

No. 210, S.]

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CHAPTER 270.

AN ACT to renumber 102.31 (1) to be 102.31 (1) (a), 102.35 to be 102.35 (1); to amend 102.01 (2), 102.03 (1) (c), 102.04 (2), 102.05 (1) and (2), 102.06, 102.07 (4), 102.08, 102.11 (1) (introductory paragraph), 102.12, 102.16 (1), 102.17 (1) (c), 102.25 (1), 102.31 (1) (a) as renumbered, 102.42 (1), 102.43 (introductory paragraph), 102.44 (1) and (3), 102.49 (7), 102.51 (1) and (6), 102.58, 102.59 (1); and to create 102.17 (1) (as) and (bm), 102.195, 102.31 (1) (b), 102.35 (2), 102.44 (5), 102.55 (7) of the statutes, relating to workmen's compensation.

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

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

102.01 (2) "Act" as used in this chapter means "chapter;" "compensation" means workmen's compensation; "injury" is mental or physical harm to an employe caused by accident or disease, and also damage to or destruction of artificial members, dental appliances and teeth; 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 in the case of disease, the last day of work for the last employer whose employment caused disability.

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

102.03 (1) (c) Where, at the time of the injury, the employe is performing service growing out of and incidental to his employment. Every employe going to and from his employment in the ordinary and usual way, while on the premises of his employer, shall be deemed to be performing service growing out of and incidental to his employment; and so shall any fireman responding to a call for assistance outside the limits of his city or village, unless such response is in violation of law. *The premises of his employer shall be deemed to include also the premises of any other person on whose premises service is being performed.*

SECTION 3. 102.04 (2) of the statutes is amended to read:

102.04 (2) Every person, firm and private corporation (including any public service corporation), who usually employs 3 or more employes, *whether in one or more trades, businesses, professions or occupations, and whether in one or more locations.* The provisions of 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 an employer not engaged in farming shall be counted. Members of partnerships shall not be counted as employes under this subsection. *A person under contract of hire for the performance of any service for any employer subject to this act shall not constitute an employer of any other person with respect to such service and such other person shall, with respect to such service, be deemed to be an employe only of such employer for whom the service is being performed.*

SECTION 4. 102.05 (1) of the statutes is amended to read:

102.05 (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 file in the office of said commission a notice that he desires to withdraw his election, which withdrawal shall take effect 30 days after the date of such filing or at such later date as may be specified in the notice. *Unless such withdrawal is filed the employer shall remain subject to the act, except that an employer who shall have had no employe at any time within a continuous period of 2 years shall be deemed to have effected withdrawal which shall be effective on the last day of such period. Such employer, however, shall again become subject to the act if at any time subsequent to such period of no employment he shall have 3 or more employes as provided in subsection (2), except as he may have elected not to accept the provisions of the act as provided in subsection (2).*

SECTION 5. 102.05 (2) of the statutes is amended to read:

102.05 (2) If any employer shall at any time have 3 or more employes, *whether in one or more trades, businesses, professions or occupations, and whether in one or more locations,* 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.

SECTION 6. 102.06 of the statutes is amended to read:

102.06 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 section 102.28 (2) in any case where such employer would have been liable for compensation if such employe had been working directly for him, *including also work in the erection, alteration, repair or demolition of improvements or of fixtures upon premises of such employer which are used or to be used in the operations of such employer.* 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 7. 102.07 (4) of the statutes is amended to read:

102.07 (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 (a) farm laborers, (b) domestic servants * * * (c) any person whose employment is not in the course of a trade, business, profession or occupation of his employer, unless, *as to any of said classes,* such employer

has elected to include them. *Item (c) shall not operate to exclude an employe whose employment is in the course of any trade, business, profession or occupation of his employer, however casual, unusual, desultory, or isolated any such trade, business, profession, or occupation may be.*

SECTION 8. 102.08 of the statutes is amended to read:

102.08 Epileptics and persons who are totally blind may elect not to be subject to the provisions of this chapter for injuries resulting because of such epilepsy or blindness and still remain subject to its provisions for all other injuries. * * * Officers of corporations may also elect not to be subject to the provisions of this chapter. Such elections shall be made by giving notice to the employer in writing on a form to be furnished by the industrial commission, and filing a copy of such notice with the industrial commission. *An election may be revoked by giving written notice to the employer of revocation, and such revocation shall be effective upon filing a copy of such notice with the industrial commission.*

SECTION 9. 102.11 (1) (introductory paragraph) of the statutes is amended to read:

102.11 (1) (Introductory paragraph) The average weekly earnings for temporary disability shall be taken at not less than * * * \$12.50 nor more than * * * \$35, and for permanent disability or death shall be taken at not less than \$20 nor more than \$30, *provided, however, that in case of permanent total disability the maximum, as applied to the first 78 weeks of indemnity only, shall be \$35.* Between said limits the average weekly earnings shall be determined as follows:

SECTION 10. 102.12 of the statutes is amended to read:

102.12 No claim for compensation shall be maintained unless, within 30 days after the occurrence of the injury or within 30 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 * * * *the employer* was not misled thereby. Regardless of whether notice was received, if no pay-

ment of compensation (other than medical treatment or burial expense) is made, and no application filed with the commission within 2 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 11. 102.16 (1) of the statutes is amended to read :

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

SECTION 12. 102.17 (1) (as) of the statutes is created to read :

102.17 (1) (as) The contents of verified medical and surgical reports, by physicians and surgeons licensed in, and practicing in, Wisconsin, presented by claimants for compensation shall constitute prima facie evidence as to the matter contained therein, subject to such rules and such limitations as the commission may prescribe.

SECTION 13. 102.17 (1) (bm) of the statutes is created to read :

102.17 (1) (bm) The provisions of section 326.12 shall not be applicable to proceedings under this act.

SECTION 14. 102.17 (1) (c) of the statutes is amended to read :

102.17 (1) (c) Whenever the testimony presented at any hearing indicates a dispute, or is such as to create doubt, as to the extent or cause of disability or death, the commission may * * * direct that the injured employe be examined or autopsy be performed, or an opinion of a physician be obtained without examination or autopsy, by an impartial, competent physician designated by the commission who is not under contract with or regularly employed by a compensation insurance carrier or self-insured employer. The expense of such examination shall be

paid by the employer. The report of such examination shall be transmitted in writing to the commission and a copy thereof shall be furnished by the commission to each party who shall have an opportunity to rebut the same on further hearing.

SECTION 15. 102.195 of the statutes is created to read:

102.195 EMPLOYEES CONFINED IN INSTITUTIONS; PAYMENT OF BENEFITS. In case an employe shall be adjudged insane or incompetent and confined in a public institution, and shall have wholly dependent on him for support a person or persons, whose dependency shall be determined as if the employe were deceased, compensation payable during the period of his confinement may be paid to the employe and his dependents, in such manner, for such time and in such amount as the commission may by order provide.

SECTION 16. 102.25 (1) of the statutes is amended to read:

102.25 (1) Said commission, or any party aggrieved by a judgment entered upon the review of any order or award, may appeal therefrom within 30 days from the date of service by either party upon the other of notice of entry of judgment. However, it shall not be necessary for said commission or any party to said action to execute, serve or file the undertaking required by * * * section 274.11(3) in order to perfect such appeal; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as state causes on such calendar. The state shall be deemed a party aggrieved, within the meaning of this subsection, whenever a judgment is entered upon such a review confirming any order or award against it. *At any time before the case is set down for hearing in the supreme court, the parties may have the record remanded by the court to the industrial commission in the same manner and for the same purposes as provided for remanding from the circuit court to the industrial commission under section 102.24 (2).*

SECTION 17. 102.31 (1) of the statutes is renumbered 102.31 (1) (a) and is amended to read:

102.31 (1) (a) 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, except that an intermediate agency or publisher referred to in * * * section 102.07 (6) may, under its own policy, cover liability of employes as defined in said * * * section 102.07 (6) for an intermediate or independent news agency, provided the policy of insurance of such publisher or intermediate agency is indorsed to cover such persons. If the publisher so covers it shall not be necessary for the intermediate or independent news agency to cover liability for such persons. No * * * policy shall be canceled *by either party* within the policy period nor terminated upon expiration date until a notice in writing shall be given * * * to the * * * *other party*, fixing the date on which it is proposed to cancel it, or declaring that the * * * *party* does not intend to renew the policy upon expiration date * * *. *Such cancellation or termination shall not become effective until 30 days after written notice has been given to the commission unless prior thereto the employer obtains other insurance coverage or an order exempting him from carrying insurance as provided in section 102.28 (2). Such notice to the commission shall be served personally or by registered mail on the commission at its office in Madison. Issuance of a new policy shall automatically revoke and terminate any former policy or policies issued by the same company. * * **

SECTION 18. 102.31 (1) (b) of the statutes is created to read:

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

SECTION 19. 102.35 of the statutes is renumbered to be 102.35 (1).

SECTION 20. 102.35 (2) of the statutes is created to read:

102.35 (2) Any employer, or duly authorized agent thereof, who, because of a claim or attempt to claim compensation benefits

from such employer, shall discriminate or threaten to discriminate against an employe as to his employment, shall forfeit to the state not less than \$50 nor more than \$500 for each offense. No action under this subsection shall be commenced except upon request of the industrial commission.

SECTION 21. 102.42 (1) of the statutes is amended to read:

102.42 (1) 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 to cure and relieve from the effects of the injury, * * * 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. *The employer shall also be liable for reasonable expense incurred by the employe for necessary treatment to cure and relieve him from the effects of occupational disease prior to the time that the employe knew or should have known the nature of his disability and its relation to employment, and as to such treatment the provisions of section 102.42 (2) and (3) shall not apply.*

SECTION 22. 102.43 (introductory paragraph) of the statutes is amended to read:

102.43 (introductory paragraph) If the injury causes disability, an indemnity shall be due * * * as wages *commencing* * * * *with* the fourth calendar day, exclusive of Sundays only, excepting where such employes work on Sunday, after the employe leaves work as the result of the injury, and *shall be payable* weekly thereafter, during such disability. * * * If the disability shall * * * *exist after* 10 calendar days from the date the employe leaves work as a result of the injury *and only if it so exist* * * * indemnity * * * shall *also be* * * * *due and payable* for the first 3 calendar days, exclusive of Sundays only, excepting where such employes work on Sunday. * * * *Said* weekly indemnity shall be as follows:

SECTION 23. 102.44 (1) of the statutes is amended to read:

102.44 (1) In case of temporary disability aggregate indemnity shall not exceed the amount payable in case of permanent total disability, *provided that in computing the amount payable in*

case of permanent total disability for the purpose only of the limitation in this subsection the maximum average weekly earnings after the first 78 weeks of indemnity shall also be \$35.

SECTION 24. 102.44 (3) of the statutes is amended to read:

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

(a) One thousand weeks for all persons under 31 years of age.

(b) For each successive yearly age group, beginning with 31 years, the maximum limitation shall be reduced by 18 weeks, until a minimum limit of 280 weeks shall be reached.

SECTION 25. 102.44 (5) of the statutes is created to read:

102.44 (5) Where an injury causes permanent disabilities one or more of which are covered by the provisions of sections 102.52 to 102.555 and one or more of which are covered by the provisions of this section, the period for which indemnity shall be payable under sections 102.52 to 102.555 or under this section, whichever is the lesser period, shall be increased by 20 per cent, provided that if the total number of weeks so payable equals or exceeds the limitations of subsection (3) (a) and (b), indemnity shall then be payable pursuant to subsection (2).

SECTION 26. 102.49 (7) of the statutes is amended to read:

102.49 (7) The additional benefits for account of each child shall accrue at the rate of * * * 13 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. *In the case of death of a child while benefits are still payable there shall be paid the reasonable expense for burial not exceeding \$100.*

SECTION 27. 102.51 (1) and (6) of the statutes are amended to read:

102.51 (1) 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 18 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. *Where a dependent entitled to the presumption in this subsection survives the deceased employe, all other dependents shall be excluded.* 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.

(6) Benefits accruing to a minor dependent child may be awarded to the mother in the discretion of the commission. *Notwithstanding the provisions of subsection (1) the commission may * * * reassign the death benefit, * * * in accordance with their respective needs * * * therefor as between a surviving spouse and children designated in section 102.49.*

SECTION 28. 102.55 (7) of the statutes is created to read:

102.55 (7) Where injuries to 2 or more of the members specified in the schedule in section 102.54 produce permanent disability which would entitle the employe, if computation were made under section 102.54, or section 102.55 as applied thereto, to compensation for a period in excess of 50 weeks, disability and resultant indemnity shall be determined on the basis of the provisions of section 102.52, and section 102.55 as applied thereto. Indemnity in such case shall bear such relation to the indemnity payable for the most similar injury specified in the schedule in section 102.52 as the nature of the injury under consideration bears to such schedule injury. In making computation under this subsection, the commission may fix the value of the disability under section 102.52, and section 102.55 as applied thereto, without regard to the value of such disability as computed under section 102.54, and section 102.55 as applied thereto, and for all

other purposes, an injury so computed shall be considered a major permanent partial disability as defined by section 102.52, and section 102.55 as applied thereto. Where the provisions of this subsection are applicable to the computation of indemnity, the provisions of section 102.555 shall not apply.

SECTION 29. 102.58 of the statutes is amended to read:

102.58 Where injury is caused by the * * * failure of the employe to use safety devices where provided *and adequately maintained* 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 *and of which the employe had notice*, or where injury results from the intoxication of the employe, the compensation, and death benefit provided herein shall be reduced 15 per cent.

SECTION 30. 102.59 (1) of the statutes is amended to read:

102.59 (1) If an employe has at the time of injury permanent disability the equivalent of * * * 15 per cent or more of permanent total disability, and, as a result of such injury, incurs further permanent disability the equivalent of * * * 15 per cent or more of permanent total disability, he shall be paid from the funds provided in this section additional compensation * * * *equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser; provided, however, that if said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury.* The payment of compensation under this section may commence at any time following the date of the second disability except that the amount paid as weekly compensation including the amount to be paid from the funds provided in this section shall not exceed the amount of weekly compensation provided in this chapter for total disability.

Approved June 8, 1943.