use in determining indemnity in case of major permanent partial * * * *disabilities*.

SECTION 58. Paragraph (e) of subsection (5) of section 102.09 of the statutes is renumbered 102.54 and is amended to read:

102.54 MINOR PERMANENT PARTIAL DISABILITY SCHEDULE. * * * In cases included in the following schedule of lesser permanent partial * * * *disabilities* the compensation to be paid for healing period and permanent disability, computed from the date of amputation, * * * as the case may be, subject to the provisions of this act for maximum and minimum payments, shall be sixty-five per cent of the average weekly earnings of the employe for the periods named in the following schedule to wit:

* * * *MINOR PERMANENT PARTIAL * * * DISABILITY SCHEDULE.*

1. The loss of a thumb at the second or distal joint, thirty weeks;
2. The loss of an index finger and the metacarpal bone thereof, fifty weeks;
3. The loss of an index finger at the proximal joint, thirty-five weeks;
4. The loss of an index finger at the second joint, twenty weeks;
5. The loss of an index finger at the distal joint, twelve weeks;
6. The loss of a middle finger and the metacarpal bone thereof, forty weeks;

7. The loss of a middle finger at the proximal joint, twenty-five weeks;
8. The loss of a middle finger at the second joint, fourteen weeks;
9. The loss of a middle finger at the distal joint, eight weeks;
10. The loss of a ring finger and the metacarpal bone thereof, thirty weeks;
11. The loss of a ring finger at the proximal joint, fifteen weeks;
12. The loss of a ring finger at the second joint, nine weeks;
13. The loss of a ring finger at the distal joint, six weeks;
14. The loss of a little finger and the metacarpal bone thereof, thirty weeks;
15. The loss of a little finger at the proximal joint, sixteen weeks;
16. The loss of a little finger at the second joint, ten weeks;
17. The loss of a little finger at the distal joint, six weeks;
18. The loss of a great toe at the proximal joint, twenty-five weeks;
19. The loss of a great toe at the second joint, fifteen weeks;
20. The loss of the second toe with the metatarsal bone thereof, thirty weeks;
21. The loss of the second toe at the proximal joint, ten weeks;
22. The loss of the second toe at the second joint, seven weeks;
23. The loss of the second toe at the distal joint, five weeks;
24. The loss of the third, fourth or little toe with the metatarsal bone thereof, twenty-five weeks;
25. The loss of the third, fourth or little toe at the proximal joint, eight weeks;
26. The loss of the third, fourth or little toe at the second or distal joint, five weeks;

SECTION 59. Paragraphs (em) to (g) of subsection (5) of section 102.09 of the statutes except paragraph (fn) are renumbered section 102.55 and amended to read:

102.55 APPLICATION OF MINOR PERMANENT PARTIAL DISABILITY SCHEDULE. * * * (1) If in case of any injury specified in * * * section 102.54 the healing period is unusually prolonged by reason of infection or other cause not due to the neglect or misconduct of the injured employe, then such injured employe shall be entitled, in addition to the

allowance *therein* * * * to indemnity for such portion of his healing period as is in excess of the normal healing period for such injury.

(2) * * * In case an accident causes more than one permanent injury specified in * * * section 102.54 to the hands or feet, the disability allowance for each additional injury, in the order of the severity of such injuries from minimum to maximum, shall be increased as follows: For the first additional injury the allowance specified in said paragraph plus ten per cent, for the second additional injury, and for each other additional injury, the allowance specified in said paragraph plus twenty per cent.

(3) * * * Whenever amputation of a member is made between any two joints mentioned in the schedules in * * * sections 102.52 and 102.54 the determined loss and resultant indemnity therefore shall bear such relation to the loss and indemnity applicable in case of amputation at the joint next nearer the body as such injury bears to one of amputation at the joint nearer the body.

(4) * * * For the purposes of * * * *these* schedules * * * permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

(5) * * * For all other injuries to the members of the body or its faculties which are specified in * * * *these* schedules * * * resulting in permanent disability, though the member be not actually severed or the faculty totally lost, compensation shall bear such relation to that named in these schedules as disabilities bear to those produced by the injuries named in these schedules. Indemnity in such cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting thereafter as found by the commission. For such computation the permanent disability period for injuries named in the schedule in * * * section 102.54 shall be taken at eighty per cent thereof.

(6) * * * In case of permanent injury included in the schedule in * * * section 102.54 only, or * * * *subsection* (5) as applied to said schedule * * * only, to an employe who is over fifty-five years of age, the compensation herein accruing for the permanent disability shall be reduced by five per cent; in case he is over sixty years of age, by ten per cent; in case he is over sixty-five years of age, by fifteen per cent; in case he is

over seventy years of age, by twenty per cent; and in case he is over seventy-five years of age, by twenty-five per cent.

SECTION 60. Paragraph (fn) of subsection (5) of section 102.09 of the statutes is renumbered section 102.56 DISFIGUREMENT, and is re-enacted.

SECTION 61. Paragraph (h) of subsection (5) of section 102.09 is renumbered section 102.57 and 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 * * * commission, compensation and death benefits as provided in * * * *this chapter* shall be increased fifteen per cent.

SECTION 62. Paragraphs (i), (j) and (k) of subsection (5) of section 102.09 of the statutes are renumbered section 102.58 and amended to read:

102.58 DECREASED COMPENSATION. * * * Where injury is caused by the wilful failure of the employe to use safety devices where provided by the employer, or * * * where injury results from the employe's wilful failure to obey any reasonable rule adopted by the employer for the safety of the employe, or * * * where injury results from the intoxication of the employe, the compensation, and death benefit provided herein shall be reduced fifteen per cent.

SECTION 63. Subsection (6) of section 102.09 of the statutes is renumbered section 102.59 and is amended to read:

102.59 PRE-EXISTING DISABILITY, ADDITIONAL INDEMNITY, STATE FUND, INVESTMENT. * * * (1) If an employe has * * * at the time of injury permanent disability consisting of twenty-five per cent or more loss or impairment of a hand, arm, foot, leg, ear or eye, and, as a result of such injury, incurs further permanent disability consisting of twenty-five per cent or more loss or impairment of a hand, arm, foot, leg, ear or eye (not previously disabled), he shall be paid from the funds provided in this * * * section additional compensation as specified in item 16, * * * of * * * section 102.52.

(2) * * * In * * * 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 * * * seventy-five dollars 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 subsection (2) of section 102.29.

(3) * * * The moneys so paid into the state treasury, * * * with all accrued interest, is hereby appropriated to the * * * commission for the discharge of all liability for special additional indemnity accruing under this * * * section.

(4) * * * For the proper administration of the funds available under * * * *this section* the commission shall, by order, set aside in the state treasury suitable reserves to carry to maturity the liability for special additional indemnity in each case, and for any contingent death benefit. Such money shall be invested by the state annuity and investment board, in the securities authorized in section 206.34.

SECTION 64. Subsection (7) of section 102.09 of the statutes is renumbered section 102.60 and is amended to read:

102.60 MINOR ILLEGALLY EMPLOYED, COMPENSATION. * * * When the injury is sustained by a minor illegally employed, compensation and death benefits * * * shall be as follows:

(1) * * * Double the amount otherwise recoverable, if the injured employe is a minor of permit age, and at the time of the * * * *injury* is employed, required, suffered or permitted to work without a written permit issued pursuant to section 103.05, except as provided in * * * *subsection (2)*.

(2) * * * Treble the amount otherwise recoverable, if the injured employe is a minor of permit age, and at the time of the * * * *injury* is employed, required, suffered or permitted to work without a permit in any place of employment or at any employment in or for which the * * * commission acting under authority of section 103.05, has adopted a written resolution providing that permits shall not be issued.

(3) * * * Treble the amount otherwise recoverable if the injured employe is a minor of permit age, or over, and at the time of the * * * *injury* is employed, required, suffered, or permitted to work at prohibited employment.

(4) * * * Treble the amount otherwise recoverable, if the injured employe is a minor under permit age and illegally employed.

(5) * * * A permit unlawfully issued by an officer specified in section 103.05, or unlawfully altered after issuance, without fraud on the part of the employer, shall be deemed a permit within the provisions of this * * * section.

(6) * * * If the amount recoverable under * * * this * * * section for temporary disability shall be less than the actual loss of wage sustained by the minor employe, then liability shall exist for such loss of wage.

SECTION 65. Section 102.10 of the statutes is renumbered section 102.61 and is re-enacted.

SECTION 66. Subsection (8) of section 102.09 of the statutes is renumbered section 102.62 and is amended to read: 102.62 PRIMARY AND SECONDARY LIABILITY; UNCHANGEABLE. * * * In case of liability for the increased compensation or increased death benefits provided for by * * * section 102.57, or included in * * * section 102.60, the liability of the employer shall be primary and the liability of the insurance carrier shall be secondary. In case proceedings are had before the commission for the recovery of such increased compensation or increased death benefits the commission shall set forth in its award the amount and order of liability as herein provided. Execution shall not be issued against the insurance carrier to satisfy any judgment covering such increased compensation or increased death benefits until execution has first been issued against the employer and has been returned * * * *unsatisfied* as to any part thereof. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for such increased compensation or increased death benefits shall be void.

SECTION 67. Subsection (9) of section 102.09 of the statutes is renumbered section 102.63 and is amended to read:

102.63 REFUNDS BY STATE. * * * Whenever the * * * commission shall certify to the state treasurer that excess payment has been made under * * * section 102.59 * * * or under * * * subsection (5) of section 102.49 either because of mistake or otherwise, the state treasurer shall within five 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.

SECTION 68. A new section of the statutes is created to be numbered and to read:

102.64 ATTORNEY-GENERAL TO REPRESENT STATE AND COMMISSION. The attorney-general shall represent the state in all cases involving payment into or out of the state treasury under the provisions of subsection (8) of section 20.57, and sections 102.49 and 102.59. He shall have power to compromise the amount of such payments but such compromises shall be subject to review by the commission.

(2) In all proceedings upon claims for compensation against the state, the attorney-general may appear on behalf of the state.

(3) In any action to review an order or award of the commission, and upon any appeal therein to the supreme court, the attorney-general shall appear on behalf of the commission, whether any other party defendant shall be represented or not, except that in actions brought by the state the governor shall appoint an attorney to appear on behalf of the commission.

SECTION 69. This act shall take effect upon passage and publication.

Approved June 27, 1931.

No. 239, A.]

[Published July 2, 1931.

CHAPTER 404.

AN ACT to create subsection (3) of section 348.386 of the statutes, relating to cutting and transporting Christmas trees and providing a penalty.

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

SECTION 1. A new subsection is added to section 348.386 of the statutes to read: (348.386) (3) No person shall cut for sale in its natural condition and untrimmed, with or without roots, any evergreen or coniferous tree, branch, bough, bush, sapling or shrub, from the lands of another without the written consent of the owner, whether such land be publicly or privately owned. Such written consent shall contain the legal description of the land where such tree, branch, bough, bush, sapling or shrub was cut, as well as the name of the legal owner thereof; and such written consent or a copy thereof certified as a true copy by the per-