

1979 Senate Bill 472

Date published: May 12, 1980

CHAPTER 278, Laws of 1979

AN ACT to repeal 102.03 (3), 102.43 (7), 102.44 (3) (b) and 102.53 (2); to renumber 102.43 (8); to renumber and amend 102.53 (1); to consolidate and amend 102.44 (3) (intro.) and (a); to amend 102.03 (4), 102.07 (11), 102.11 (1) (intro.), 102.13 (1), 102.14 (2), 102.17 (1) (f) 1 and (4), 102.18 (2) and (4) (a), 102.22 (1), 102.23 (1) (intro.), (a), (b) and (c) and (2), 102.24 (1), 102.25, 102.26 (1), 102.31 (1) (a), 102.32 (6), 102.42 (7) and (9) (title) and (a), 102.44 (1) (intro.) and (2), 102.46, 102.48 (1), 102.49 (5) (d), 102.53 (intro.), 102.555 (4) (intro.) and (d) and (5), 102.565 (1), (2), (3) and (4) and 102.66 (1); to repeal and recreate 102.03 (1) (g); and to create 102.01 (2) (am), 102.13 (1m), 102.17 (2m), 102.175, 102.18 (1) (c) and (d) and 102.44 (5) and (6) of the statutes, relating to revising the worker's compensation laws.

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

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

102.01 (2) (am) "Commission" means the labor and industry review commission.

SECTION 2. 102.03 (1) (g) of the statutes is repealed and recreated to read:

102.03 (1) (g) Members of the state legislature are covered by this chapter when they are engaged in performing their duties as state legislators including:

1. While performing services growing out of and incidental to their function as legislators;
2. While performing their official duties as members of committees or other official bodies created by the legislature;
3. While traveling to and from the state capital to perform their duties as legislators; and
4. While traveling to and from any place to perform services growing out of and incidental to their function as legislators, regardless of where the trip originated, and including acts reasonably necessary for living but excluding any deviations for private or personal purposes except that acts reasonably necessary for living are not deviations.

SECTION 3. 102.03 (3) of the statutes is repealed.

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

102.03 (4) The right to compensation and the amount thereof of the compensation shall in all cases be determined in accordance with the provisions of law in effect as of the date of the injury except as to employes whose rate of compensation is changed as provided in ss. 102.43 (7) ~~and (8)~~ and 102.44 (1) and ~~(2)~~ (5).

SECTION 5. 102.07 (11) of the statutes is amended to read:

102.07 (11) The department shall ~~may~~ by rule prescribe classes of volunteer workers who may, at the election of the person for whom the service is being performed, be deemed to be employes for the purposes of this chapter. Election shall be by endorsement upon the worker's compensation insurance policy with written notice to the department. In the case of an employer exempt from insuring liability, election shall be by written notice to the department. The department shall by rule prescribe the means and manner in which notice of election by the employer is to be provided to the volunteer workers.

SECTION 6. 102.11 (1) (intro.) of the statutes is amended to read:

102.11 (1) (intro.) The average weekly earnings for temporary disability, permanent total disability or death benefits for injury on or after January 1, ~~1978~~ 1980, shall be taken at not less than \$30 nor more than such wage rate as will result in a maximum compensation rate of 100% of the state's average weekly earnings as determined under s. 108.05 as of June 30, ~~1977~~ 1979. The maximum weekly compensation rate after December 31, ~~1978~~ 1980, is 100% of the average weekly earnings determined as of June 30, ~~1978~~ 1980. The average weekly earnings for permanent partial disability for injuries after January 1, ~~1978~~ 1980, shall be taken at not less than \$30 nor more than ~~\$97.50~~ \$105, resulting in a weekly maximum compensation rate of ~~\$65~~ \$70. Between such limits the average weekly earnings shall be determined as follows:

SECTION 6j. 102.13 (1) of the statutes, as affected by chapter 102, laws of 1979, is amended to read:

102.13 (1) ~~Whenever~~ Except as provided in sub. (1m), whenever compensation is claimed by an employe, the employe shall, upon the written request of the employe's employer, submit to reasonable examination by a physician, chiropractor or podiatrist, provided and paid for by the employer, and shall submit to examination by any physician, chiropractor or podiatrist selected by the commission or an examiner. The employe shall be entitled to have a physician, chiropractor or podiatrist, provided by himself or herself, present at any such examination. So long as the employe, after such written request of the employer, refuses to submit to such examination, or in any way obstructs the examination, the employe's right to begin or maintain any proceeding for the collection of compensation shall be suspended, except as provided in sub. (1m). If the employe refuses to submit to such examination after direction by the department or an examiner, or in any way obstructs such examination, the employe's right to the weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction, shall be barred, except as provided in sub. (1m). Any physician, chiropractor or podiatrist who is

present at any such examination may be required to testify as to the results thereof. Any physician, chiropractor or podiatrist who attended an employe may be required to testify before the department when it so directs. Notwithstanding any other statutory provisions, any physician, chiropractor or podiatrist attending a worker's compensation claimant may furnish to the employe, employer, worker's compensation insurer, or the department information and reports relative to a compensation claim. The testimony of any physician, chiropractor or podiatrist, who is licensed to practice where he or she resides or practices outside the state, may be received in evidence in compensation proceedings.

SECTION 6k. 102.14 (2) of the statutes is amended to read:

102.14 (2) The council on worker's compensation shall advise the department in carrying out the purposes of this chapter. Such council shall submit its recommendations with respect to amendments to this chapter to each regular session of the legislature and shall report its views upon any pending bill relating to this chapter to the proper legislative committee. At the request of the chairpersons of the senate and assembly committees on labor, the department shall schedule a meeting of the council with the members of the senate and assembly committees on labor to review and discuss matters of legislative concern arising under this chapter.

SECTION 6m. 102.13 (1m) of the statutes is created to read:

102.13 (1m) The rights of employes to begin or maintain proceedings for the collection of compensation and to receive weekly indemnities which accrue and become payable shall not be suspended or barred under sub. (1) when an employe refuses to submit to a physical examination, upon the request of the employer or at the direction of the department or an examiner, which would require the employe to travel a distance of 100 miles or more from his or her place of residence.

SECTION 7. 102.17 (1) (f) 1 and (4) of the statutes are amended to read:

102.17 (1) (f) 1. Who is beyond reach of the subpoena of ~~an examiner~~ the department; or

102.17 (4) The right of an employe, the employe's legal representative or dependent to proceed under this section shall not extend beyond ~~10~~ 12 years from the date of the injury or death or from the date that compensation, other than treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest. ~~In case of injury or death caused by lung disease or by exposure to a toxic substance or to ionized radiation the time limit shall be 12 years, and in~~ In the case of occupational disease there shall be no statute of limitations, except that benefits or treatment expense becoming due after ~~the 10-year period set forth in this subsection or~~ 12 years from the date of injury or death or last payment of compensation ~~in cases of lung disease or exposure to a toxic substance or ionized radiation,~~ shall be paid from the work injury supplemental benefit fund under s. 102.65 and in the manner provided in s. 102.66. Payment of wages by the employer during disability or absence from work to obtain treatment shall be deemed payment of compensation for the purpose of this section if the employer knew of the employe's condition and its alleged relation to the employment.

SECTION 8. 102.17 (2m) of the statutes is created to read:

102.17 (2m) Any party, including the department, may require any person to produce books, papers and records at the hearing by personal service of a subpoena or subpoena duces tecum upon the person along with a tender of witness fees as provided in ss. 885.05 and 885.06. The subpoena shall be on a form provided by the department and shall give the name and address of the party requesting the subpoena.

SECTION 9. 102.175 of the statutes is created to read:

102.175 Apportionment of liability. If it is established at the hearing that 2 or more accidental injuries, for each of which a party to the proceedings is liable under this chapter, have each contributed to a physical or mental condition for which benefits would be

otherwise due, liability for such benefits shall be apportioned according to the proof of the relative contribution to disability resulting from the injury.

SECTION 10. 102.18 (1) (c) and (d) of the statutes are created to read:

102.18 (1) (c) If 2 or more examiners have conducted a formal hearing on a claim and are unable to agree on the order or award to be issued, the decision shall be the decision of the majority. If the examiners are equally divided on the decision, the department may appoint an additional examiner who shall review the record and consult with the other examiners concerning their personal impressions of the credibility of the evidence. Findings of fact and an order or award may then be issued by a majority of the examiners.

(d) Any award which falls within a range of 5% of the highest or lowest estimate of permanent partial disability made by a practitioner which is in evidence is presumed to be a reasonable award, provided it is not higher than the highest or lower than the lowest estimate in evidence.

SECTION 11. 102.18 (2) and (4) (a) of the statutes are amended to read:

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

(4) (a) Unless the liability under ss. 102.35 (3), 102.43 (5), 102.49, 102.57, 102.58, 102.59, 102.60 or 102.61 is specifically mentioned, the order, findings or award are deemed not to affect such liability.

SECTION 12. 102.22 (1) of the statutes is amended to read:

102.22 (1) Where the employer or his or her insurer is guilty of inexcusable delay in making payments, the payments as to which ~~such~~ the delay is found shall be increased by 10%. Where ~~such~~ the delay is chargeable to the employer and not to the insurer s. 102.62 shall ~~be applicable~~ apply and the relative liability of the parties shall be fixed and discharged as therein provided. The department may also order the employer or insurance carrier to reimburse the employe for any finance charges, collection charges or interest which the employe paid as a result of the inexcusable delay by the employer or insurance carrier.

SECTION 13. 102.23 (1) (intro.), (a), (b) and (c) and (2) of the statutes are amended to read:

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

court if all parties stipulate and that court agrees. The judicial review provisions of ch. 227 do not apply to the review proceedings under this subsection.

(a) In such action a complaint shall be served with the summons. The complaint need not be verified, but shall state the grounds upon which a review is sought. Service upon ~~the secretary or deputy secretary~~ a commissioner or agent authorized by the commission to accept service shall be deemed complete service on all parties, but there shall be left with the person so served as many copies of the summons and complaint as there are defendants, and the department shall mail one ~~such~~ copy to each other defendant. If the summons and complaint are not filed within 6 months from date of service, such service is void.

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

(c) The ~~department~~ commission shall make return to the court of all documents and papers on file in the matter, and of all testimony which has been taken ~~therein~~, and of the commission's order, findings and ward. Such return of the ~~department~~ commission when filed in the office of the clerk of the circuit court shall, with the papers mentioned in supreme court Rule 809.15 constitute a judgment roll in ~~such~~ the action; and it shall not be necessary to have a transcript approved. The action may thereupon be brought on for hearing before ~~said~~ the court upon ~~such~~ the record by either party on 10 days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(2) Upon the trial of any such action the court shall disregard any irregularity or error of the commission or the department unless it ~~be~~ is made to affirmatively appear that the plaintiff was damaged thereby.

SECTION 14. 102.24 (1) of the statutes is amended to read:

102.24 (1) Upon the setting aside of any order or award, the court may recommit the controversy and remand the record in the case to the department commission for further hearing or proceedings, or it may enter the proper judgment upon the findings of the commission, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award shall be made by the clerk ~~thereof~~ of the court upon the docket entry of any judgment which may ~~theretofore~~ have been rendered upon ~~such~~ the order or award, and transcripts of ~~such~~ the abstract may ~~thereupon~~ be obtained for like entry upon the dockets of the courts of other counties.

SECTION 15. 102.25 of the statutes is amended to read:

102.25 Appeal from judgment on award. (1) 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. A trial court shall not require the department commission or any party to the action to execute, serve or file an undertaking under s. 808.07 or to serve, or secure approval of, a transcript of the notes of the stenographic reporter or the tape of the recording machine. All such appeals shall be placed on the calendar of the court of appeals and brought to a hearing in the same manner as state causes on ~~such~~ the calendar. The state is 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 court of appeals or the supreme court, the parties may have the record remanded by the court to the department in the same manner and for the same purposes as provided for remanding from the circuit court to the department under s. 102.24 (2).

(2) It shall be the duty of the clerk of any court rendering a decision affecting an award of the ~~department~~ commission to promptly furnish the ~~department~~ commission with a copy of such decision without charge.

SECTION 16. 102.26 (1) of the statutes is amended to read:

102.26 (1) No fees ~~shall~~ may 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~~ may be taxed against the ~~department~~ commission.

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

102.31 (1) (a) Every contract for the insurance of the compensation provided for by this chapter, or against liability therefor, shall be ~~deemed to be~~ made subject to this chapter, and provisions ~~thereof~~ inconsistent with this chapter are void. ~~Such~~ The contract shall be construed to grant full coverage of all liability of the assured under this chapter except for liability under s. 102.35 (3) which is the sole liability of the employer, notwithstanding any agreement of the parties to the contrary unless the department has theretofore by written order specifically consented to the issuance of a policy on a part of such liability, except that an intermediate agency or publisher referred to in s. 102.07 (6) may, under its own policy, cover liability of employes as defined in s. 102.07 (6) for an intermediate or independent news agency, provided the policy of insurance of the publisher or intermediate agency is endorsed to cover such persons. If the publisher so covers it is not necessary for the intermediate or independent news agency to cover liability for such persons. No policy may be canceled by either party within the policy period nor terminated upon the expiration date until a notice in writing is given to the other party, fixing the date on which it is proposed to cancel it, or declaring that the party does not intend to renew the policy upon expiration. Such cancellation or termination is not effective until 30 days after written notice has been given to the department either by personal service of ~~such the~~ notice upon the department at its office in Madison or by sending the notice by certified mail addressed to the department at its office in Madison. The department may provide by rule that the notice of cancellation or termination be given by certified mail to the Wisconsin compensation rating bureau, as defined in s. 626.02 (2), rather than to the department. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination. However, ~~such the~~ cancellation or termination is effective whether or not ~~such the~~ notice has been given to the department upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2).

SECTION 18. 102.32 (6) of the statutes is amended to read:

102.32 (6) Any time after 6 months from the date of the injury, the department may direct payment in gross or in such manner as it may determine to the best interest of the injured employe or his or her dependents. In directing ~~such the~~ payment, the department shall give the employer or the employer's insurer an interest credit against its liability. ~~The credit shall be computed by adding the number of weeks over which the unadvanced compensation will be payable to one-half of the number of weeks over which the advanced sum would have been payable and multiplying this total by 0.135% of the sum advanced at 7%.~~

SECTION 19. 102.42 (7) and (9) (title) and (a) of the statutes are amended to read:

102.42 (7) **MEDICAL EXPENSES OF STATE EMPLOYEE.** In the event of a claim by a state employe under the conditions enumerated in s. 102.03, involving only payment of medical, chiropractic or podiatric expense of not to exceed a gross of \$500 \$1,500, plus com-

compensation for not to exceed 8 12 weeks of temporary disability, the employing department may approve payment of such reasonable expense for necessary treatment to whomsoever owing and compensation for not to exceed 8 12 weeks of temporary disability, subject to subsequent review by the department of industry, labor and human relations. If the employing department rejects the claim, the employe may make claim to the department of industry, labor and human relations. Payment shall be charged to the appropriate fund, as provided by s. 20.865 (1) (d).

(9) (title) REHABILITATION; PHYSICAL AND VOCATIONAL. (a) One of the primary purposes of this chapter is restoration of an injured employe to gainful employment. To this end, the department ~~may~~ shall employ ~~one or more specialists~~ a specialist in physical, medical and vocational rehabilitation.

SECTION 20. 102.43 (7) of the statutes is repealed.

SECTION 21. 102.43 (8) of the statutes is renumbered 102.43 (7).

SECTION 22. 102.44 (1) (intro.) and (2) of the statutes are amended to read:

102.44 (1) (intro.) Notwithstanding any other provision of this chapter, every employe who is receiving compensation under this chapter for permanent total disability or continuous temporary total disability more than 24 months after the date of injury resulting from an injury which occurred prior to January 1, 1976, shall receive supplemental benefits which shall be payable in the first instance by the employer or the employer's insurance carrier. These supplemental benefits shall be paid only for weeks of disability occurring after January 1, 1978, and shall continue during the period of such total disability subsequent to that date.

(2) In case of permanent total disability aggregate indemnity shall be weekly indemnity for the period that the employe may live. Total impairment for industrial use 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, constitutes permanent total disability. This enumeration is not exclusive, but in other cases the department shall find the facts. ~~In cases where it is determined that periodic benefits granted by the federal social security act are payable because of the injury, the weekly benefits payable under this section may be reduced to the point that there will be no reduction in the benefits payable under the social security act upon submission to the department of satisfactory proof of the amount of social security benefits payable and the amount that such benefits would be reduced by continued payment of full compensation benefits.~~

SECTION 22m. 102.44 (3) (intro.) and (a) of the statutes are consolidated and amended to read:

102.44 (3) (intro.) For permanent partial disability not covered by ss. 102.52 to 102.56, the aggregate number of weeks of indemnity shall bear such relation to ~~the number of 1,000 weeks set out in pars. (a) and (b)~~ as the nature of the injury bears to one causing permanent total disability and shall be payable at the rate of two-thirds of the average weekly earnings of the employe, the earnings to be computed as provided in s. 102.11. Such The weekly indemnity shall be in addition to compensation for the healing period and shall be for the period that the employe may live, not to exceed: ~~(a) One thousand 1,000 weeks for all persons 52 years of age or less.~~

SECTION 22p. 102.44 (3) (b) of the statutes is repealed.

SECTION 23. 102.44 (5) and (6) of the statutes are created to read:

102.44 (5) In cases where it is determined that periodic benefits granted by the federal social security act are paid to the employe because of disability, the benefits payable under this chapter shall be reduced as follows:

(a) For each dollar that the total monthly benefits payable under this chapter plus the monthly benefits payable under the social security act for disability exceed 80% of the employe's average current earnings as determined by the social security administration,

the benefits payable under this chapter shall be reduced by the same amount so that the total benefits payable shall not exceed 80% of the employe's average current earnings.

(b) No reduction under this section shall be made because of an increase granted by the social security administration as a cost of living adjustment.

(c) Failure of the employe, except for excusable neglect, to report social security disability payments within 30 days after written request shall allow the employer or insurance carrier to reduce weekly compensation benefits payable under this chapter by 75%. Compensation benefits otherwise payable shall be reimbursed to the employe after reporting.

(d) The employer or insurance carrier making such reduction shall report to the department the reduction and as requested by the department, furnish to the department satisfactory proof of the basis for the reduction.

(e) The reduction prescribed by this section shall be allowed only as to payments made on or after July 1, 1980, and shall be computed on the basis of payments made for temporary total, temporary partial, permanent total and permanent partial disability.

(f) No reduction shall take into account payments made under the social security act to dependents of an employe.

(6) (a) Where an injured employe claiming compensation for disability under sub. (2) or (3) has returned to work for the employer for whom he or she worked at the time of the injury, the permanent disability award shall be based upon the physical limitations resulting from the injury without regard to loss of earning capacity unless the actual wage loss in comparison with earnings at the time of injury equals or exceeds 15%.

(b) If, during the period set forth in s. 102.17 (4) the employment relationship is terminated by the employer at the time of the injury, or by the employe because his or her physical or mental limitations prevent his or her continuing in such employment, or if during such period a wage loss of 15% or more occurs the department may reopen any award and make a redetermination taking into account loss of earning capacity.

(c) The determination of wage loss shall not take into account any period during which benefits are payable for temporary disability.

(d) The determination of wage loss shall not take into account any period during which benefits are paid under ch. 108.

(e) For the purpose of determining wage loss, payment of benefits for permanent partial disability shall not be considered payment of wages.

(f) Wage loss shall be determined on wages, as defined in s. 102.11. Percentage of wage loss shall be calculated on the basis of actual average wages over a period of at least 13 weeks.

(g) For purposes of this subsection, if the employer in good faith makes an offer of employment which is refused by the employe without reasonable cause, the employe is considered to have returned to work with the earnings the employe would have received had it not been for the refusal.

(h) In all cases of permanent partial disability not covered by ss. 102.52 to 102.56, whether or not the employe has returned to work, the permanent partial disability shall not be less than that imposed by the physical limitations.

SECTION 23m. 102.46 of the statutes is amended to read:

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

SECTION 24. 102.48 (1) of the statutes is amended to read:

102.48 (1) An unestranged surviving parent or parents to whose support the deceased has contributed less than \$500 in the 52 weeks next preceding the injury causing death shall receive a death benefit of ~~\$2,000~~ \$5,000. If the parents are not living together, the department shall divide this sum in such proportion as it deems to be just, considering their ages and other facts bearing on dependency.

SECTION 25. 102.49 (5) (d) of the statutes is amended to read:

102.49 (5) (d) 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~~ 3rd party under s. 102.29. If ~~such~~ the payment is not made within 20 days after the department makes request therefor, any sum payable shall bear interest at the rate of ~~6 per cent~~ 7% per annum.

SECTION 25e. 102.52 (intro.) of the statutes is amended to read:

102.52 (intro.) Permanent partial disability schedule. In cases included in the following schedule of permanent partial disabilities indemnity shall be paid for the healing period, and in addition ~~thereto, where the employe is 52 years of age or less~~, for the period specified, at the rate of two-thirds of the average weekly earnings of the employe, to be computed as provided in s. 102.11:

SECTION 25m. 102.53 (1) of the statutes is renumbered 102.53 and amended to read:

102.53 (title) Multiple injury variations. In case an injury causes more than one permanent disability specified in ~~sections ss.~~ ss. 102.44 (3), 102.52 and 102.55, the period for which indemnity shall be payable for each additional equal or lesser disability shall be increased as follows:

(1) In the case of impairment of both eyes, by ~~200 per cent~~ %.

(2) In the case of disabilities on the same hand covered by ~~section s.~~ s. 102.52 (9), by ~~100 per cent~~ % for the first equal or lesser disability and by ~~150 per cent~~ % for the ~~second~~ 2nd and ~~third~~ 3rd equal or lesser disabilities.

(3) In the case of disabilities on the same foot covered by ~~section s.~~ s. 102.52 (14), by ~~20 per cent~~ %.

(4) In all other cases, by ~~20 per cent~~ %.

(5) The aggregate result as computed by applying ~~paragraph (a) sub. (1), and the aggregate result for members on the same hand or foot as computed by applying paragraphs (b) and (c) subs. (2) and (3), shall each be taken as a unit for applying paragraph (d) sub. (4) as between such units, and as between such units and each other disability.~~

SECTION 26. 102.53 (2) of the statutes is repealed.

SECTION 27. 102.555 (4) (intro.) and (d) and (5) of the statutes are amended to read:

102.555 (4) (intro.) Subject to the limitations ~~herein contained and s. 102.53 (2) provided in this section~~, there shall be payable for total occupational deafness of one ear, 36 weeks of compensation; for total occupational deafness of both ears, 216 weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named ~~herein in this section~~ as disabilities bear to the maximum disabilities ~~herein provided. The reduction of the periods for which indemnity is paid made because of age under s. 102.53 (2) shall apply in cases for occupational deafness under par. (a); such reduction shall not apply in claims for occupational deafness under pars. (b), (c) and (d), and in lieu thereof a reduction shall be made at the rate of one-half per cent for each year that the age of the employe exceeds 52 in this section.~~ In cases covered by this subsection, "time of injury", "occurrence of injury", or "date of injury" shall, at the

option of the employe, be the date of occurrence of any of the following events to an employe:

(d) Layoff, provided the layoff is complete and continuous for ~~one year~~ 6 months.

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

SECTION 28. 102.565 (1), (2), (3) and (4) of the statutes are amended to read:

102.565 (1) When an employe working subject to this chapter ~~is, because he or she has a nondisabling silicosis, discharged from the employment in which he or she is engaged, or when an employe ceases such employment and it is in fact inadvisable for the employe on account of a nondisabling silicosis to continue in it,~~ as a result of exposure in the course of his or her employment over a period of time to toxic or hazardous substances or conditions, develops any clinically observable abnormality or condition which, on competent medical opinion, predisposes or renders the employe in any manner differentially susceptible to disability to such an extent that it is inadvisable for the employe to continue employment involving such exposure and the employe is discharged from or ceases to continue the employment, and suffers wage loss by reason of such discharge, or such cessation, the department may allow such sum as it deems just as compensation therefor, not exceeding \$13,000. In the event a nondisabling condition may also be caused by toxic or hazardous exposure not related to employment, and the employe has a history of such exposure, compensation as provided by this section shall not be allowed nor shall any other remedy for loss of earning capacity. In case of such discharge prior to a finding by the department that it is inadvisable for the employe to continue in such employment and if it is reasonably probable that continued exposure would result in disability, the liability of the employer who so discharges the employe is primary, and the liability of the employer's insurer is secondary, under the same procedure and to the same effect as provided by s. 102.62.

(2) Upon application of any employer or employe the department may direct any employe of ~~such the employer or such an employe~~ who, in the course of his or her employment, has been exposed to the ~~inhalation of silica~~ toxic or hazardous substances or conditions, to submit to examination by a physician or physicians to be appointed by the department to determine whether ~~such the employe has silicosis developed any abnormality or condition under sub. (1),~~ and the degree thereof. The cost of ~~such the~~ medical examination shall be borne by the person making application. The results of ~~such the~~ examination shall be submitted by the physician to the department, which shall submit copies of ~~such the~~ reports to the employer and employe, who shall have opportunity to rebut the ~~same reports~~ provided request therefor is made to the department within 10 days from the mailing of ~~such the~~ report to the parties. The department shall make its findings as to whether or not it is inadvisable for the employe to continue in his or her employment.

(3) If an employe refuses to submit to ~~such the~~ examination after direction by the commission, or any member thereof or the department or an examiner thereof, or in any way obstructs the same, the employe's right to compensation under this section shall be barred.

(4) No payment shall be made to an employe under this section unless he or she shall have worked for a reasonable period of time for the employer from whom he or she claims compensation in work for exposing him to inhalation of silica for a total period of at least 90 days or her to toxic or hazardous conditions.

SECTION 29. 102.66 (1) of the statutes is amended to read:

102.66 (1) In the event that there is an otherwise meritorious claim for occupational disease barred solely by the statute of limitations under s. 102.17 (4), the department may in lieu of worker's compensation benefits direct payment from the work injury supplemental benefit fund under s. 102.65 such compensation and such medical expenses as would otherwise be due, based on the date of injury to or on behalf of the injured employe. ~~Such~~ The benefits shall be supplemental to the extent of compensation liability to any disability or medical benefits payable from any group insurance policy where the premium is paid in whole or in part by any employer, or under any federal insurance or benefit program providing disability or medical benefits. Death benefits payable under any such group policy do not limit the benefits payable under this section.

SECTION 29m. **Applicability.** This act applies to any injuries incurred, claims made or awards made after January 1, 1980.

SECTION 30. **Effective date.** This act shall take effect on January 1, 1980, or the day after publication, whichever is later.

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