

McKibben, Greiner, Dearden

Succeeded By
(SF) HF 2190 SSB 3003
Business + Labor

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR RELATIONS
BILL BY CHAIRPERSON FREEMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning workers' compensation.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 22.7, Code Supplement 2001, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 43. Records filed with the division of
4 workers' compensation of the department of workforce
5 development which contain or permit the ascertainment of the
6 identity of an injured employee or an injured employee's
7 dependent as provided in section 86.44.

8 Sec. 2. Section 85.1, subsection 6, Code 2001, is amended
9 to read as follows:

10 6. Employers may with respect to an employee or a
11 classification of employees exempt from coverage provided by
12 this chapter pursuant to subsection 1, 2, or 3-4-~~or~~-5, other
13 than the employee or classification of employees with respect
14 to whom a rule of liability or a method of compensation is
15 established by the Congress of the United States, assume a
16 liability for compensation imposed upon employers by this
17 chapter, for the benefit of employees within the coverage of
18 this chapter, by the purchase of valid workers' compensation
19 insurance which does not specifically including exclude the
20 employee or classification of employees. The purchase of and
21 acceptance by an employer of valid workers' compensation
22 insurance applicable to the employee or classification of
23 employees constitutes an assumption by the employer of
24 liability without any further act on the part of the employer,
25 but only with respect to the employee or classification of
26 employees as are within the coverage of the workers'
27 compensation insurance contract and only for the time period
28 in which the insurance contract is in force. Upon an election
29 of such coverage, the employee or classification of employees
30 shall accept compensation in the manner provided by this
31 chapter and the employer shall be relieved from any other
32 liability for recovery of damage, or other compensation for
33 injury.

34 Sec. 3. Section 85.22, Code 2001, is amended by striking
35 the section and inserting in lieu thereof the following:

1 85.22 LIABILITY OF OTHERS -- INDEMNITY AND SUBROGATION.

2 1. When an employee receives an injury, dies, or incurs an
3 occupational disease or an occupational hearing loss for which
4 workers' compensation benefits are payable under this chapter,
5 chapter 85A, or chapter 85B, under circumstances creating a
6 cause of action for damages for personal injury or wrongful
7 death against a third party other than the employee's employer
8 or any employee of the employer as provided in section 85.20,
9 the employer shall promptly pay all workers' compensation
10 benefits that accrue and the employee may pursue the cause of
11 action against the third party without waiving workers'
12 compensation benefits.

13 2. If the employee receives a recovery from the third
14 party, the employer shall be indemnified for the workers'
15 compensation benefits actually paid less prorated attorney
16 fees as provided in this section. The employer shall have a
17 lien upon the cause of action and recovery to secure its right
18 of indemnification and an offset against any workers'
19 compensation benefits that become payable after the third-
20 party recovery is disbursed. The employer may be subrogated
21 to the rights of the employee if the employee fails to
22 commence an action against the third party.

23 3. The employee shall give the employer written notice of
24 making a claim against a third party and shall provide a copy
25 of the original notice and petition to the employer within ten
26 days after commencing an action against a third party.
27 Failure to give the notice shall not prejudice the employer or
28 the cause of action against the third party. The employer's
29 lien is perfected by filing written notice in the office of
30 the clerk of the district court where the action against the
31 third party is pending. The lien is binding on any person who
32 has actual knowledge that the employee has received workers'
33 compensation benefits from the employer. The employer shall
34 provide an itemized statement showing the amount of its lien
35 whenever requested by the employee or the third party.

1 4. The employer may request in writing that the employee
2 commence an action against a third party. If the employee
3 fails to commence the action within ninety days after the
4 request, the employer is subrogated to the rights of the
5 employee to pursue the cause of action against the third
6 party. The employer may commence a subrogation action without
7 giving prior notice to the employee within the last thirty
8 days prior to the time the cause of action would be barred by
9 any applicable statute of limitation. An employer who
10 exercises subrogation rights shall give the employee written
11 notice of making a claim against a third party and shall
12 provide a copy of the original notice and petition to the
13 employee within ten days after commencing an action against a
14 third party. The employee shall reasonably cooperate with the
15 employer's efforts to pursue the cause of action.

16 5. A recovery from a third party shall be disbursed as
17 follows:

18 a. Fees for the employee's attorney, including
19 administrative expenses of litigation, shall be paid. Any
20 dispute concerning attorney fees or the validity and amount of
21 the employer's right to indemnification shall be determined by
22 the court having jurisdiction of the third-party action. The
23 proportion of the total recovery that is paid for attorney
24 fees shall be computed to the nearest one-hundredth of a
25 percent to determine the factor for prorated attorney fees. A
26 party is responsible for prorated attorney fees allocable to
27 the portion of the recovery received by the party.

28 b. The employer shall pay all unpaid workers' compensation
29 benefits which have accrued at the time the third-party
30 recovery is disbursed and the employer shall then be
31 indemnified for the workers' compensation benefits actually
32 paid from the date the benefits were paid less prorated
33 attorney fees. The employer shall not be indemnified for
34 interest paid pursuant to section 85.30 or additional benefits
35 paid pursuant to section 86.13.

1 and cause the clerk to notify the parties. The decree or
2 judgment, in the absence of a petition for judicial review or
3 if judicial review has been commenced, in the absence of a
4 stay of execution or enforcement of the decision or order of
5 the workers' compensation commissioner, or in the absence of
6 an act of any party which prevents a decision of a deputy
7 workers' compensation commissioner from becoming final, has
8 the same effect and in all proceedings in relation thereto is
9 the same as though rendered in a suit duly heard and
10 determined by the court.

11 Sec. 7. Section 86.43, Code 2001, is amended to read as
12 follows:

13 86.43 JUDGMENT -- MODIFICATION OF.

14 Upon the presentation to the court of a certified copy of a
15 decision of the workers' compensation commissioner, ending,
16 diminishing, or increasing the compensation under the
17 provisions of this chapter, the court shall revoke or modify
18 the decree or judgment to conform to such decision.

19 Sec. 8. NEW SECTION. 86.45 CONFIDENTIAL INFORMATION.

20 1. For purposes of this section, "confidential
21 information" means all information filed with the workers'
22 compensation commissioner as a result of an individual's
23 injury or death that would allow the identification of an
24 injured employee or that employee's dependents. "Confidential
25 information" includes first reports of injury and claim
26 activity reports. Pleadings, motions, orders, decisions,
27 opinions, and applications for approval of settlements are not
28 confidential information.

29 2. The workers' compensation commissioner shall not
30 disclose confidential information except under any of the
31 following circumstances:

- 32 a. Pursuant to the terms of a written waiver of
33 confidentiality.
- 34 b. To another governmental agency for the purpose of
35 compiling statistical data that will not disclose the identity

1 a. "Employee" includes the employee's trustee, guardian,
2 conservator, estate, or other legal representative.

3 b. "Employer" includes an insurance carrier acting
4 pursuant to chapter 87 and any other person who pays or is
5 legally obligated to pay workers' compensation benefits to the
6 employee on behalf of the employer.

7 c. "Recovery" means a payment of anything of value, from
8 or on behalf of the third party, paid to or as directed by the
9 employee, in resolution of the employee's cause of action for
10 damages for personal injury or wrongful death against the
11 third party regardless of the manner in which the payment is
12 characterized. "Recovery" does not include a payment made in
13 good faith to resolve a claim for damage to the employee's
14 tangible property, a claim made by a person other than the
15 employee, or a claim for loss of consortium.

16 Sec. 4. Section 85.27, subsection 3, Code Supplement 2001,
17 is amended to read as follows:

18 3. Notwithstanding section 85.26, subsection 4, charges
19 believed to be excessive or unnecessary may be referred by the
20 employer, insurance carrier, or health service provider to the
21 workers' compensation commissioner for determination, and the
22 commissioner may utilize the procedures provided in sections
23 86.38 and 86.39, or set by rule, and conduct such inquiry as
24 the commissioner deems necessary. Any health service provider
25 charges not in dispute shall be paid directly to the health
26 service provider prior to utilization of procedures provided
27 in sections 86.38 and 86.39 or set by rule. A health service
28 provider rendering treatment to an employee whose injury is
29 compensable under this section agrees to be bound by such
30 charges as allowed by the workers' compensation commissioner
31 and shall not recover in law or equity any amount in excess of
32 charges set by the commissioner. When a dispute under chapter
33 85, 85A, or 85B regarding reasonableness of a fee for medical
34 services arises between a health service provider and an
35 employer or insurance carrier, the health service provider,

1 employer, or insurance carrier shall not seek payment from the
2 injured employee. When a dispute under chapter 85, 85A, or
3 85B regarding reasonableness of a fee for medical services
4 arises between a health service provider and an insurance
5 carrier, the health service provider shall not seek payment
6 from the employer.

7 Sec. 5. Section 85.27, subsection 4, Code Supplement 2001,
8 is amended to read as follows:

9 4. For purposes of this section, the employer is obliged
10 to furnish reasonable services and supplies to treat an
11 injured employee, and has the right to choose the care. The
12 employer is liable for the reasonable cost of the care chosen
13 by the employer or by the employer's representative. The
14 treatment must be offered promptly and be reasonably suited to
15 treat the injury without undue inconvenience to the employee.
16 If the employee has reason to be dissatisfied with the care
17 offered, the employee should communicate the basis of such
18 dissatisfaction to the employer, in writing if requested,
19 following which the employer and the employee may agree to
20 alternate care reasonably suited to treat the injury. If the
21 employer and employee cannot agree on such alternate care, the
22 commissioner may, upon application and reasonable proofs of
23 the necessity therefor, allow and order other care. In an
24 emergency, the employee may choose the employee's care at the
25 employer's expense, provided the employer or the employer's
26 agent cannot be reached immediately. An application made
27 under this subsection shall be considered an original
28 proceeding for purposes of commencement and contested case
29 proceedings under section 85.26. The hearing shall be
30 conducted pursuant to chapter 17A. Before a hearing is
31 scheduled, the parties may choose a telephone hearing or an
32 in-person hearing. A request for an in-person hearing shall
33 be approved unless the in-person hearing would be impractical
34 because of the distance between the parties to the hearing.
35 The workers' compensation commissioner shall issue a decision

1 within ten working days of receipt of an application for
2 alternate care made pursuant to a telephone hearing or within
3 fourteen working days of receipt of an application for
4 alternate care made pursuant to an in-person hearing. The
5 employer shall notify an injured employee of the employee's
6 ability to contest the employer's choice of care pursuant to
7 this subsection.

8 Sec. 6. Section 85.27, subsection 6, Code Supplement 2001,
9 is amended to read as follows:

10 6. While a contested case proceeding for determination of
11 liability for workers' compensation benefits is pending before
12 the workers' compensation commissioner relating to an injury
13 alleged to have given rise to treatment, no debt collection,
14 as defined by section 537.7102, shall be undertaken against an
15 employee, or the employee's dependents or employer, for the
16 collection of charges for that treatment rendered an employee
17 by any health service provider. However, the health service
18 provider may send one itemized written bill to the employee
19 and the employee's employer setting forth the amount of the
20 charges in connection with the treatment after notification of
21 the contested case proceeding.

22 Sec. 7. Section 85.27, subsection 7, Code Supplement 2001,
23 is amended to read as follows:

24 7. If, after the third day of incapacity to work following
25 the date of sustaining a compensable injury which does not
26 result in permanent partial disability, or if, at any time
27 after sustaining a compensable injury which results in
28 permanent partial disability, an employee, who is not
29 receiving weekly benefits under section 85.33 or section
30 85.34, subsection 1, returns to work and is required to leave
31 work for one full day or less to receive services pursuant to
32 this section, the employee shall be paid an amount equivalent
33 to the wages lost at the employee's regular rate of pay for
34 the time the employee is required to leave work. For the
35 purposes of this subsection, "day of incapacity to work" means

1 eight hours of accumulated absence from work due to incapacity
2 to work or due to the receipt of services pursuant to this
3 section. The employer shall make the payments under this
4 subsection as wages to the employee after making such
5 deductions from the amount as legally required or customarily
6 made by the employer from wages. Payments made under this
7 subsection shall be required to be reimbursed pursuant to any
8 insurance policy covering workers' compensation. Payments
9 under this subsection shall not be construed to be payment of
10 weekly benefits.

11 Sec. 8. Section 85.38, subsection 2, unnumbered paragraph
12 2, Code 2001, is amended to read as follows:

13 If an employer denies liability under this chapter, chapter
14 85A, or chapter 85B, for payment for any medical services
15 received or weekly compensation requested by an employee with
16 ~~a-disability~~, and the employee is a beneficiary under either
17 an individual or group plan for nonoccupational illness,
18 injury, or disability, the nonoccupational plan shall not deny
19 ~~payment for-the-medical-services-received~~ of benefits under
20 the plan on the basis that the employer's liability ~~for-the~~
21 ~~medical-services~~ under this chapter, chapter 85A, or chapter
22 85B is unresolved.

23 Sec. 9. Section 86.42, Code 2001, is amended to read as
24 follows:

25 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

26 Any party in interest may present a certified copy of an
27 order or decision of the commissioner, from which a timely
28 petition for judicial review has not been filed or if judicial
29 review has been filed, which has not had execution or
30 enforcement stayed as provided in section 17A.19, subsection
31 5, or an order or decision of a deputy commissioner from which
32 a timely appeal has not been taken within the agency and which
33 has become final by the passage of time as provided by rule
34 and section 17A.15, or an agreement for settlement approved by
35 the commissioner, and all papers in connection therewith, to

1 the district court where judicial review of the agency action
2 may be commenced. The court shall render a decree or judgment
3 and cause the clerk to notify the parties. The decree or
4 judgment, in the absence of a petition for judicial review or
5 if judicial review has been commenced, in the absence of a
6 stay of execution or enforcement of the decision or order of
7 the workers' compensation commissioner, or in the absence of
8 an act of any party which prevents a decision of a deputy
9 workers' compensation commissioner from becoming final, has
10 the same effect and in all proceedings in relation thereto is
11 the same as though rendered in a suit duly heard and
12 determined by the court.

13 Sec. 10. Section 86.43, Code 2001, is amended to read as
14 follows:

15 86.43 JUDGMENT -- MODIFICATION OF.

16 Upon the presentation to the court of a certified copy of a
17 decision of the workers' compensation commissioner, ending,
18 diminishing, or increasing the compensation under the
19 provisions of this chapter, the court shall revoke or modify
20 the decree or judgment to conform to such decision.

21 Sec. 11. Section 86.44, Code 2001, is amended to read as
22 follows:

23 86.44 CONFIDENTIALITY.

24 1. All verbal or written information relating to the
25 subject matter of an agreement and transmitted between any
26 party to a dispute and a mediator to resolve a dispute
27 pursuant to this chapter or chapter 85, 85A, or 85B, during
28 any stage of a mediation or a dispute resolution process
29 conducted by a mediator as provided in this section, whether
30 reflected in notes, memoranda, or other work products in the
31 case files, is a confidential communication except as
32 otherwise expressly provided in this chapter. Mediators
33 involved in a mediation or a dispute resolution process shall
34 not be examined in any judicial or administrative proceeding
35 regarding confidential communications and are not subject to

1 judicial or administrative process requiring the disclosure of
2 confidential communications.

3 For purposes of this section subsection, "mediator" means a
4 chief deputy workers' compensation commissioner or deputy
5 workers' compensation commissioner acting in the capacity to
6 resolve a dispute pursuant to this chapter or chapter 85, 85A,
7 or 85B, or an employee of the division of workers'
8 compensation involved during any stage of a process to resolve
9 a dispute.

10 2. a. Except as otherwise provided in this subsection,
11 all records filed with the division of workers' compensation
12 pursuant to section 85.26, 86.11, or 86.13, which contain or
13 permit the ascertainment of the identity of an injured
14 employee or the injured employee's dependent, shall be kept
15 confidential, unless otherwise ordered by a court.

16 b. A record described in paragraph "a" may be disclosed
17 under any of the following circumstances:

18 (1) Pursuant to the terms of a written waiver of
19 confidentiality by the injured employee or the injured
20 employee's dependent.

21 (2) The use of records by a governmental body for the
22 compilation of statistical data after deletion of the identity
23 of the injured employee or the injured employee's dependent.

24 (3) To the injured employee or the injured employee's
25 dependent, or the agent or attorney of the injured employee or
26 dependent.

27 (4) To the person that filed the confidential record.

28 (5) To an employer, insurance carrier, or third-party
29 administrator of workers' compensation claims, or a designee,
30 who is involved in administering a claim for benefits made
31 with respect to the injury or death of an employee.

32 (6) To all parties in a contested case proceeding before
33 the workers' compensation commissioner in which the injured
34 employee or the injured employee's dependent is a party.

35 (7) In compliance with a subpoena.

1 Code section 85.27, subsection 3, is amended to provide
2 that if a dispute arises between a health service provider and
3 an insurance carrier concerning the reasonableness of a fee
4 for medical services, the health service provider shall not
5 seek payment of the fee from the employer.

6 Code section 85.27, subsection 4, is amended to provide
7 that the employer or the employer's representatives are
8 responsible for payment of the reasonable cost of all medical
9 services chosen and provided at their direction to an injured
10 worker.

11 Code section 85.27, subsection 6, is amended to provide
12 that no debt collection shall be undertaken against an
13 employer for treatment charges while a contested case
14 proceeding for determination of workers' compensation benefits
15 liability is pending.

16 Code section 85.27, subsection 7, is amended to provide
17 that a "day of incapacity to work" means eight work hours
18 which can be accumulated over more than one day toward meeting
19 the three-day incapacity to work threshold under the
20 subsection.

21 Code section 85.38 is amended to provide that a
22 nonoccupational, individual, or group insurance plan shall not
23 deny payment of benefits to an employee under the plan for
24 weekly compensation because the employer's liability for
25 workers' compensation is unresolved.

26 Code sections 86.42 and 86.43 are amended to eliminate the
27 requirement that a party who wishes to enforce a workers'
28 compensation award initially made by the workers' compensation
29 division must present a certified copy of the order or
30 decision to the district court.

31 Code section 86.44 is amended to provide that records filed
32 with the division of workers' compensation of the department
33 of workforce development, which contain or permit the
34 ascertainment of the identity of an injured employee or an
35 injured employee's dependent, shall be kept confidential as

1 provided in Code chapter 22 and not disclosed except under
2 limited circumstances.

3 New Code section 87.1A gives the workers' compensation
4 commissioner the authority to require employers to submit
5 proof of employer's liability insurance for payment of
6 workers' compensation.

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REPRINTED

FILED FEB 14 2002

SENATE FILE 2190
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 3003)

Passed Senate, Date 4/3/02 (P.471)
Vote: Ayes 47 Nays 0
Passed House, Date 3-27-02 (P.1055)
Vote: Ayes 53 Nays 42

Approved Vote D 5/9/02
Re-Passed 4-8-02
(P.1031) Vote 26-18

A BILL FOR

1 An Act concerning workers' compensation.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 2190
S-5099
1 Amend Senate File 2190 as follows:
2 1. Page 2, by striking lines 6 through 19.
3 2. By renumbering as necessary.
By LARRY MCKIBBEN
S-5099 FILED MARCH 4, 2002
ADOPTED 3/4/02 (P. 471)

1 Section 1. Section 22.7, Code Supplement 2001, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 43. Confidential information relating to
4 an injured employee as provided in section 86.45.

5 Sec. 2. Section 85.27, subsection 4, Code Supplement 2001,
6 is amended to read as follows:

7 4. For purposes of this section, the employer is obliged
8 to furnish reasonable services and supplies to treat an
9 injured employee, and has the right to choose the care. The
10 employer is liable for the reasonable cost of the care chosen
11 by the employer or by the employer's representative. The
12 treatment must be offered promptly and be reasonably suited to
13 treat the injury without undue inconvenience to the employee.
14 If the employee has reason to be dissatisfied with the care
15 offered, the employee should communicate the basis of such
16 dissatisfaction to the employer, in writing if requested,
17 following which the employer and the employee may agree to
18 alternate care reasonably suited to treat the injury. If the
19 employer and employee cannot agree on such alternate care, the
20 commissioner may, upon application and reasonable proofs of
21 the necessity therefor, allow and order other care. In an
22 emergency, the employee may choose the employee's care at the
23 employer's expense, provided the employer or the employer's
24 agent cannot be reached immediately. An application made
25 under this subsection shall be considered an original
26 proceeding for purposes of commencement and contested case
27 proceedings under section 85.26. The hearing shall be
28 conducted pursuant to chapter 17A. Before a hearing is
29 scheduled, the parties may choose a telephone hearing or an
30 in-person hearing. A request for an in-person hearing shall
31 be approved unless the in-person hearing would be impractical
32 because of the distance between the parties to the hearing.
33 The workers' compensation commissioner shall issue a decision
34 within ten working days of receipt of an application for
35 alternate care made pursuant to a telephone hearing or within

1 fourteen working days of receipt of an application for
2 alternate care made pursuant to an in-person hearing. The
3 employer shall notify an injured employee of the employee's
4 ability to contest the employer's choice of care pursuant to
5 this subsection.

6 Sec. 3. Section 85.27, subsection 6, Code Supplement 2001,
7 is amended to read as follows:

8 6. While a contested case proceeding for determination of
9 liability for workers' compensation benefits is pending before
10 the workers' compensation commissioner relating to an injury
11 alleged to have given rise to treatment, no debt collection,
12 as defined by section 537.7102, shall be undertaken against an
13 employee, or the employee's dependents or employer, for the
14 collection of charges for that treatment rendered an employee
15 by any health service provider. However, the health service
16 provider may send one itemized written bill to the employee
17 and the employee's employer setting forth the amount of the
18 charges in connection with the treatment after notification of
19 the contested case proceeding.

20 Sec. 4. Section 85.27, subsection 7, Code Supplement 2001,
21 is amended to read as follows:

22 7. If, after the third day of incapacity to work following
23 the date of sustaining a compensable injury which does not
24 result in permanent partial disability, or if, at any time
25 after sustaining a compensable injury which results in
26 permanent partial disability, an employee, who is not
27 receiving weekly benefits under section 85.33 or section
28 85.34, subsection 1, returns to work and is required to leave
29 work for one full day or less to receive services pursuant to
30 this section, the employee shall be paid an amount equivalent
31 to the wages lost at the employee's regular rate of pay for
32 the time the employee is required to leave work. For the
33 purposes of this subsection, "day of incapacity to work" means
34 eight hours of accumulated absence from work due to incapacity
35 to work or due to the receipt of services pursuant to this

1 section. The employer shall make the payments under this
2 subsection as wages to the employee after making such
3 deductions from the amount as legally required or customarily
4 made by the employer from wages. Payments made under this
5 subsection shall be required to be reimbursed pursuant to any
6 insurance policy covering workers' compensation. Payments
7 under this subsection shall not be construed to be payment of
8 weekly benefits.

9 Sec. 5. Section 85.38, subsection 2, unnumbered paragraph
10 2, Code 2001, is amended to read as follows:

11 If an employer denies liability under this chapter, chapter
12 85A, or chapter 85B, for payment for any medical services
13 received or weekly compensation requested by an employee with
14 a-disability, and the employee is a beneficiary under either
15 an individual or group plan for nonoccupational illness,
16 injury, or disability, the nonoccupational plan shall not deny
17 payment ~~for-the-medical-services-received~~ of benefits under
18 the plan on the basis that the employer's liability ~~for-the~~
19 ~~medical-services~~ under this chapter, chapter 85A, or chapter
20 85B is unresolved.

21 Sec. 6. Section 86.42, Code 2001, is amended to read as
22 follows:

23 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

24 Any party in interest may present a certified copy of an
25 order or decision of the commissioner, from which a timely
26 petition for judicial review has not been filed or if judicial
27 review has been filed, which has not had execution or
28 enforcement stayed as provided in section 17A.19, subsection
29 5, or an order or decision of a deputy commissioner from which
30 a timely appeal has not been taken within the agency and which
31 has become final by the passage of time as provided by rule
32 and section 17A.15, or an agreement for settlement approved by
33 the commissioner, and all papers in connection therewith, to
34 the district court where judicial review of the agency action
35 may be commenced. The court shall render a decree or judgment

1 and cause the clerk to notify the parties. The decree or
2 judgment, in the absence of a petition for judicial review or
3 if judicial review has been commenced, in the absence of a
4 stay of execution or enforcement of the decision or order of
5 the workers' compensation commissioner, or in the absence of
6 an act of any party which prevents a decision of a deputy
7 workers' compensation commissioner from becoming final, has
8 the same effect and in all proceedings in relation thereto is
9 the same as though rendered in a suit duly heard and
10 determined by the court.

11 Sec. 7. Section 86.43, Code 2001, is amended to read as
12 follows:

13 86.43 JUDGMENT -- MODIFICATION OF.

14 Upon the presentation to the court of a certified copy of a
15 decision of the workers' compensation commissioner, ending,
16 diminishing, or increasing the compensation under the
17 provisions of this chapter, the court shall revoke or modify
18 the decree or judgment to conform to such decision.

19 Sec. 8. NEW SECTION. 86.45 CONFIDENTIAL INFORMATION.

20 1. For purposes of this section, "confidential
21 information" means all information filed with the workers'
22 compensation commissioner as a result of an individual's
23 injury or death that would allow the identification of an
24 injured employee or that employee's dependents. "Confidential
25 information" includes first reports of injury and claim
26 activity reports. Pleadings, motions, orders, decisions,
27 opinions, and applications for approval of settlements are not
28 confidential information.

29 2. The workers' compensation commissioner shall not
30 disclose confidential information except under any of the
31 following circumstances:

32 a. Pursuant to the terms of a written waiver of
33 confidentiality.

34 b. To another governmental agency for the purpose of
35 compiling statistical data that will not disclose the identity

1 of the injured employee or that employee's dependents.

2 c. To the individual, or the individual's agent or
3 attorney, whose information is contained in the reports and
4 records.

5 d. To the person, entity, or agent who submitted the
6 reports, records, or information.

7 e. To the agents, attorneys, investigators, consultants,
8 and adjusters for an employer, insurance carrier, or third-
9 party administrator of workers' compensation claims who are
10 involved in administering a claim for benefits made with
11 respect to injury or the death of the individual.

12 f. To all parties in a contested case proceeding before
13 the workers' compensation commissioner in which the injured
14 employee or the injured employee's representative or dependent
15 is a party.

16 g. In compliance with a subpoena.

17 h. To attorneys, investigators, agents, or adjusters on
18 behalf of an employee, employer, insurance carrier, or third-
19 party administrator in connection with an insurance claim.

20 EXPLANATION

21 This bill makes several changes to the workers'
22 compensation law.

23 Code section 22.7 is amended to provide that certain
24 confidential information filed with the workers' compensation
25 commissioner relating to an injured employee shall be kept
26 confidential as provided in Code chapter 22 and not be
27 disclosed except under limited circumstances.

28 Code section 85.27, subsection 4, is amended to provide
29 that the employer or the employer's representatives are
30 responsible for payment of the reasonable cost of all medical
31 services chosen and provided at their direction to an injured
32 worker.

33 Code section 85.27, subsection 6, is amended to provide
34 that no debt collection shall be undertaken against an
35 employer for treatment charges while a contested case

1 proceeding for determination of workers' compensation benefits
2 liability is pending.

3 Code section 85.27, subsection 7, is amended to provide
4 that a "day of incapacity to work" means eight work hours
5 which can be accumulated over more than one day toward meeting
6 the three-day incapacity to work threshold under the
7 subsection.

8 Code section 85.38 is amended to provide that a
9 nonoccupational, individual, or group insurance plan shall not
10 deny payment of benefits to an employee under the plan for
11 weekly compensation because the employer's liability for
12 workers' compensation is unresolved.

13 Code sections 86.42 and 86.43 are amended to eliminate the
14 requirement that a party who wishes to enforce a workers'
15 compensation award initially made by the workers' compensation
16 division must present a certified copy of the order or
17 decision to the district court.

18 New Code section 86.45 provides that confidential
19 information filed with the workers' compensation commissioner
20 that would allow the ascertainment of the identity of an
21 injured employee or an injured employee's dependent shall be
22 kept confidential as provided in Code chapter 22 and not
23 disclosed except under limited circumstances.

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H 3/5/02 Labor Ind
H - 3/15/02 Do Pass

3/21/02 UNFINISHED BUSINESS CALENDAR

SENATE FILE 2190
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 3003)

(AS AMENDED AND PASSED BY THE SENATE MARCH 4, 2002)

* - Language Stricken by the Senate

Passed Senate, ^(P. 103) Date 4-8-02 Passed House, ^(P. 1055) Date 3-27-02
Vote: Ayes 26 Nays 18 Vote: Ayes 53 Nays 42
Approved Netoed 5-9-02

A BILL FOR

- 1 An Act concerning workers' compensation.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. 2190

1 Section 1. Section 22.7, Code Supplement 2001, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 43. Confidential information relating to
4 an injured employee as provided in section 86.45.

5 Sec. 2. Section 85.27, subsection 4, Code Supplement 2001,
6 is amended to read as follows:

7 4. For purposes of this section, the employer is obliged
8 to furnish reasonable services and supplies to treat an
9 injured employee, and has the right to choose the care. The
10 employer is liable for the reasonable cost of the care chosen
11 by the employer or by the employer's representative. The
12 treatment must be offered promptly and be reasonably suited to
13 treat the injury without undue inconvenience to the employee.
14 If the employee has reason to be dissatisfied with the care
15 offered, the employee should communicate the basis of such
16 dissatisfaction to the employer, in writing if requested,
17 following which the employer and the employee may agree to
18 alternate care reasonably suited to treat the injury. If the
19 employer and employee cannot agree on such alternate care, the
20 commissioner may, upon application and reasonable proofs of
21 the necessity therefor, allow and order other care. In an
22 emergency, the employee may choose the employee's care at the
23 employer's expense, provided the employer or the employer's
24 agent cannot be reached immediately. An application made
25 under this subsection shall be considered an original
26 proceeding for purposes of commencement and contested case
27 proceedings under section 85.26. The hearing shall be
28 conducted pursuant to chapter 17A. Before a hearing is
29 scheduled, the parties may choose a telephone hearing or an
30 in-person hearing. A request for an in-person hearing shall
31 be approved unless the in-person hearing would be impractical
32 because of the distance between the parties to the hearing.
33 The workers' compensation commissioner shall issue a decision
34 within ten working days of receipt of an application for
35 alternate care made pursuant to a telephone hearing or within

1 fourteen working days of receipt of an application for
2 alternate care made pursuant to an in-person hearing. The
3 employer shall notify an injured employee of the employee's
4 ability to contest the employer's choice of care pursuant to
5 this subsection.

* 6 Sec. 3. Section 85.27, subsection 7, Code Supplement 2001,
7 is amended to read as follows:

8 7. If, after the third day of incapacity to work following
9 the date of sustaining a compensable injury which does not
10 result in permanent partial disability, or if, at any time
11 after sustaining a compensable injury which results in
12 permanent partial disability, an employee, who is not
13 receiving weekly benefits under section 85.33 or section
14 85.34, subsection 1, returns to work and is required to leave
15 work for one full day or less to receive services pursuant to
16 this section, the employee shall be paid an amount equivalent
17 to the wages lost at the employee's regular rate of pay for
18 the time the employee is required to leave work. For the
19 purposes of this subsection, "day of incapacity to work" means
20 eight hours of accumulated absence from work due to incapacity
21 to work or due to the receipt of services pursuant to this
22 section. The employer shall make the payments under this
23 subsection as wages to the employee after making such
24 deductions from the amount as legally required or customarily
25 made by the employer from wages. Payments made under this
26 subsection shall be required to be reimbursed pursuant to any
27 insurance policy covering workers' compensation. Payments
28 under this subsection shall not be construed to be payment of
29 weekly benefits.

30 Sec. 4. Section 85.38, subsection 2, unnumbered paragraph
31 2, Code 2001, is amended to read as follows:

32 If an employer denies liability under this chapter, chapter
33 85A, or chapter 85B, for payment for any medical services
34 received or weekly compensation requested by an employee with
35 a-disability, and the employee is a beneficiary under either

1 an individual or group plan for nonoccupational illness,
2 injury, or disability, the nonoccupational plan shall not deny
3 payment ~~for-the-medical-services-received~~ of benefits under
4 the plan on the basis that the employer's liability ~~for-the~~
5 ~~medical-services~~ under this chapter, chapter 85A, or chapter
6 85B is unresolved.

7 Sec. 5. Section 86.42, Code 2001, is amended to read as
8 follows:

9 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

10 Any party in interest may present a certified copy of an
11 order or decision of the commissioner, from which a timely
12 petition for judicial review has not been filed or if judicial
13 review has been filed, which has not had execution or
14 enforcement stayed as provided in section 17A.19, subsection
15 5, or an order or decision of a deputy commissioner from which
16 a timely appeal has not been taken within the agency and which
17 has become final by the passage of time as provided by rule
18 and section 17A.15, or an agreement for settlement approved by
19 the commissioner, and all papers in connection therewith, to
20 the district court where judicial review of the agency action
21 may be commenced. The court shall render a decree or judgment
22 and cause the clerk to notify the parties. The decree or
23 judgment, in the absence of a petition for judicial review or
24 if judicial review has been commenced, in the absence of a
25 stay of execution or enforcement of the decision or order of
26 the workers' compensation commissioner, or in the absence of
27 an act of any party which prevents a decision of a deputy
28 workers' compensation commissioner from becoming final, has
29 the same effect and in all proceedings in relation thereto is
30 the same as though rendered in a suit duly heard and
31 determined by the court.

32 Sec. 6. Section 86.43, Code 2001, is amended to read as
33 follows:

34 86.43 JUDGMENT -- MODIFICATION OF.

35 Upon the presentation to the court of a certified copy of a

1 decision of the workers' compensation commissioner, ending,
2 diminishing, or increasing the compensation under the
3 provisions of this chapter, the court shall revoke or modify
4 the decree or judgment to conform to such decision.

5 Sec. 7. NEW SECTION. 86.45 CONFIDENTIAL INFORMATION.

6 1. For purposes of this section, "confidential
7 information" means all information filed with the workers'
8 compensation commissioner as a result of an individual's
9 injury or death that would allow the identification of an
10 injured employee or that employee's dependents. "Confidential
11 information" includes first reports of injury and claim
12 activity reports. Pleadings, motions, orders, decisions,
13 opinions, and applications for approval of settlements are not
14 confidential information.

15 2. The workers' compensation commissioner shall not
16 disclose confidential information except under any of the
17 following circumstances:

18 a. Pursuant to the terms of a written waiver of
19 confidentiality.

20 b. To another governmental agency for the purpose of
21 compiling statistical data that will not disclose the identity
22 of the injured employee or that employee's dependents.

23 c. To the individual, or the individual's agent or
24 attorney, whose information is contained in the reports and
25 records.

26 d. To the person, entity, or agent who submitted the
27 reports, records, or information.

28 e. To the agents, attorneys, investigators, consultants,
29 and adjusters for an employer, insurance carrier, or third-
30 party administrator of workers' compensation claims who are
31 involved in administering a claim for benefits made with
32 respect to injury or the death of the individual.

33 f. To all parties in a contested case proceeding before
34 the workers' compensation commissioner in which the injured
35 employee or the injured employee's representative or dependent

1 is a party.

2 g. In compliance with a subpoena.

3 h. To attorneys, investigators, agents, or adjusters on
4 behalf of an employee, employer, insurance carrier, or third-
5 party administrator in connection with an insurance claim.

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SENATE FILE 2190

H-8299

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. ____ Section 85.34, Code 2001, is amended by
6 adding the following new subsection:

7 NEW SUBSECTION. 7. APPORTIONMENT. Compensation
8 for a permanent partial disability which would
9 otherwise be payable pursuant to this section shall be
10 reduced as provided in this subsection as follows:

11 a. If an employee has a preexisting functional
12 loss under subsection 2, paragraphs "a" through "t",
13 or a preexisting industrial disability under
14 subsection 2, paragraph "u", the preexisting
15 functional loss or industrial disability shall be
16 apportioned and the employer shall not be liable for
17 that preexisting loss or disability with respect to
18 claims for a permanent partial disability resulting
19 from subsequent injuries which result in an increase
20 in the permanent impairment to the same member or an
21 increase in industrial disability with respect to any
22 condition affecting employability. However, the
23 apportionment authorized by this paragraph shall not
24 apply if the preexisting functional loss or
25 preexisting industrial disability was the product of a
26 work injury with the same employer and the employee
27 did not recover benefits pursuant to this chapter for
28 that preexisting functional loss or preexisting
29 industrial disability.

30 b. If an employee has received a benefit under
31 this chapter, chapter 85A, or chapter 85B, for a
32 previous injury to a portion of the body as described
33 in subsection 2, the employer shall not be liable for
34 the amount representing the applicable previous
35 payment with respect to claims for a permanent partial
36 disability resulting from subsequent injuries to the
37 same portion of the body. For purposes of this
38 paragraph, the applicable previous payment is the
39 percentage of disability that resulted from the
40 previous injury for which compensation was received
41 under this chapter, chapter 85A, or chapter 85B, or
42 the dollar amount received in a contested case
43 settlement under section 85.35 that was not paid by
44 the employee for medical care."

45 2. By renumbering as necessary.

By HORBACH of Tama

H-8299 FILED MARCH 15, 2002

Adopted

3.27.02

(p 1037)

SENATE FILE 2190**H-8300**

- 1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. By striking page 1, line 5, through page 2,
4 line 5.
5 2. Page 4, line 20, by inserting after the word
6 "agency" the following: ", or an advisory, rating, or
7 research organization,".
8 3. Page 4, line 21, by inserting after the word
9 "data" the following: ", evaluating the state's
10 workers' compensation system, or conducting
11 scientific, medical, or public policy research,".
12 4. By renumbering as necessary.

By HORBACH of Tama

H-8300 FILED MARCH 15, 2002

*adopted 3-27-02
(p 1020)*

SENATE FILE 2190**H-8336**

- 1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. By striking page 2, line 30, through page 3,
4 line 6.
5 2. By renumbering as necessary.

By EICHHORN of Hamilton

H-8336 FILED MARCH 19, 2002

Adopted 3.27-02 (p 1042)

SENATE FILE 2190

H-8339

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 5, by inserting after line 5 the
4 following:
5 "Sec. ____ . WORKERS' COMPENSATION APPORTIONMENT
6 INTERIM STUDY. The legislative council is requested
7 to authorize an interim study committee to study
8 issues concerning compensation that should be payable
9 to an employee for a permanent partial disability when
10 the employee has previously suffered an injury or
11 previously received workers' compensation benefits.
12 In addition, the interim study committee shall examine
13 whether racial discrimination impacts the payment of
14 workers' compensation benefits. The interim study
15 committee shall receive testimony from organizations
16 representing employees, employers, and workers'
17 compensation insurers concerning the impact of
18 modifying current law concerning the apportionment of
19 workers' compensation benefits. The interim study
20 committee shall submit a report of its findings and
21 recommendations, including proposed legislation, if
22 any, to the general assembly on or before January 13,
23 2003."
24 2. By renumbering as necessary.

By FORD of Polk

H-8339 FILED MARCH 19, 2002

lost
3-27-02 (P. 1050)

SENATE FILE 2190

H-8342

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 3, by inserting after line 6 the
4 following:
5 "Sec. ____ . Section 85.71, Code 2001, is amended by
6 adding the following new subsection:
7 NEW SUBSECTION. 5. The employee resides in this
8 state."
9 2. By renumbering as necessary.

By OSTERHAUS of Jackson

H-8342 FILED MARCH 19, 2002

lost
3-27-02
(P. 1043)

SENATE FILE 2190

H-8343

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, by inserting after line 29 the
4 following:
5 "Sec. ____ . Section 85.36, unnumbered paragraph 1,
6 Code Supplement 2001, is amended to read as follows:
7 The basis of compensation shall be the weekly
8 earnings of the injured employee at the time of the
9 injury. "Weekly earnings" means gross earnings as
10 defined in section 85.61. "Weekly earnings " also
11 means gross salary, wages, or earnings of an employee
12 to which such employee would have been entitled had
13 the employee worked the customary hours for the full
14 pay period in which the employee was injured, as
15 regularly required by the employee's employer for the
16 work or employment for which the employee was
17 employed, computed or determined as follows and then
18 rounded to the nearest dollar:
19 Sec. ____ . Section 85.36, subsections 6 and 7, Code
20 Supplement 2001, are amended to read as follows:
21 6. In the case of an employee who is paid on a
22 daily or hourly basis, or by the output of the
23 employee, the weekly earnings shall be computed by
24 dividing by thirteen the earnings, not including
25 overtime or premium pay, of the employee earned in the
26 employ of ~~the employer~~ all employers in the last
27 completed period of thirteen consecutive calendar
28 weeks immediately preceding the injury. If the
29 employee was absent from employment for reasons
30 personal to the employee during part of the thirteen
31 calendar weeks preceding the injury, the employee's
32 weekly earnings shall be the amount the employee would
33 have earned had the employee worked when work was
34 available to other employees of the employer in a
35 similar occupation. A week which does not fairly
36 reflect the employee's customary earnings shall be
37 replaced by the closest previous week with earnings
38 that fairly represent the employee's customary
39 earnings.
40 7. In the case of an employee who has been in the
41 employ of the employer less than thirteen calendar
42 weeks immediately preceding the injury, the employee's
43 weekly earnings shall be computed under subsection 6,
44 taking the earnings, not including overtime or premium
45 pay, for such purpose to be the amount the employee
46 would have earned had the employee been so employed by
47 ~~the employer~~ all employers during the full thirteen
48 calendar weeks immediately preceding the injury and
49 had worked, when work was available to other employees
50 in a similar occupation. If the earnings of other

H-8343

Page 2

1 employees cannot be determined, the employee's weekly
2 earnings shall be the average computed for the number
3 of weeks the employee has been in the employ of ~~the~~
4 ~~employer~~ all employers."

5 2. Page 3, by inserting after line 6 the
6 following:

7 "Sec. ____ . Section 85.61, subsection 3, Code
8 Supplement 2001, is amended to read as follows:

9 3. "Gross earnings" means recurring payments by
10 any employer to the employee for employment, before
11 any authorized or lawfully required deduction or
12 withholding of funds by the employer, excluding
13 irregular bonuses, retroactive pay, overtime, penalty
14 pay, reimbursement of expenses, expense allowances,
15 and the employer's contribution for welfare benefits."

16 3. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8343 FILED MARCH 19, 2002

Host

3-27-02

(P. 1055)

SENATE FILE 2190

H-8344

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. _____. Section 85.31, subsection 1, unnumbered
6 paragraph 1, Code 2001, is amended to read as follows:

7 When death results from the injury, the employer
8 shall pay the dependents who were wholly dependent on
9 the earnings of the employee for support at the time
10 of the injury, during their lifetime, compensation
11 upon the basis of ~~eighty~~ one hundred percent per week
12 of the employee's average weekly spendable earnings,
13 commencing from the date of death as follows:

14 Sec. _____. Section 85.34, subsection 2, unnumbered
15 paragraph 1, Code 2001, is amended to read as follows:

16 Compensation for permanent partial disability shall
17 begin at the termination of the healing period
18 provided in subsection 1. The compensation shall be
19 in addition to the benefits provided by sections 85.27
20 and 85.28. The compensation shall be based upon the
21 extent of the disability and upon the basis of ~~eighty~~
22 one hundred percent per week of the employee's average
23 spendable weekly earnings, but not more than a weekly
24 benefit amount, rounded to the nearest dollar, equal
25 to one hundred eighty-four percent of the statewide
26 average weekly wage paid employees as determined by
27 the department of workforce development under section
28 96.19, subsection 36, and in effect at the time of the
29 injury. The minimum weekly benefit amount shall be
30 equal to the weekly benefit amount of a person whose
31 gross weekly earnings are thirty-five percent of the
32 statewide average weekly wage. For all cases of
33 permanent partial disability compensation shall be
34 paid as follows:

35 Sec. _____. Section 85.34, subsection 3, unnumbered
36 paragraph 1, Code 2001, is amended to read as follows:

37 Compensation for an injury causing permanent total
38 disability shall be upon the basis of ~~eighty~~ one
39 hundred percent per week of the employee's average
40 spendable weekly earnings, but not more than a weekly
41 benefit amount, rounded to the nearest dollar, equal
42 to two hundred percent of the statewide average weekly
43 wage paid employees as determined by the department of
44 workforce development under section 96.19, subsection
45 36, and in effect at the time of the injury. The
46 minimum weekly benefit amount is equal to the weekly
47 benefit amount of a person whose gross weekly earnings
48 are thirty-five percent of the statewide average
49 weekly wage. The weekly compensation is payable
50 during the period of the employee's disability.

H-8344

H-8344

Page 2

1 Sec. ____ Section 85.37, Code 2001, is amended to
2 read as follows:
3 85.37 COMPENSATION SCHEDULE.
4 If an employee receives a personal injury causing
5 temporary total disability, or causing a permanent
6 partial disability for which compensation is payable
7 during a healing period, compensation for the
8 temporary total disability or for the healing period
9 shall be upon the basis provided in this section. The
10 weekly benefit amount payable to any employee for any
11 one week shall be upon the basis of eighty one hundred
12 percent of the employee's weekly spendable earnings,
13 but shall not exceed an amount, rounded to the nearest
14 dollar, equal to sixty-six and two-thirds percent of
15 the statewide average weekly wage paid employees as
16 determined by the department of workforce development
17 under section 96.19, subsection 36, and in effect at
18 the time of the injury. However, as of July 1, 1975;
19 July 1, 1977; July 1, 1979; and July 1, 1981, the
20 maximum weekly benefit amount rounded to the nearest
21 dollar shall be increased so that it equals one
22 hundred percent, one hundred thirty-three and one-
23 third percent, one hundred sixty-six and two-thirds
24 percent, and two hundred percent, respectively, of the
25 statewide average weekly wage as determined above.
26 Total weekly compensation for any employee shall not
27 exceed eighty one hundred percent per week of the
28 employee's weekly spendable earnings. The minimum
29 weekly benefit amount shall be equal to the weekly
30 benefit amount of a person whose gross weekly earnings
31 are thirty-five percent of the statewide average
32 weekly wage, or to the spendable weekly earnings of
33 the employee, whichever are less.
34 Such compensation shall be in addition to the
35 benefits provided by sections 85.27 and 85.28."
36 2. By renumbering as necessary.

By REEDER of Fayette

H-8344 FILED MARCH 19, 2002

w/d

3-27-02

(P1137)

SENATE FILE 2190

H-8345

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. ____ . Section 85.36, unnumbered paragraph 1,
6 Code Supplement 2001, is amended to read as follows:

7 The basis of compensation shall be the weekly
8 earnings of the injured employee at the time of the
9 injury. "Weekly earnings" means gross earnings as
10 defined in section 85.61. "Weekly earnings" also
11 means gross salary, wages, or earnings of an employee
12 to which such employee would have been entitled had
13 the employee worked the customary hours for the full
14 pay period in which the employee was injured; as
15 regularly required by the employee's employer for the
16 work or employment for which the employee was
17 employed, computed or determined as follows and then
18 rounded to the nearest dollar:"

19 2. Page 3, by inserting after line 6 the
20 following:

21 "Sec. ____ . Section 85.61, subsection 3, Code
22 Supplement 2001, is amended to read as follows:

23 3. "Gross earnings" means recurring payments by
24 employer to the employee for employment, before any
25 authorized or lawfully required deduction or
26 withholding of funds by the employer, excluding
27 irregular bonuses, retroactive pay, overtime, and
28 penalty pay, ~~reimbursement of expenses, expense~~
29 ~~allowances, and the employer's contribution for~~
30 welfare benefits and specifically including earnings
31 representing payments in kind, such as fringe
32 benefits."

33 3. By renumbering as necessary.

By T. TAYLOR of Linn

H-8345 FILED MARCH 19, 2002

List
3-27-02
(p. 1038)

SENATE FILE 2190**H-8346**

1 Amend Senate File 2190, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 3, by inserting after line 6, the
 4 following:
 5 "Sec. ____ . Section 85.55, Code 2001, is amended to
 6 read as follows:
 7 85.55 WAIVERS PROHIBITED ~~PHYSICAL DEFECTS.~~
 8 No employee or dependent to whom this chapter
 9 applies, shall have power to waive any of the
 10 provisions of this chapter in regard to the amount of
 11 compensation which may be payable to such employee or
 12 dependent hereunder. ~~However, any person who has some~~
 13 ~~physical defect which increases the risk of injury,~~
 14 ~~may, subject to the approval of the workers'~~
 15 ~~compensation commissioner, enter into a written~~
 16 ~~agreement with the employee's employer waiving~~
 17 ~~compensation for injuries which may occur directly or~~
 18 ~~indirectly because of such physical defect, provided,~~
 19 ~~however, that such waiver shall not affect the~~
 20 ~~employee's benefits to be paid from the second injury~~
 21 ~~fund under the provisions of section 85.64."~~
 22 2. By renumbering as necessary.

By MURPHY of Dubuque

H-8346 FILED MARCH 19, 2002*Act 3-27-02 (P. 1044)***SENATE FILE 2190****H-8347**

1 Amend Senate File 2190, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 3, by inserting after line 6 the
 4 following:
 5 "Sec. ____ . Section 85A.12, unnumbered paragraph 1,
 6 Code 2001, is amended to read as follows:
 7 An employer shall not be liable for any
 8 compensation for an occupational disease unless such
 9 disease shall be due to the nature of an employment in
 10 which the hazards of such disease actually exist, and
 11 which hazards are characteristic thereof and peculiar
 12 to the trade, occupation, process, or employment, and
 13 such disease actually arises out of the employment,
 14 ~~and unless disablement or death results within three~~
 15 ~~years in case of pneumoconiosis, or within one year in~~
 16 ~~case of any other occupational disease, after the last~~
 17 ~~injurious exposure to such disease in such employment,~~
 18 ~~or in case of death, unless death follows continuous~~
 19 ~~disability from such disease commencing within the~~
 20 ~~period above limited for which compensation has been~~
 21 ~~paid or awarded or timely claim made as provided by~~
 22 ~~this chapter and results within seven years after such~~
 23 ~~exposure."~~
 24 2. By renumbering as necessary.

By T. TAYLOR of Linn

H-8347 FILED MARCH 19, 2002*Act 3/27/02 (P. 1044)*

SENATE FILE 2190

H-8348

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 6, the
4 following:

5 "Sec. ____ . Section 85B.4, subsection 3, Code 2001,
6 is amended to read as follows:

7 3. "Occupational hearing loss" means that portion
8 of a permanent sensorineural loss of hearing in one or
9 both ears that exceeds an average hearing level of
10 twenty-five decibels for the frequencies five hundred,
11 one thousand, two thousand, ~~and~~ three thousand, and
12 four thousand Hertz, arising out of and in the course
13 of employment caused by excessive noise exposure.
14 "Occupational hearing loss" does not include loss of
15 hearing attributable to age or any other condition or
16 exposure not arising out of and in the course of
17 employment.

18 Sec. ____ . Section 85B.9, subsection 3, Code 2001,
19 is amended to read as follows:

20 3. In calculating the total amount of hearing
21 loss, the hearing levels at each of the ~~four~~ five
22 frequencies, five hundred, one thousand, two thousand,
23 ~~and~~ three thousand, and four thousand Hertz, shall be
24 added together and divided by ~~four~~ five to determine
25 the average decibel hearing level for each ear. If
26 the resulting average decibel hearing level in either
27 ear is twenty-five decibels or less, the percentage
28 hearing loss for that ear shall be zero. For each
29 resulting average decibel hearing level exceeding
30 twenty-five decibels, an allowance of one and one-half
31 percent shall be made up to the maximum of one hundred
32 percent which is reached at an average decibel hearing
33 level of ninety-two decibels. In determining the
34 total binaural percentage hearing loss, the percentage
35 hearing loss for the ear with better hearing shall be
36 multiplied by five and added to the percentage hearing
37 loss for the ear with worse hearing and the sum of the
38 two divided by six.

39 Sec. ____ . Section 85B.10, Code 2001, is amended to
40 read as follows:

41 85B.10 EMPLOYER'S NOTICE OF RESULTS OF TEST.

42 The employer shall communicate to the employee, in
43 writing, the results of an audiometric examination or
44 physical examination of an employee which reflects an
45 average hearing level in one or both ears in excess of
46 twenty-five decibels for the test frequencies of five
47 hundred, one thousand, two thousand, ~~and~~ three
48 thousand, and four thousand Hertz, as soon as
49 practicable after the examination. The communication
50 shall include the name and qualifications of the

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Page 2

1 person conducting the audiometric examination or
2 physical examination, the site of the examination, the
3 kind or type of test or examinations given, the
4 results of each and the average decibel hearing level,
5 for the ~~four~~ five frequencies, in each ear, and, if
6 known to the employer, whether the hearing loss is
7 sensorineural and, if the hearing loss resulted from
8 another cause, the cause."
9 2. By renumbering as necessary.
10

By DOTZLER of Black Hawk

H-8348 FILED MARCH 19, 2002*Act**3-27-02**(P.1046)*

SENATE FILE 2190

H-8349

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting before line 6, the
4 following:

5 "Sec. ____ Section 85.27, subsection 4, Code
6 Supplement 2001, is amended to read as follows:

7 4. For purposes of this section, the employer is
8 obliged to furnish reasonable services and supplies to
9 treat an injured employee, and ~~has the right to choose~~
10 ~~the care the employee has the right to choose the~~
11 employee's care at the employer's expense if the
12 employer is notified of the choice. The treatment
13 must be offered promptly and be reasonably suited to
14 treat the injury without undue inconvenience to the
15 employee. If the ~~employee~~ employer has reason to be
16 dissatisfied with the care offered, the ~~employee~~
17 employer should communicate the basis of such
18 dissatisfaction to the ~~employee~~ employer, in writing
19 if requested, following which the employer and the
20 employee may agree to alternate care reasonably suited
21 to treat the injury. If the employer and employee
22 cannot agree on such alternate care, the commissioner
23 may, upon application and reasonable proofs of the
24 necessity therefor, allow and order other care. ~~In an~~
25 ~~emergency, the employee may choose the employee's care~~
26 ~~at the employer's expense, provided the employer or~~
27 ~~the employer's agent cannot be reached immediately.~~
28 An application made under this subsection shall be
29 considered an original proceeding for purposes of
30 commencement and contested case proceedings under
31 section 85.26. The hearing shall be conducted
32 pursuant to chapter 17A. Before a hearing is
33 scheduled, the parties may choose a telephone hearing
34 or an in-person hearing. A request for an in-person
35 hearing shall be approved unless the in-person hearing
36 would be impractical because of the distance between
37 the parties to the hearing. The workers' compensation
38 commissioner shall issue a decision within ten working
39 days of receipt of an application for alternate care
40 made pursuant to a telephone hearing or within
41 fourteen working days of receipt of an application for
42 alternate care made pursuant to an in-person hearing.
43 ~~The employer shall notify an injured employee of the~~
44 ~~employee's ability to contest the employer's choice of~~
45 ~~care pursuant to this subsection.~~ This subsection
46 does not prohibit an employer from retaining a
47 physician or other health service provider for use by
48 employees."

49 2. By renumbering as necessary.

50

By JOCHUM of Dubuque

H-8349 FILED MARCH 19, 2002

Lat 3/27/02 (p. 053)

SENATE FILE 2190

H-8350

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 6, the
4 following:

5 "Sec. ____ . Section 85.70, Code 2001, is amended to
6 read as follows:

7 85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.

8 An employee who has sustained an injury resulting
9 in permanent partial or permanent total disability,
10 for which compensation is payable under this chapter,
11 and who ~~cannot~~ is unable to return to gainful
12 employment in the job the employee held at the time of
13 the injury because of such disability, shall upon
14 application to and approval by the workers'
15 compensation commissioner be entitled to a ~~twenty-~~
16 ~~dollar weekly~~ an additional worker training payment
17 from the employer. The worker training payment shall
18 be in addition to any other benefit payments to the
19 employee, during each full week in which the employee
20 is not receiving healing period benefits pursuant to
21 section 85.34, and is actively participating in a
22 vocational rehabilitation program recognized by the
23 vocational rehabilitation services division of the
24 department of education or participating in any other
25 training program, including apprenticeship training,
26 recognized by the department of education. The
27 additional worker training payment authorized by this
28 section shall be in an amount determined in the same
29 manner as healing period benefits are calculated
30 pursuant to section 85.37. The workers' compensation
31 commissioner's approval of such application for
32 payment may be given only after a careful evaluation
33 of available facts, and after consultation with the
34 employer or the employer's representative. Judicial
35 review of the decision of the workers' compensation
36 commissioner may be obtained in accordance with the
37 terms of the Iowa administrative procedure Act and in
38 section 86.26. Such additional benefit payment shall
39 be paid for a period not to exceed thirteen
40 consecutive weeks except that the workers'
41 compensation commissioner may extend the period of
42 payment not to exceed an additional ~~thirteen~~ ninety-
43 one weeks if the circumstances indicate that a
44 continuation of training will in fact ~~accomplish~~
45 assist the employee's rehabilitation."

46 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8350 FILED MARCH 19, 2002

lost 3/27/02
(P.1047)

SENATE FILE 2190

H-8351

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, by inserting after line 29, the
4 following:
5 "Sec. ____ . Section 85.33, subsection 4, Code 2001,
6 is amended to read as follows:
7 4. If an employee is entitled to temporary partial
8 benefits under subsection 3 of this section, the
9 employer for whom the employee was working at the time
10 of injury shall pay to the employee weekly
11 compensation benefits, as provided in section 85.32,
12 for and during the period of temporary partial
13 disability. The temporary partial benefit shall be
14 sixty-six and two-thirds percent of the difference
15 between the employee's weekly earnings at the time of
16 injury, computed in compliance with section 85.36, and
17 the employee's actual gross weekly income from
18 employment during the period of temporary partial
19 disability. ~~If at the time of injury an employee is
20 paid on the basis of the output of the employee, with
21 a minimum guarantee pursuant to a written employment
22 agreement, the minimum guarantee shall be used as the
23 employee's weekly earnings at the time of injury.~~
24 However, the weekly compensation benefits shall not
25 exceed the payments to which the employee would be
26 entitled under section 85.36 or section 85.37, or
27 under subsection 1 of this section."
28 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8351 FILED MARCH 19, 2002

Last
3-27-02
(p. 1038)

SENATE FILE 2190

H-8352

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. ____ . Section 85.36, unnumbered paragraph 1,
6 Code Supplement 2001, is amended to read as follows:

7 The basis of compensation shall be the weekly
8 earnings of the injured employee at the time of the
9 injury. "Weekly earnings" means gross earnings as
10 defined in section 85.61. "Weekly earnings " also
11 means gross salary, wages, or earnings of an employee
12 to which such employee would have been entitled had
13 the employee worked the customary hours for the full
14 pay period in which the employee was injured, as
15 regularly required by the employee's employer for the
16 work or employment for which the employee was
17 employed, computed or determined as follows and then
18 rounded to the nearest dollar:"

19 2. Page 3, by inserting after line 6 the
20 following:

21 "Sec. ____ . Section 85.61, subsection 3, Code
22 Supplement 2001, is amended to read as follows:

23 3. "Gross earnings" means recurring payments by
24 employer to the employee for employment, before any
25 authorized or lawfully required deduction or
26 withholding of funds by the employer, excluding
27 ~~irregular bonuses~~, retroactive pay, overtime, penalty
28 pay, reimbursement of expenses, expense allowances,
29 and the employer's contribution for welfare benefits,
30 and specifically including all bonuses of any kind."

31 3. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8352 FILED MARCH 19, 2002

Loat

3-27-02

(P. 1039)

SENATE FILE 2190

H-8353

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 5, by inserting after line 5 the
4 following:

5 "Sec. ____ Section 507E.3, subsection 2,
6 unnumbered paragraph 1, Code 2001, is amended to read
7 as follows:

8 A person commits a class "D" felony if the person,
9 with the intent to defraud ~~an insurer~~, does any of the
10 following:

11 Sec. ____ Section 507E.3, subsection 2, Code 2001,
12 is amended by adding the following new paragraphs:

13 NEW PARAGRAPH. d. Makes a false statement or
14 representation as to a material fact in the course of
15 reporting, investigating, or adjusting a claim for any
16 payment or any other benefit pursuant to an insurance
17 policy.

18 NEW PARAGRAPH. e. Makes a false statement or
19 representation as to a material fact for the purpose
20 of obtaining, maintaining, or renewing insurance that
21 is required by law, whether for the person or for
22 another person, or for the purpose of evading the
23 requirements of the law."

24 2. By renumbering as necessary.

By CHIODO of Polk

H-8353 FILED MARCH 19, 2002

W/D
3-27-02
(P. 1050)

SENATE FILE 2190

H-8354

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by striking lines 5 through 44 and
5 inserting the following:

6 ""Sec. ____ . Section 85.34, subsection 2, paragraph
7 u, unnumbered paragraph 1, Code 2001, is amended to
8 read as follows:

9 In all cases of permanent partial disability other
10 than those ~~hereinabove~~ described or referred to in
11 paragraphs "a" through "t" ~~hereof~~, the compensation
12 shall be paid during the number of weeks in relation
13 to ~~five hundred~~ the life expectancy of the injured
14 employee in weeks as the disability bears to the body
15 of the injured employee as a whole. For purposes of
16 this paragraph, "life expectancy of the injured
17 employee" shall be determined pursuant to the life
18 expectancy table adopted by the workers' compensation
19 division for use in commutation proceedings.

20 Sec. ____ . Section 85.34, Code 2001, is amended by
21 adding the following new subsection:

22 NEW SUBSECTION. 7. PERMANENT PARTIAL DISABILITY
23 -- REDUCTION FOR PREVIOUS BENEFIT PAYMENTS. If an
24 employee receives a personal injury for which
25 permanent partial disability benefits are payable, and
26 that employee has already received permanent partial
27 disability benefits as a result of a previous personal
28 injury, the extent of that employee's entitlement to
29 permanent partial disability benefits may be subject
30 to a reduction as follows:

31 a. If the employee was previously paid permanent
32 partial disability benefits for a functional
33 disability confined to a scheduled member pursuant to
34 subsection 2, paragraphs "a" through "t", and that
35 employee sustains a subsequent injury to the same
36 scheduled member, the extent of that employee's
37 entitlement to permanent partial disability benefits
38 may be reduced as a result of the previous payment if,
39 at the time of the employee's most recent injury, the
40 previous injury was still independently causing an
41 ascertainable percentage of functional disability.

42 b. If the employee was previously paid permanent
43 partial disability benefits for an industrial
44 disability pursuant to subsection 2, paragraph "u",
45 and that employee sustains a subsequent injury which
46 would entitle that employee to permanent partial
47 disability benefits pursuant to subsection 2,
48 paragraph "u", the extent of that employee's
49 entitlement to permanent partial disability benefits
50 may be reduced as a result of the previous payment if,

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Page 2

1 at the time of the employee's most recent injury, the
2 previous injury was still independently causing an
3 ascertainable percentage of industrial disability.
4 The reduction permitted by this paragraph shall not
5 exceed the percentage of industrial disability
6 previously paid which can be independently attributed
7 to the previous injury.

8 c. The employer shall have the burden of proving
9 any reduction permitted by this subsection."

By WINCKLER of Scott**H-8354** FILED MARCH 19, 2002

Lost
3-27-02 (p 1026)

SENATE FILE 2190**H-8355**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 44 the
5 following:

6 "If compensation is reduced pursuant to an
7 apportionment as provided in this subsection, any
8 reduction in liability to an employer shall be passed
9 on to the employer and not the workers' compensation
10 insurer for the employer."

By T. TAYLOR of Linn**H-8355** FILED MARCH 19, 2002

Lost 3-27-02

(p 1030)

SENATE FILE 2190**H-8356**

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. ____ Section 85.37, Code 2001, is amended by
6 adding the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. The workers'
8 compensation commissioner shall adopt rules providing
9 for an annual adjustment from the date of injury of
10 the weekly benefit amount in accordance with a
11 generally recognized cost-of-living standard."

12 2. By renumbering as necessary.

By DOTZLER of Black Hawk**H-8356** FILED MARCH 19, 2002

Lost
3-27-02
(p 1040)

SENATE FILE 2190

H-8358

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 6 the
4 following:

5 "Sec. ____ . Section 85.39, unnumbered paragraph 2,
6 Code 2001, is amended to read as follows:

7 ~~If an evaluation of permanent disability~~
8 examination has been made by a physician retained by
9 the employer and the employee believes ~~this evaluation~~
10 ~~to be too low~~ that any opinion rendered as the result
11 of the examination and affecting benefits entitlement
12 is incorrect, the employee shall, upon application to
13 the commissioner and upon delivery of a copy of the
14 application to the employer and its insurance carrier,
15 be reimbursed by the employer the reasonable fee for a
16 subsequent examination by a physician of the
17 employee's own choice, and reasonably necessary
18 transportation expenses incurred for the examination.
19 The physician chosen by the employee has the right to
20 confer with and obtain from the employer-retained
21 physician sufficient history of the injury to make a
22 proper examination. This paragraph applies regardless
23 of whether or not the employer denies or accepts
24 liability for benefits."

25 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8358 FILED MARCH 19, 2002

Last 3-27-02

(P. 1047)

SENATE FILE 2190

H-8359

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. ____ . Section 85.34, Code 2001, is amended by
6 adding the following new subsection:

7 NEW SUBSECTION. 7. REINSTATEMENT TO WORK. An
8 employee who has suffered an injury which is
9 compensable under this chapter or chapter 85A shall
10 not have the employee's employment terminated by the
11 employee's employer as a result of the injury. If an
12 employee suffers a permanent partial disability under
13 this chapter or chapter 85A, the employer shall return
14 the employee to work performing duties that shall be
15 consistent with any restrictions on the employee as a
16 result of the disability."

17 2. By renumbering as necessary.

By CONNORS of Polk

H-8359 FILED MARCH 19, 2002

Last 3/27/02 (P. 1040)

SENATE FILE 2190

H-8360

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. _____. Section 85.36, subsections 6 and 7,
6 Code Supplement 2001, are amended to read as follows:

7 6. In the case of an employee who is paid on a
8 daily or hourly basis, or by the output of the
9 employee, the weekly earnings shall be computed by
10 dividing by thirteen the earnings, ~~not including~~
11 ~~overtime or premium pay~~, of the employee earned in the
12 employ of the employer in the last completed period of
13 thirteen consecutive calendar weeks immediately
14 preceding the injury. If the employee was absent from
15 employment for reasons personal to the employee during
16 part of the thirteen calendar weeks preceding the
17 injury, the employee's weekly earnings shall be the
18 amount the employee would have earned had the employee
19 worked when work was available to other employees of
20 the employer in a similar occupation. A week which
21 does not fairly reflect the employee's customary
22 earnings shall be replaced by the closest previous
23 week with earnings that fairly represent the
24 employee's customary earnings.

25 7. In the case of an employee who has been in the
26 employ of the employer less than thirteen calendar
27 weeks immediately preceding the injury, the employee's
28 weekly earnings shall be computed under subsection 6,
29 taking the earnings, ~~not including overtime or premium~~
30 ~~pay~~, for such purpose to be the amount the employee
31 would have earned had the employee been so employed by
32 the employer the full thirteen calendar weeks
33 immediately preceding the injury and had worked, when
34 work was available to other employees in a similar
35 occupation. If the earnings of other employees cannot
36 be determined, the employee's weekly earnings shall be
37 the average computed for the number of weeks the
38 employee has been in the employ of the employer."

39 2. Page 3, by inserting after line 6 the
40 following:

41 "Sec. _____. Section 85.61, subsection 3, Code
42 Supplement 2001, is amended to read as follows:

43 3. "Gross earnings" means recurring payments by
44 employer to the employee for employment, before any
45 authorized or lawfully required deduction or
46 withholding of funds by the employer, excluding
47 irregular bonuses, retroactive pay, ~~overtime~~, penalty
48 pay, reimbursement of expenses, expense allowances,
49 and the employer's contribution for welfare benefits,
50 and specifically including overtime pay at the

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Page 2

1 overtime rate."

2 3. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8360 FILED MARCH 19, 2002*Loet*
3-27-02 (p. 1041)**SENATE FILE 2190****H-8361**1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:3 1. Page 2, by inserting after line 29 the
4 following:5 "Sec. ____ Section 85.34, subsection 2, Code 2001,
6 is amended by striking the subsection and inserting in
7 lieu thereof the following:8 2. PERMANENT PARTIAL DISABILITIES. Compensation
9 for permanent partial disability shall begin at the
10 termination of the healing period provided in
11 subsection 1. The compensation shall be in addition
12 to the benefits provided by sections 85.27 and 85.28.
13 The compensation shall be based upon the extent of the
14 disability and upon the basis of eighty percent per
15 week of the employee's average spendable weekly
16 earnings, but not more than a weekly benefit amount,
17 rounded to the nearest dollar, equal to one hundred
18 eighty-four percent of the statewide average weekly
19 wage paid employees as determined by the department of
20 workforce development under section 96.19, subsection
21 36, and in effect at the time of the injury. The
22 minimum weekly benefit amount shall be equal to the
23 weekly benefit amount of a person whose gross weekly
24 earnings are thirty-five percent of the statewide
25 average weekly wage. For all cases of permanent
26 partial disability compensation shall be paid based
27 upon the extent of permanent loss of earning capacity
28 proximately caused by a personal injury arising out of
29 and in the course of employment."

30 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8361 FILED MARCH 19, 2002*Loet*
3-27-02
(p. 1042)

SENATE FILE 2190

H-8362

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 6 the
4 following:

5 "Sec. ____ . Section 85.70, Code 2001, is amended to
6 read as follows:

7 85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.

8 An employee who has sustained an injury resulting
9 in permanent partial or permanent total disability,
10 for which compensation is payable under this chapter,
11 and ~~who cannot return to gainful employment because of~~
12 ~~such disability which prevents the employee from~~
13 returning to the same or similar employment, shall
14 upon application to and approval by the workers'
15 compensation commissioner be entitled to a ~~twenty-~~
16 ~~dollar~~ one-hundred-dollar weekly payment from the
17 employer in addition to any other benefit payments,
18 during each full week in which the employee is
19 actively participating in a vocational rehabilitation
20 program recognized by the vocational rehabilitation
21 services division of the department of education. The
22 workers' compensation commissioner's approval of such
23 application for payment may be given only after a
24 careful evaluation of available facts, and after
25 consultation with the employer or the employer's
26 representative. Judicial review of the decision of
27 the workers' compensation commissioner may be obtained
28 in accordance with the terms of the Iowa
29 administrative procedure Act and in section 86.26.
30 Such additional benefit payment shall be paid for a
31 period not to exceed ~~thirteen~~ twenty-six consecutive
32 weeks except that the workers' compensation
33 commissioner may extend the period of payment not to
34 exceed an additional ~~thirteen~~ twenty-six weeks if the
35 circumstances indicate that a continuation of training
36 will in fact accomplish rehabilitation."

37 2. By renumbering as necessary.

38

39

40 JOCHUM of Dubuque

H-8362 FILED MARCH 19, 2002

lost
3-27-02
(P. 1048)

SENATE FILE 2190

H-8366

- 1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by inserting after line 4 the
4 following:
5 "Sec. ____ Section 85.27, subsection 1, Code
6 Supplement 2001, is amended to read as follows:
7 1. The employer, for all injuries compensable
8 under this chapter or chapter 85A, shall furnish
9 reasonable surgical, medical, dental, osteopathic,
10 chiropractic, podiatric, physical rehabilitation,
11 vocational rehabilitation, nursing, ambulance and
12 hospital services and supplies therefor and shall
13 allow reasonably necessary transportation expenses
14 incurred for such services. The employer shall also
15 furnish reasonable and necessary crutches, artificial
16 members and appliances ~~but shall not be required to~~
17 ~~furnish more than one set of permanent prosthetic~~
18 ~~devices."~~
19 2. By renumbering as necessary.

By T. TAYLOR of Linn

H-8366 FILED MARCH 19, 2002

*lost**3-27-02**(p. 1060)*

SENATE FILE 2190**H-8372**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by striking lines 43 and 44 and
5 inserting the following: "settlement, disregarding
6 any dollars received in a contested case settlement
7 related to past or future medical benefits, interest,
8 temporary total disability benefits, healing period
9 benefits, penalty benefits, or any other dollars paid
10 for any consideration received by the injured worker
11 for anything other than permanent impairment
12 benefits."

By DOTZLER of Black Hawk

H-8372 FILED MARCH 20, 2002

Adopted
3-27-02 (p. 1036)

SENATE FILE 2190**H-8373**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, line 33, by inserting after the figure
5 "2," the following: "paragraphs "a" through "t",".
6 2. Page 1, line 39, by striking the word
7 "disability" and inserting the following:
8 "impairment".

By MURPHY of Dubuque

H-8373 FILED MARCH 20, 2002

Adopt 3-27-02

(p. 1029)

SENATE FILE 2190**H-8374**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by striking lines 13 and 14 and
5 inserting the following: "the preexisting".
6 2. Page 1, line 15, by striking the words "or
7 industrial disability".
8 3. Page 1, line 17, by striking the words "or
9 disability".
10 4. Page 1, by striking lines 20 through 22 and
11 inserting the following: "in the permanent impairment
12 to the same member. However, the".
13 5. Page 1, lines 24 and 25, by striking the words
14 "or preexisting industrial disability".
15 6. Page 1, lines 28 and 29, by striking the words
16 "or preexisting industrial disability".

By MURPHY of Dubuque

H-8374 FILED MARCH 20, 2002

Adopt 3/27/02 (p. 1026)

SENATE FILE 2190

H-8375

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, line 44, by inserting after the word
5 "care." the following: "However, the applicable
6 previous payment does not include compensation
7 received by the employee but subsequently repaid by
8 the employee pursuant to section 85.22."

By TREMMEL of Wapello

H-8375 FILED MARCH 20, 2002

*Lost 3-27-02**(P. 1030)* SENATE FILE 2190

H-8371

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 4 the
5 following:

6 "Sec. ____ Section 85.33, subsection 2, Code 2001,
7 is amended by striking the subsection and inserting in
8 lieu thereof the following:

9 2. "Temporary partial disability" or "temporarily,
10 partially disabled" means the condition of an employee
11 which, as the result of care or treatment of a
12 personal injury arising out of and in the course of
13 employment, the actual gross weekly earnings of the
14 employee is less than the weekly earnings computed in
15 accordance with section 85.36."

16 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8371 FILED MARCH 20, 2002

*Lost**3-27-02**(P. 1034)*

SENATE FILE 2190

H-8376

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 4 the
5 following:

6 "Sec. ____ . Section 85.34, subsection 5, Code
7 2001, is amended to read as follows:

8 5. Recovery of employee overpayment. If an
9 employee is paid any weekly benefits in excess of that
10 required by this chapter and chapters 85A, 85B, and
11 86, the excess paid by the employer shall be credited
12 against the liability of the employer for any future
13 weekly benefits due pursuant to subsection 2, for a
14 subsequent injury to the same employee. An
15 overpayment can be established only when the
16 overpayment is recognized in a settlement agreement
17 approved under section 86.13, pursuant to final agency
18 action in a contested case which was commenced within
19 three years from the date that weekly benefits were
20 last paid for the claim for which the benefits were
21 overpaid, or pursuant to final agency action in a
22 contested case for a prior injury to the same
23 employee. The credit shall remain available for eight
24 years after the date the overpayment was established.
25 If an overpayment is established pursuant to this
26 subsection, the employee and employer may enter into a
27 written settlement agreement providing for the
28 repayment by the employee of the overpayment. The
29 agreement is subject to the approval of the workers'
30 compensation commissioner. The employer shall not
31 take any adverse action against the employee for
32 failing to agree to such a written settlement
33 agreement. However, an overpayment shall not be
34 created if an employee has been paid compensation for
35 either a functional loss or industrial disability from
36 an injury resulting in permanent partial disability
37 and who subsequently suffers an injury in which the
38 finding of functional loss or industrial disability is
39 less than the amount or percentage of the earlier
40 compensation paid."

By DOTZLER of Black Hawk

H-8376 FILED MARCH 20, 2002

Adapted
3-27-02
(P.1034)

SENATE FILE 2190

H-8380

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, line 29, by inserting after the word
5 "disability" the following: ", or if the preexisting
6 functional loss or preexisting industrial disability
7 resulted from any physical or mental injury sustained
8 by the employee while in the service of the armed
9 forces of this country".

By WARNSTADT of Woodbury

H-8380 FILED MARCH 20, 2002

Adopted
3-27-02 (P. 1428)

SENATE FILE 2190

H-8381

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 6 the
4 following:

5 "Sec. ____ . Section 86.13, unnumbered paragraph 4,
6 Code 2001, is amended by striking the unnumbered
7 paragraph and inserting in lieu thereof the following:

8 Unless the employer proves as an affirmative
9 defense that the employer had a reasonable excuse for
10 not paying or for paying amounts after their due dates
11 fixed by law or by a health care provider, including
12 all benefits provided by sections 85.27 through 85.34
13 or section 86.13, whether constituting compensation,
14 interest, penalties, or other benefits, the denial or
15 delay of which payment is proven by the employee, the
16 workers' compensation commissioner shall order the
17 employer to pay the employee a penalty equal to treble
18 the amount or the value, as the case may be, of the
19 payment which was denied or delayed past the due
20 date."

21 2. By renumbering as necessary.

By HATCH of Polk

H-8381 FILED MARCH 20, 2002

w/d
3.27.02

SENATE FILE 2190**H-8382**

1 Amend Senate File 2190, as amended, passed, and
 2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 6 the
 4 following:

5 "Sec. _____. Section 86.13, unnumbered paragraph 4,
 6 Code 2001, is amended by striking the unnumbered
 7 paragraph and inserting in lieu thereof the following:

8 Unless the employer proves as an affirmative
 9 defense that the employer had a reasonable excuse for
 10 not paying or for paying weekly compensation after its
 11 due date, the denial or delay of which is proven by
 12 the employee, the workers' compensation commissioner
 13 shall order the employer to pay the employee a penalty
 14 equal to treble the amount of the weekly compensation,
 15 the payment of which was denied or delayed past the
 16 due date."

17 2. By renumbering as necessary.

By HATCH of Polk

H-8382 FILED MARCH 20, 2002

w/d
3.27-02

SENATE FILE 2190**H-8383**

1 Amend Senate File 2190, as amended, passed, and
 2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 4 the
 4 following:

5 "Sec. _____. Section 85.26, subsection 2, Code 2001,
 6 is amended by striking the subsection and inserting in
 7 lieu thereof the following:

8 2. If an award for payment of benefits under
 9 chapter 85, 85A, or 85B has been filed by the workers'
 10 compensation commissioner, and not commuted, or if an
 11 agreement for settlement pursuant to section 86.13 has
 12 been filed with and approved by the commissioner and
 13 not commuted, or if within six months of the
 14 commencement of any kind of disability benefits a
 15 denial of liability has not been filed with the
 16 commissioner and notice of the denial delineating the
 17 grounds of denial has not been mailed to the employee
 18 in the form and manner required by the commissioner,
 19 the amount of benefits due by an employer to an
 20 employee may be reviewed at any time upon commencement
 21 of reopening proceedings by the employer."

22 2. By renumbering as necessary.

By T. TAYLOR of Linn

H-8383 FILED MARCH 20, 2002

Loet
3.27.02

(p. 1051)

SENATE FILE 2190

H-8384

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting before line 6 the
4 following:

5 "Sec. ____ . Section 85.27, subsection 4, Code
6 Supplement 2001, is amended to read as follows:

7 4. For purposes of this section, the employer is
8 obliged to furnish reasonable services and supplies to
9 treat an injured employee, ~~and has the right to choose~~
10 ~~the care but the choice of care shall be made jointly~~
11 ~~by the employer and the employee.~~ The treatment must
12 be offered promptly and be reasonably suited to treat
13 the injury without undue inconvenience to the
14 employee. ~~If the employee has reason to be~~
15 ~~dissatisfied with the care offered, the employee~~
16 ~~should communicate the basis of such dissatisfaction~~
17 ~~to the employer, in writing if requested, following~~
18 ~~which the employer and the employee may agree to~~
19 ~~alternate care reasonably suited to treat the injury.~~
20 If the employer and employee cannot agree on such
21 ~~alternate~~ care, the commissioner may, upon application
22 and reasonable proofs of the necessity therefor, allow
23 and order ~~other~~ alternate care. In an emergency, or
24 if, at any time prior to an alternate care decision
25 being issued by the commissioner, the employee
26 reasonably needs care, the employee may choose the
27 employee's care at the employer's expense, provided
28 the employer or the employer's agent cannot be reached
29 immediately. An application made under this
30 subsection shall be considered an original proceeding
31 for purposes of commencement and contested case
32 proceedings under section 85.26. The hearing shall be
33 conducted pursuant to chapter 17A. Before a hearing
34 is scheduled, the parties may choose a telephone
35 hearing or an in-person hearing. A request for an in-
36 person hearing shall be approved unless the in-person
37 hearing would be impractical because of the distance
38 between the parties to the hearing. The workers'
39 compensation commissioner shall issue a decision
40 within ten working days of receipt of an application
41 for alternate care made pursuant to a telephone
42 hearing or within fourteen working days of receipt of
43 an application for alternate care made pursuant to an
44 in-person hearing. ~~The employer shall notify an~~
45 ~~injured employee of the employee's ability to contest~~
46 ~~the employer's choice of care pursuant to this~~
47 ~~subsection."~~

48 2. By renumbering as necessary.

By JOCHUM of Dubuque

H-8384 FILED MARCH 20, 2002

w/d

3-27-02 (p.1053)

SENATE FILE 2190**H-8385**

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 29 the
4 following:

5 "Sec. _____. Section 85.33, subsection 2, Code 2001,
6 is amended by striking the subsection and inserting in
7 lieu thereof the following:

8 2. "Temporary partial disability" or "temporarily,
9 partially disabled" means the condition of an employee
10 which, as the result of care or treatment of a
11 personal injury arising out of and in the course of
12 employment, the actual gross weekly earnings of the
13 employee is less than the weekly earnings computed in
14 accordance with section 85.36."

15 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8385 FILED MARCH 20, 2002

W/D
3-27-02 (p. 1042)

SENATE FILE 2190**H-8386**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 44 the
5 following:

6 "_____. Page 3, by inserting after line 6 the
7 following:

8 "Sec. _____. Section 86.13, unnumbered paragraph 4,
9 Code 2001, is amended by striking the unnumbered
10 paragraph and inserting in lieu thereof the following:

11 Unless the employer proves as an affirmative
12 defense that the employer had a reasonable excuse for
13 not paying or for paying weekly compensation after its
14 due date, the denial or delay of which is proven by
15 the employee, the workers' compensation commissioner
16 shall order the employer to pay the employee a penalty
17 equal to treble the amount of the weekly compensation,
18 the payment of which was denied or delayed past the
19 due date.""

20 2. By renumbering as necessary.

By HATCH of Polk

H-8386 FILED MARCH 20, 2002

W/D
3-27-02
(p. 1030)

SENATE FILE 2190**H-8387**

1 Amend the amendment, H-8299, to Senate File 2190,
 2 as amended, passed, and reprinted by the Senate, as
 3 follows:

4 1. Page 1, by inserting after line 44 the
 5 following:

6 "____. Page 3, by inserting after line 6 the
 7 following:

8 "Sec. ____ Section 86.13, unnumbered paragraph 4,
 9 Code 2001, is amended by striking the unnumbered
 10 paragraph and inserting in lieu thereof the following:

11 Unless the employer proves as an affirmative
 12 defense that the employer had a reasonable excuse for
 13 not paying or for paying amounts after their due dates
 14 fixed by law or by a health care provider, including
 15 all benefits provided by sections 85.27 through 85.34
 16 or section 86.13, whether constituting compensation,
 17 interest, penalties, or other benefits, the denial or
 18 delay of which payment is proven by the employee, the
 19 workers' compensation commissioner shall order the
 20 employer to pay the employee a penalty equal to treble
 21 the amount or the value, as the case may be, of the
 22 payment which was denied or delayed past the due
 23 date."

24 2. By renumbering as necessary.

By HATCH of Polk

H-8387 FILED MARCH 20, 2002

W/D
3-27-02 (p. 1030)

SENATE FILE 2190**H-8388**

1 Amend the amendment, H-8299, to Senate File 2190,
 2 as amended, passed, and reprinted by the Senate, as
 3 follows:

4 1. Page 1, line 44, by inserting after the word
 5 "care." the following: "However, the apportionment
 6 authorized by this paragraph shall not apply to those
 7 workers who are generally engaged in "high-injury-
 8 risk" industries in which multiple injuries over an
 9 individual's work life would be anticipated. The
 10 workers' compensation commissioner and the labor
 11 commissioner shall jointly identify on an annual basis
 12 which industries are high-injury-risk industries."

By BELL of Jasper

H-8388 FILED MARCH 20, 2002

Lost
3-27-02

SENATE FILE 2190**H-8389**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, line 29, by inserting after the word
5 "disability" the following: ", or if the preexisting
6 functional loss or preexisting industrial disability
7 resulted from a congenital defect or condition
8 regardless of when the defect or condition manifested
9 itself or became apparent".

By SMITH of Marshall
FOEGE of Linn

H-8389 FILED MARCH 20, 2002*Lost 3/27/02**(p.1029)***SENATE FILE 2190****H-8390**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, line 29, by inserting after the word
5 "disability" the following: ", or if the preexisting
6 functional loss or preexisting industrial disability
7 resulted from a congenital defect or condition which
8 manifested itself and was apparent at birth".

By JOCHUM of Dubuque

H-8390 FILED MARCH 20, 2002*Adopted**3-27-02**(p.1029)*

SENATE FILE 2190

H-8391

1 Amend the amendment, H-8299, to Senate File 2190,
 2 as amended, passed, and reprinted by the Senate, as
 3 follows:
 4 1. Page 1, by inserting after line 2 the
 5 following:
 6 "____. Page 1, by inserting after line 4 the
 7 following:
 8 "Sec. ____ Section 85.26, subsection 2, Code 2001,
 9 is amended by striking the subsection and inserting in
 10 lieu thereof the following:
 11 2. If an award for payment of benefits under
 12 chapter 85, 85A, or 85B has been filed by the workers'
 13 compensation commissioner, and not commuted, or if an
 14 agreement for settlement pursuant to section 86.13 has
 15 been filed with and approved by the commissioner and
 16 not commuted, or if within six months of the
 17 commencement of any kind of disability benefits a
 18 denial of liability has not been filed with the
 19 commissioner and notice of the denial delineating the
 20 grounds of denial has not been mailed to the employee
 21 in the form and manner required by the commissioner,
 22 the amount of benefits due by an employer to an
 23 employee may be reviewed at any time upon commencement
 24 of reopening proceedings by the employer.""
 25 2. By renumbering as necessary.

By T. TAYLOR of Linn

H-8391 FILED MARCH 20, 2002

Lost
3-27-02
(p.1034)

SENATE FILE 2190

H-8392

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by inserting after line 2 the
5 following:
6 "____. Page 2, by inserting before line 6 the
7 following:
8 "Sec. ____ Section 85.27, subsection 4, Code
9 Supplement 2001, is amended to read as follows:
10 4. For purposes of this section, the employer is
11 obliged to furnish reasonable services and supplies to
12 treat an injured employee, and ~~has the right to choose~~
13 ~~the care~~ but the choice of care shall be made jointly
14 by the employer and the employee. The treatment must
15 be offered promptly and be reasonably suited to treat
16 the injury without undue inconvenience to the
17 employee. ~~If the employee has reason to be~~
18 ~~dissatisfied with the care offered, the employee~~
19 ~~should communicate the basis of such dissatisfaction~~
20 ~~to the employer, in writing if requested, following~~
21 ~~which the employer and the employee may agree to~~
22 ~~alternate care reasonably suited to treat the injury.~~
23 If the employer and employee cannot agree on such
24 alternate care, the commissioner may, upon application
25 and reasonable proofs of the necessity therefor, allow
26 and order ~~other~~ alternate care. In an emergency, or
27 if, at any time prior to an alternate care decision
28 being issued by the commissioner, the employee
29 reasonably needs care, the employee may choose the
30 employee's care at the employer's expense, provided
31 the employer or the employer's agent cannot be reached
32 immediately. An application made under this
33 subsection shall be considered an original proceeding
34 for purposes of commencement and contested case
35 proceedings under section 85.26. The hearing shall be
36 conducted pursuant to chapter 17A. Before a hearing
37 is scheduled, the parties may choose a telephone
38 hearing or an in-person hearing. A request for an in-
39 person hearing shall be approved unless the in-person
40 hearing would be impractical because of the distance
41 between the parties to the hearing. The workers'
42 compensation commissioner shall issue a decision
43 within ten working days of receipt of an application
44 for alternate care made pursuant to a telephone
45 hearing or within fourteen working days of receipt of
46 an application for alternate care made pursuant to an
47 in-person hearing. ~~The employer shall notify an~~
48 ~~injured employee of the employee's ability to contest~~
49 ~~the employer's choice of care pursuant to this~~
50 ~~subsection."~~

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Page 2

1 2. By renumbering as necessary.

By JOCHUM of Dubuque

H-8392 FILED MARCH 20, 2002*W/O 3-27-02 (P 1034)***SENATE FILE 2190****H-8395**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 44 the
5 following:

6 "____. Page 5, by inserting after line 5 the
7 following:

8 "Sec. ____ Section 91D.1, subsection 1, paragraphs
9 a and d, Code 2001, are amended to read as follows:

10 a. The hourly wage stated in the federal minimum
11 wage law, pursuant to 29 U.S.C. § 206, shall be
12 increased to ~~-\$3.85~~ \$5.65 on January 1, ~~of 1990,~~ 2003,
13 ~~-\$4.25 on January 1 of 1991,~~ and ~~-\$4.65~~ to \$6.15 on
14 January 1, ~~of 1992~~ 2004.

15 d. An employer is not required to pay an employee
16 the applicable minimum wage provided in paragraph "a"
17 until the employee has completed ninety calendar days
18 of employment with the employer. An employee who has
19 completed ninety calendar days of employment with the
20 employer prior to ~~January 1 of 1990,~~ 1991 July 1,
21 2002, or ~~1992~~ July 1, 2003, shall earn the applicable
22 hourly minimum wage. An employer shall pay an
23 employee who has not completed ninety calendar days of
24 employment with the employer an hourly wage of at
25 least ~~-\$3.35~~ \$5.15 as of ~~January 1 of 1990~~ July 1,
26 2002, ~~-\$3.85 as of January 1 of 1991,~~ and ~~-\$4.25~~ \$5.65
27 as of ~~January 1 of 1992~~ July 1, 2003."

28 ____ Title page, line 1, by inserting after the
29 word "concerning" the following: "employment issues,
30 including the state minimum wage and"."

31 2. By renumbering as necessary.

By MURPHY of Dubuque

H-8395 FILED MARCH 20, 2002*Mr. Hermone - Motion to Suspend Rules Act 3-27-02 (P 1032)***SENATE FILE 2190****H-8444**

1 Amend the amendment, H-8299, to Senate File 2190,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 44, the
5 following:

6 "c. This subsection shall be known and may be
7 cited as the "Workers' Compensation Benefit Reduction
8 Act of 2002.""

By JOCHUM of Dubuque

H-8444 FILED MARCH 27, 2002*W/O 3-27-01 (P 1033)*

HOUSE AMENDMENT TO
SENATE FILE 2190

S-5272

1 Amend Senate File 2190, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 1, line 5, through page 2,
4 line 5.

5 2. Page 2, by inserting after line 29 the
6 following:

7 "Sec. _____. Section 85.34, subsection 5, Code 2001,
8 is amended to read as follows:

9 5. Recovery of employee overpayment. If an
10 employee is paid any weekly benefits in excess of that
11 required by this chapter and chapters 85A, 85B, and
12 86, the excess paid by the employer shall be credited
13 against the liability of the employer for any future
14 weekly benefits due pursuant to subsection 2, for a
15 subsequent injury to the same employee. An
16 overpayment can be established only when the
17 overpayment is recognized in a settlement agreement
18 approved under section 86.13, pursuant to final agency
19 action in a contested case which was commenced within
20 three years from the date that weekly benefits were
21 last paid for the claim for which the benefits were
22 overpaid, or pursuant to final agency action in a
23 contested case for a prior injury to the same
24 employee. The credit shall remain available for eight
25 years after the date the overpayment was established.
26 If an overpayment is established pursuant to this
27 subsection, the employee and employer may enter into a
28 written settlement agreement providing for the
29 repayment by the employee of the overpayment. The
30 agreement is subject to the approval of the workers'
31 compensation commissioner. The employer shall not
32 take any adverse action against the employee for
33 failing to agree to such a written settlement
34 agreement. However, an overpayment shall not be
35 created if an employee has been paid compensation for
36 either a functional loss or industrial disability from
37 an injury resulting in permanent partial disability
38 and who subsequently suffers an injury in which the
39 finding of functional loss or industrial disability is
40 less than the amount or percentage of the earlier
41 compensation paid.

42 Sec. _____. Section 85.34, Code 2001, is amended by
43 adding the following new subsection:

44 NEW SUBSECTION. 7. APPORTIONMENT. Compensation
45 for a permanent partial disability which would
46 otherwise be payable pursuant to this section shall be
47 reduced as provided in this subsection as follows:

48 a. If an employee has a preexisting functional
49 loss under subsection 2, paragraphs "a" through "t",
50 or a preexisting industrial disability under

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Page 2

1 subsection 2, paragraph "u", the preexisting
2 functional loss or industrial disability shall be
3 apportioned and the employer shall not be liable for
4 that preexisting loss or disability with respect to
5 claims for a permanent partial disability resulting
6 from subsequent injuries which result in an increase
7 in the permanent impairment to the same member or an
8 increase in industrial disability with respect to any
9 condition affecting employability. However, the
10 apportionment authorized by this paragraph shall not
11 apply if the preexisting functional loss or
12 preexisting industrial disability was the product of a
13 work injury with the same employer and the employee
14 did not recover benefits pursuant to this chapter for
15 that preexisting functional loss or preexisting
16 industrial disability, or if the preexisting
17 functional loss or preexisting industrial disability
18 resulted from any physical or mental injury sustained
19 by the employee while in the service of the armed
20 forces of this country, or if the preexisting
21 functional loss or preexisting industrial disability
22 resulted from a congenital defect or condition which
23 manifested itself and was apparent at birth.

24 b. If an employee has received a benefit under
25 this chapter, chapter 85A, or chapter 85B, for a
26 previous injury to a portion of the body as described
27 in subsection 2, the employer shall not be liable for
28 the amount representing the applicable previous
29 payment with respect to claims for a permanent partial
30 disability resulting from subsequent injuries to the
31 same portion of the body. For purposes of this
32 paragraph, the applicable previous payment is the
33 percentage of disability that resulted from the
34 previous injury for which compensation was received
35 under this chapter, chapter 85A, or chapter 85B, or
36 the dollar amount received in a contested case
37 settlement, disregarding any dollars received in a
38 contested case settlement related to past or future
39 medical benefits, interest, temporary total disability
40 benefits, healing period benefits, penalty benefits,
41 or any other dollars paid for any consideration
42 received by the injured worker for anything other than
43 permanent impairment benefits."

44 3. By striking page 2, line 30, through page 3,
45 line 6.

46 4. Page 4, line 20, by inserting after the word
47 "agency" the following: ", or an advisory, rating, or
48 research organization,".

49 5. Page 4, line 21, by inserting after the word
50 "data" the following: ", evaluating the state's

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Page 3

- 1 workers' compensation system, or conducting
- 2 scientific, medical, or public policy research,".
- 3 6. By renumbering, relettering, or redesignating
- 4 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5272 FILED MARCH 28, 2002

Senate Concurred 4-8-02
(p. 1030) SENATE FILE 2190

S-5292

- 1 Amend the House amendment, S-5272, to Senate File
- 2 2190, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 2, by inserting after line 43 the
- 5 following:
- 6 "If compensation is reduced pursuant to an
- 7 apportionment as provided in this subsection, any
- 8 reduction in liability to an employer shall be passed
- 9 on to the employer and not the workers' compensation
- 10 insurer for the employer."

By DICK L. DEARDEN

S-5292 FILED APRIL 2, 2002

LOST (p. 887)

SENATE FILE 2190

S-5293

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 6 the
5 following:

6 "Sec. _____. Section 85.34, subsection 2, paragraph
7 u, unnumbered paragraph 1, Code 2001, is amended to
8 read as follows:

9 In all cases of permanent partial disability other
10 than those hereinabove described or referred to in
11 paragraphs "a" through "t" hereof, the compensation
12 shall be paid during the number of weeks in relation
13 to ~~five hundred~~ the life expectancy of the injured
14 employee in weeks as the disability bears to the body
15 of the injured employee as a whole. For purposes of
16 this paragraph, "life expectancy of the injured
17 employee" shall be determined pursuant to the life
18 expectancy table adopted by the workers' compensation
19 division for use in commutation proceedings."

20 2. By striking page 1, line 42, through page 2,
21 line 43, and inserting the following:

22 "Sec. _____. Section 85.34, Code 2001, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 7. PERMANENT PARTIAL DISABILITY
25 -- REDUCTION FOR PREVIOUS BENEFIT PAYMENTS. If an
26 employee receives a personal injury for which
27 permanent partial disability benefits are payable, and
28 that employee has already received permanent partial
29 disability benefits as a result of a previous personal
30 injury, the extent of that employee's entitlement to
31 permanent partial disability benefits may be subject
32 to a reduction as follows:

33 a. If the employee was previously paid permanent
34 partial disability benefits for a functional
35 disability confined to a scheduled member pursuant to
36 subsection 2, paragraphs "a" through "t", and that
37 employee sustains a subsequent injury to the same
38 scheduled member, the extent of that employee's
39 entitlement to permanent partial disability benefits
40 may be reduced as a result of the previous payment if,
41 at the time of the employee's most recent injury, the
42 previous injury was still independently causing an
43 ascertainable percentage of functional disability.

44 b. If the employee was previously paid permanent
45 partial disability benefits for an industrial
46 disability pursuant to subsection 2, paragraph "u",
47 and that employee sustains a subsequent injury which
48 would entitle that employee to permanent partial
49 disability benefits pursuant to subsection 2,
50 paragraph "u", the extent of that employee's

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Page 2

1 entitlement to permanent partial disability benefits
2 may be reduced as a result of the previous payment if,
3 at the time of the employee's most recent injury, the
4 previous injury was still independently causing an
5 ascertainable percentage of industrial disability.
6 The reduction permitted by this paragraph shall not
7 exceed the percentage of industrial disability
8 previously paid which can be independently attributed
9 to the previous injury.

10 c. The employer shall have the burden of proving
11 any reduction permitted by this subsection."

12 3. By renumbering as necessary.

By THOMAS FIEGEN

JACK HOLVECK

ROBERT E. DVORSKY

BETTY A. SOUKUP

MIKE CONNOLLY

JOE BOLKCOM

AMANDA RAGAN

MARK SHEARER

WALLY E. HORN

JOHN P. KIBBIE

PATRICIA HARPER

BILL FINK

JOHNIE HAMMOND

DENNIS H. BLACK

TOM FLYNN

DICK L. DEARDEN

EUGENE S. FRAISE

MICHAEL E. GRONSTAL

MATT MCCOY

S-5293 FILED APRIL 2, 2002

LOST

(p. 887)

SENATE FILE 2190

S-5341

- 1 Amend the House amendment, S-5272, to Senate File
- 2 2190, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. By striking page 1, line 42, through page 2,
- 5 line 43.
- 6 2. By renumbering as necessary.

By DICK L. DEARDEN

S-5341 FILED APRIL 3, 2002

*Lost 4-8-02
(p. 1020)*

SENATE FILE 2190

S-5342

- 1 Amend the House amendment, S-5272, to Senate File
- 2 2190, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 1, by striking lines 3 and 4.
- 5 2. By renumbering as necessary.

By JACK HOLVECK

S-5342 FILED APRIL 3, 2002

*Lost
4-8-02 (p. 1014)*

SENATE FILE 2190

S-5343

- 1 Amend the House amendment, S-5272, to Senate File
- 2 2190, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 2, by striking lines 22 and 23, and
- 5 inserting the following: "resulted from a congenital
- 6 defect or condition regardless of when the defect or
- 7 condition manifested itself or became apparent".

By JOHNIE HAMMOND

S-5343 FILED APRIL 3, 2002

*Lost
4-8-02
(p. 1021)*

SENATE FILE 2190**S-5344**

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 6 the
5 following:

6 ""Sec. ____ . Section 85.33, subsection 2, Code
7 2001, is amended by striking the subsection and
8 inserting in lieu thereof the following:

9 2. "Temporary partial disability" or "temporarily,
10 partially disabled" means the condition of an employee
11 which, as the result of care or treatment of a
12 personal injury arising out of and in the course of
13 employment, the actual gross weekly earnings of the
14 employee is less than the weekly earnings computed in
15 accordance with section 85.36."

16 2. By renumbering as necessary.

By THOMAS FIEGEN

S-5344 FILED APRIL 3, 2002

Lost
4-8-02 (P.1016)

SENATE FILE 2190

S-5345

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, line 43, by inserting after the word
5 "benefits." the following: "However, the applicable
6 previous payment does not include compensation
7 received by the employee but subsequently repaid by
8 the employee pursuant to section 85.22."

By THOMAS FIEGEN

S-5345 FILED APRIL 3, 2002

Lost
4-8-02
(P.1023)

SENATE FILE 2190

S-5346

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. By striking page 1, line 50, through page 2,
5 line 1 and inserting the following: "the
6 preexisting".

7 2. Page 2, line 2, by striking the words "or
8 industrial disability".

9 3. Page 2, line 4, by striking the words "or
10 disability".

11 4. Page 2, by striking lines 7 through 9 and
12 inserting the following: "in the permanent impairment
13 to the same member. However, the".

14 5. Page 2, lines 11 and 12, by striking the words
15 "or preexisting industrial disability".

16 6. Page 2, lines 15 and 16, by striking the words
17 "or preexisting industrial disability".

18 7. Page 2, line 17, by striking the words "or
19 preexisting industrial disability".

20 8. Page 2, line 21, by striking the words "or
21 preexisting industrial disability".

By JACK HOLVECK

S-5346 FILED APRIL 3, 2002

Lost
4-8-02 (p. 1021)

SENATE FILE 2190

S-5347

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, line 27, by inserting after the figure
5 "2," the following: "paragraphs "a" through "t",".

6 2. Page 2, line 33, by striking the word
7 "disability" and inserting the following:
8 "impairment".

By JACK HOLVECK

S-5347 FILED APRIL 3, 2002

Lost
4-8-02
(p. 1022)

SENATE FILE 2190

S-5348

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 45 the
5 following:
6 "____. Page 3, by inserting before line 7 the
7 following:
8 "Sec. ____ Section 85.70, Code 2001, is amended to
9 read as follows:
10 85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.
11 An employee who has sustained an injury resulting
12 in permanent partial or permanent total disability,
13 for which compensation is payable under this chapter,
14 and who ~~cannot return to gainful employment because of~~
15 ~~such disability~~ which prevents the employee from
16 returning to the same or similar employment, shall
17 upon application to and approval by the workers'
18 compensation commissioner be entitled to a ~~twenty-~~
19 ~~dollar~~ one-hundred-dollar weekly payment from the
20 employer in addition to any other benefit payments,
21 during each full week in which the employee is
22 actively participating in a vocational rehabilitation
23 program recognized by the vocational rehabilitation
24 services division of the department of education. The
25 workers' compensation commissioner's approval of such
26 application for payment may be given only after a
27 careful evaluation of available facts, and after
28 consultation with the employer or the employer's
29 representative. Judicial review of the decision of
30 the workers' compensation commissioner may be obtained
31 in accordance with the terms of the Iowa
32 administrative procedure Act and in section 86.26.
33 Such additional benefit payment shall be paid for a
34 period not to exceed ~~thirteen~~ twenty-six consecutive
35 weeks except that the workers' compensation
36 commissioner may extend the period of payment not to
37 exceed an additional ~~thirteen~~ twenty-six weeks if the
38 circumstances indicate that a continuation of training
39 will in fact accomplish rehabilitation.""
40 2. By renumbering as necessary.

By BILL FINK

S-5348 FILED APRIL 3, 2002

Loot
4-8-02
(P. 1027)

SENATE FILE 2190

S-5349

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 3, by inserting after line 2 the
5 following:

6 "____. Page 5, by inserting after line 5 the
7 following:

8 "Sec. ____ . Section 91D.1, subsection 1, paragraphs
9 a and d, Code 2001, are amended to read as follows:

10 a. The hourly wage stated in the federal minimum
11 wage law, pursuant to 29 U.S.C. § 206, shall be
12 increased to ~~-\$3.85~~ \$5.65 on January 1, ~~of 1990,~~ 2003,
13 ~~-\$4.25 on January 1 of 1991,~~ and ~~-\$4.65~~ to \$6.15 on
14 January 1, ~~of 1992~~ 2004.

15 d. An employer is not required to pay an employee
16 the applicable minimum wage provided in paragraph "a"
17 until the employee has completed ninety calendar days
18 of employment with the employer. An employee who has
19 completed ninety calendar days of employment with the
20 employer prior to ~~January 1 of 1990,~~ 1991 July 1,
21 2002, or ~~1992~~ July 1, 2003, shall earn the applicable
22 hourly minimum wage. An employer shall pay an
23 employee who has not completed ninety calendar days of
24 employment with the employer an hourly wage of at
25 least ~~-\$3.35~~ \$5.15 as of ~~January 1 of 1990~~ July 1,
26 2002, ~~-\$3.85 as of January 1 of 1991,~~ and ~~-\$4.25~~ \$5.65
27 as of ~~January 1 of 1992~~ July 1, 2003."

28 2. By renumbering as necessary.

By TOM FLYNN

S-5349 FILED APRIL 3, 2002

0/6

4/8/02

(P. 1030)

SENATE FILE 2190

S-5350

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 45 the
5 following:

6 "____. Page 3, by inserting before line 7, the
7 following:

8 "Sec. ____ Section 85.70, Code 2001, is amended to
9 read as follows:

10 85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.

11 An employee who has sustained an injury resulting
12 in permanent partial or permanent total disability,
13 for which compensation is payable under this chapter,
14 and who ~~cannot~~ is unable to return to gainful
15 employment in the job the employee held at the time of
16 the injury because of such disability, shall upon
17 application to and approval by the workers'
18 compensation commissioner be entitled to a ~~twenty-~~
19 dollar weekly additional worker training payment
20 from the employer. The worker training payment shall
21 be in addition to any other benefit payments to the
22 employee, during each full week in which the employee
23 is not receiving healing period benefits pursuant to
24 section 85.34, and is actively participating in a
25 vocational rehabilitation program recognized by the
26 vocational rehabilitation services division of the
27 department of education or participating in any other
28 training program, including apprenticeship training,
29 recognized by the department of education. The
30 additional worker training payment authorized by this
31 section shall be in an amount determined in the same
32 manner as healing period benefits are calculated
33 pursuant to section 85.37. The workers' compensation
34 commissioner's approval of such application for
35 payment may be given only after a careful evaluation
36 of available facts, and after consultation with the
37 employer or the employer's representative. Judicial
38 review of the decision of the workers' compensation
39 commissioner may be obtained in accordance with the
40 terms of the Iowa administrative procedure Act and in
41 section 86.26. Such additional benefit payment shall
42 be paid for a period not to exceed thirteen
43 consecutive weeks except that the workers'
44 compensation commissioner may extend the period of
45 payment not to exceed an additional ~~thirteen~~ ninety-
46 one weeks if the circumstances indicate that a
47 continuation of training will in fact accomplish
48 assist the employee's rehabilitation."

49 2. By renumbering as necessary.

By BILL FINK

S-5350 FILED APRIL 3, 2002

lost
4-8-02
(P. 1027)

SENATE FILE 2190

S-5351

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 43 the
5 following:

6 "Sec. ____ . Section 85.36, unnumbered paragraph 1,
7 Code Supplement 2001, is amended to read as follows:

8 The basis of compensation shall be the weekly
9 earnings of the injured employee at the time of the
10 injury. "Weekly earnings" means gross earnings as
11 defined in section 85.61. "Weekly earnings " also
12 means gross salary, wages, or earnings of an employee
13 to which such employee would have been entitled had
14 the employee worked the customary hours for the full
15 pay period in which the employee was injured, as
16 regularly required by the employee's employer for the
17 work or employment for which the employee was
18 employed, computed or determined as follows and then
19 rounded to the nearest dollar:"

20 2. Page 2, by inserting after line 45 the
21 following:

22 " ____ . Page 3, by inserting before line 7 the
23 following:

24 "Sec. ____ . Section 85.61, subsection 3, Code
25 Supplement 2001, is amended to read as follows:

26 3. "Gross earnings" means recurring payments by
27 employer to the employee for employment, before any
28 authorized or lawfully required deduction or
29 withholding of funds by the employer, excluding
30 ~~irregular bonuses~~, retroactive pay, overtime, penalty
31 pay, reimbursement of expenses, expense allowances,
32 and the employer's contribution for welfare benefits,
33 and specifically including all bonuses of any kind."

34 3. By renumbering as necessary.

By MARK SHEARER

S-5351 FILED APRIL 3, 2002

Loot

4-8-02

(P. 1024)

SENATE FILE 2190

S-5352

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 45, the
5 following:
6 "____. Page 3, by inserting before line 7, the
7 following:
8 "Sec. ____ Section 85.55, Code 2001, is amended to
9 read as follows:
10 85.55 WAIVERS PROHIBITED ~~PHYSICAL DEFECTS.~~
11 No employee or dependent to whom this chapter
12 applies, shall have power to waive any of the
13 provisions of this chapter in regard to the amount of
14 compensation which may be payable to such employee or
15 dependent hereunder. ~~However, any person who has some~~
16 ~~physical defect which increases the risk of injury,~~
17 ~~may, subject to the approval of the workers'~~
18 ~~compensation commissioner, enter into a written~~
19 ~~agreement with the employee's employer waiving~~
20 ~~compensation for injuries which may occur directly or~~
21 ~~indirectly because of such physical defect, provided,~~
22 ~~however, that such waiver shall not affect the~~
23 ~~employee's benefits to be paid from the second injury~~
24 ~~fund under the provisions of section 85.64."~~

By PATRICIA HARPER

S-5352 FILED APRIL 3, 2002

Lot
4-8-02
(P.1028)

SENATE FILE 2190

S-5353

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting before line 7, the
5 following:

6 ""Sec. ____ Section 85.33, subsection 4, Code
7 2001, is amended to read as follows:

8 4. If an employee is entitled to temporary partial
9 benefits under subsection 3 of this section, the
10 employer for whom the employee was working at the time
11 of injury shall pay to the employee weekly
12 compensation benefits, as provided in section 85.32,
13 for and during the period of temporary partial
14 disability. The temporary partial benefit shall be
15 sixty-six and two-thirds percent of the difference
16 between the employee's weekly earnings at the time of
17 injury, computed in compliance with section 85.36, and
18 the employee's actual gross weekly income from
19 employment during the period of temporary partial
20 disability. ~~If at the time of injury an employee is
21 paid on the basis of the output of the employee, with
22 a minimum guarantee pursuant to a written employment
23 agreement, the minimum guarantee shall be used as the
24 employee's weekly earnings at the time of injury.~~
25 However, the weekly compensation benefits shall not
26 exceed the payments to which the employee would be
27 entitled under section 85.36 or section 85.37, or
28 under subsection 1 of this section."

By MARK SHEARER

S-5353 FILED APRIL 3, 2002

Lost
4-8-02
(P. 1017)

SENATE FILE 2190

S-5355

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 43 the
5 following:

6 "Sec. ____ . Section 85.36, unnumbered paragraph 1,
7 Code Supplement 2001, is amended to read as follows:

8 The basis of compensation shall be the weekly
9 earnings of the injured employee at the time of the
10 injury. "Weekly earnings" means gross earnings as
11 defined in section 85.61. "Weekly earnings " also
12 means gross salary, wages, or earnings of an employee
13 to which such employee would have been entitled had
14 the employee worked the customary hours for the full
15 pay period in which the employee was injured, as
16 regularly required by the employee's employer for the
17 work or employment for which the employee was
18 employed, computed or determined as follows and then
19 rounded to the nearest dollar:

20 Sec. ____ . Section 85.36, subsections 6 and 7, Code
21 Supplement 2001, are amended to read as follows:

22 6. In the case of an employee who is paid on a
23 daily or hourly basis, or by the output of the
24 employee, the weekly earnings shall be computed by
25 dividing by thirteen the earnings, not including
26 overtime or premium pay, of the employee earned in the
27 employ of ~~the employer~~ all employers in the last
28 completed period of thirteen consecutive calendar
29 weeks immediately preceding the injury. If the
30 employee was absent from employment for reasons
31 personal to the employee during part of the thirteen
32 calendar weeks preceding the injury, the employee's
33 weekly earnings shall be the amount the employee would
34 have earned had the employee worked when work was
35 available to other employees of the employer in a
36 similar occupation. A week which does not fairly
37 reflect the employee's customary earnings shall be
38 replaced by the closest previous week with earnings
39 that fairly represent the employee's customary
40 earnings.

41 7. In the case of an employee who has been in the
42 employ of the employer less than thirteen calendar
43 weeks immediately preceding the injury, the employee's
44 weekly earnings shall be computed under subsection 6,
45 taking the earnings, not including overtime or premium
46 pay, for such purpose to be the amount the employee
47 would have earned had the employee been so employed by
48 ~~the employer~~ all employers during the full thirteen
49 calendar weeks immediately preceding the injury and
50 had worked, when work was available to other employees

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1 in a similar occupation. If the earnings of other
 2 employees cannot be determined, the employee's weekly
 3 earnings shall be the average computed for the number
 4 of weeks the employee has been in the employ of ~~the~~
 5 ~~employer all employers.~~""

6 2. Page 2, by inserting after line 45 the
 7 following:

8 "____. Page 3, by inserting before line 7 the
 9 following:

10 "Sec. ____ Section 85.61, subsection 3, Code
 11 Supplement 2001, is amended to read as follows:

12 3. "Gross earnings" means recurring payments by
 13 any employer to the employee for employment, before
 14 any authorized or lawfully required deduction or
 15 withholding of funds by the employer, excluding
 16 irregular bonuses, retroactive pay, overtime, penalty
 17 pay, reimbursement of expenses, expense allowances,
 18 and the employer's contribution for welfare
 19 benefits. ""

20 3. By renumbering as necessary.

By BILL FINK

S-5355 FILED APRIL 3, 2002

lost

4-8-02 (p. 1024)

SENATE FILE 2190

S-5354

1 Amend the House amendment, S-5272, to Senate File
 2 2190, as amended, passed, and reprinted by the Senate,
 3 as follows:

4 1. Page 2, by inserting after line 45 the
 5 following:

6 "____. Page 3, by inserting before line 7 the
 7 following:

8 "Sec. ____ Section 85A.12, unnumbered paragraph 1,
 9 Code 2001, is amended to read as follows:

10 An employer shall not be liable for any
 11 compensation for an occupational disease unless such
 12 disease shall be due to the nature of an employment in
 13 which the hazards of such disease actually exist, and
 14 which hazards are characteristic thereof and peculiar
 15 to the trade, occupation, process, or employment, and
 16 such disease actually arises out of the employment,
 17 ~~and unless disablement or death results within three~~
 18 ~~years in case of pneumoconiosis, or within one year in~~
 19 ~~case of any other occupational disease, after the last~~
 20 ~~injurious exposure to such disease in such employment,~~
 21 ~~or in case of death, unless death follows continuous~~
 22 ~~disability from such disease commencing within the~~
 23 ~~period above limited for which compensation has been~~
 24 ~~paid or awarded or timely claim made as provided by~~
 25 ~~this chapter and results within seven years after such~~
 26 ~~exposure.~~ ""

By ROBERT E. DVORSKY

S-5354 FILED APRIL 3, 2002

lost

4-8-02 (p. 1028)

SENATE FILE 2190

S-5356

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 4 the
5 following:

6 "____. Page 2, by inserting before line 6 the
7 following:

8 "Sec. ____ Section 85.27, subsection 4, Code
9 Supplement 2001, is amended to read as follows:

10 4. For purposes of this section, the employer is
11 obliged to furnish reasonable services and supplies to
12 treat an injured employee, ~~and has the right to choose~~
13 ~~the care~~ but the choice of care shall be made jointly
14 by the employer and the employee. The treatment must
15 be offered promptly and be reasonably suited to treat
16 the injury without undue inconvenience to the
17 employee. ~~If the employee has reason to be~~
18 ~~dissatisfied with the care offered, the employee~~
19 ~~should communicate the basis of such dissatisfaction~~
20 ~~to the employer, in writing if requested, following~~
21 ~~which the employer and the employee may agree to~~
22 ~~alternate care reasonably suited to treat the injury.~~
23 If the employer and employee cannot agree on such
24 ~~alternate care~~, the commissioner may, upon application
25 and reasonable proofs of the necessity therefor, allow
26 and order ~~other~~ alternate care. In an emergency, or
27 if, at any time prior to an alternate care decision
28 being issued by the commissioner, the employee
29 reasonably needs care, the employee may choose the
30 employee's care at the employer's expense, provided
31 the employer or the employer's agent cannot be reached
32 immediately. An application made under this
33 subsection shall be considered an original proceeding
34 for purposes of commencement and contested case
35 proceedings under section 85.26. The hearing shall be
36 conducted pursuant to chapter 17A. Before a hearing
37 is scheduled, the parties may choose a telephone
38 hearing or an in-person hearing. A request for an in-
39 person hearing shall be approved unless the in-person
40 hearing would be impractical because of the distance
41 between the parties to the hearing. The workers'
42 compensation commissioner shall issue a decision
43 within ten working days of receipt of an application
44 for alternate care made pursuant to a telephone
45 hearing or within fourteen working days of receipt of
46 an application for alternate care made pursuant to an
47 in-person hearing. ~~The employer shall notify an~~
48 ~~injured employee of the employee's ability to contest~~
49 ~~the employer's choice of care pursuant to this~~
50 ~~subsection."~~

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Page 2

1 2. By renumbering as necessary.

By BETTY A. SOUKUP**S-5356** FILED APRIL 3, 2002

4-8-02

(p. 1015)

SENATE FILE 2190**S-5385**

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting before line 7 the
5 following:

6 ""Sec. ____ . Section 85.34, subsection 2, Code
7 2001, is amended by adding the following new
8 unnumbered paragraph:

9 NEW UNNUMBERED PARAGRAPH. If an employee is
10 injured and entitled to compensation for a permanent
11 partial disability under this subsection, and if the
12 injured employee's employment is terminated following
13 the injury due in part to the employer not offering
14 suitable work, compensation for the permanent partial
15 disability shall be determined pursuant to paragraph
16 "u" and not paragraphs "a" through "t".

17 2. By renumbering as necessary.

By JOE BOLKCOM**S-5385** FILED APRIL 3, 2002

4-8-02

(p. 1018)

SENATE FILE 2190

S-5357

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 4, the
5 following:

6 "____. Page 2, by inserting before line 6, the
7 following:

8 "Sec. ____ Section 85.27, subsection 4, Code
9 Supplement 2001, is amended to read as follows:

10 4. For purposes of this section, the employer is
11 obliged to furnish reasonable services and supplies to
12 treat an injured employee, and ~~has the right to choose~~
13 ~~the care the employee has the right to choose the~~
14 employee's care at the employer's expense if the
15 employer is notified of the choice. The treatment
16 must be offered promptly and be reasonably suited to
17 treat the injury without undue inconvenience to the
18 employee. If the ~~employee~~ employer has reason to be
19 dissatisfied with the care offered, the ~~employee~~
20 employer should communicate the basis of such
21 dissatisfaction to the ~~employee~~ employer, in writing
22 if requested, following which the employer and the
23 employee may agree to alternate care reasonably suited
24 to treat the injury. If the employer and employee
25 cannot agree on such alternate care, the commissioner
26 may, upon application and reasonable proofs of the
27 necessity therefor, allow and order other care. ~~In an~~
28 ~~emergency, the employee may choose the employee's care~~
29 ~~at the employer's expense, provided the employer or~~
30 ~~the employer's agent cannot be reached immediately.~~
31 An application made under this subsection shall be
32 considered an original proceeding for purposes of
33 commencement and contested case proceedings under
34 section 85.26. The hearing shall be conducted
35 pursuant to chapter 17A. Before a hearing is
36 scheduled, the parties may choose a telephone hearing
37 or an in-person hearing. A request for an in-person
38 hearing shall be approved unless the in-person hearing
39 would be impractical because of the distance between
40 the parties to the hearing. The workers' compensation
41 commissioner shall issue a decision within ten working
42 days of receipt of an application for alternate care
43 made pursuant to a telephone hearing or within
44 fourteen working days of receipt of an application for
45 alternate care made pursuant to an in-person hearing.
46 ~~The employer shall notify an injured employee of the~~
47 ~~employee's ability to contest the employer's choice of~~
48 ~~care pursuant to this subsection.~~ This subsection
49 does not prohibit an employer from retaining a
50 physician or other health service provider for use by

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1 employees."

By BETTY A. SOUKUP

S-5357 FILED APRIL 3, 2002

lost
4-8-02 (p. 1016)

SENATE FILE 2190

S-5358

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 3, by inserting after line 2 the
5 following:

6 "____. Page 5, by inserting after line 5 the
7 following:

8 "Sec. ____ Section 507E.3, subsection 2,
9 unnumbered paragraph 1, Code 2001, is amended to read
10 as follows:

11 A person commits a class "D" felony if the person,
12 with the intent to defraud ~~an insurer~~, does any of the
13 following:

14 Sec. ____ Section 507E.3, subsection 2, Code 2001,
15 is amended by adding the following new paragraphs:

16 NEW PARAGRAPH. d. Makes a false statement or
17 representation as to a material fact in the course of
18 reporting, investigating, or adjusting a claim for any
19 payment or any other benefit pursuant to an insurance
20 policy.

21 NEW PARAGRAPH. e. Makes a false statement or
22 representation as to a material fact for the purpose
23 of obtaining, maintaining, or renewing insurance that
24 is required by law, whether for the person or for
25 another person, or for the purpose of evading the
26 requirements of the law."

27 2. By renumbering as necessary.

By JOE BOLKCOM

S-5358 FILED APRIL 3, 2002

0/0

4-8-02

(p. 1030)

SENATE FILE 2190

S-5359

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 45 the
5 following:

6 "____. Page 3, by inserting before line 7, the
7 following:

8 "Sec. _____. Section 85B.4, subsection 3, Code 2001,
9 is amended to read as follows:

10 3. "Occupational hearing loss" means that portion
11 of a permanent sensorineural loss of hearing in one or
12 both ears that exceeds an average hearing level of
13 twenty-five decibels for the frequencies five hundred,
14 one thousand, two thousand, ~~and~~ three thousand, and
15 four thousand Hertz, arising out of and in the course
16 of employment caused by excessive noise exposure.
17 "Occupational hearing loss" does not include loss of
18 hearing attributable to age or any other condition or
19 exposure not arising out of and in the course of
20 employment.

21 Sec. _____. Section 85B.9, subsection 3, Code 2001,
22 is amended to read as follows:

23 3. In calculating the total amount of hearing
24 loss, the hearing levels at each of the ~~four~~ five
25 frequencies, five hundred, one thousand, two thousand,
26 ~~and~~ three thousand, and four thousand Hertz, shall be
27 added together and divided by ~~four~~ five to determine
28 the average decibel hearing level for each ear. If
29 the resulting average decibel hearing level in either
30 ear is twenty-five decibels or less, the percentage
31 hearing loss for that ear shall be zero. For each
32 resulting average decibel hearing level exceeding
33 twenty-five decibels, an allowance of one and one-half
34 percent shall be made up to the maximum of one hundred
35 percent which is reached at an average decibel hearing
36 level of ninety-two decibels. In determining the
37 total binaural percentage hearing loss, the percentage
38 hearing loss for the ear with better hearing shall be
39 multiplied by five and added to the percentage hearing
40 loss for the ear with worse hearing and the sum of the
41 two divided by six.

42 Sec. _____. Section 85B.10, Code 2001, is amended to
43 read as follows:

44 85B.10 EMPLOYER'S NOTICE OF RESULTS OF TEST.

45 The employer shall communicate to the employee, in
46 writing, the results of an audiometric examination or
47 physical examination of an employee which reflects an
48 average hearing level in one or both ears in excess of
49 twenty-five decibels for the test frequencies of five
50 hundred, one thousand, two thousand, ~~and~~ three

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1 thousand, and four thousand Hertz, as soon as
2 practicable after the examination. The communication
3 shall include the name and qualifications of the
4 person conducting the audiometric examination or
5 physical examination, the site of the examination, the
6 kind or type of test or examinations given, the
7 results of each and the average decibel hearing level,
8 for the ~~four~~ five frequencies, in each ear, and, if
9 known to the employer, whether the hearing loss is
10 sensorineural and, if the hearing loss resulted from
11 another cause, the cause."

By MIKE CONNOLLY

S-5359 FILED APRIL 3, 2002

lost
4-8-02 (*§ 1029*) SENATE FILE 2190

S-5360

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 2, the
5 following:

6 "____. Page 1, by inserting after line 4 the
7 following:

8 "Sec. ____ Section 85.27, subsection 1, Code
9 Supplement 2001, is amended to read as follows:

10 1. The employer, for all injuries compensable
11 under this chapter or chapter 85A, shall furnish
12 reasonable surgical, medical, dental, osteopathic,
13 chiropractic, podiatric, physical rehabilitation,
14 vocational rehabilitation, nursing, ambulance and
15 hospital services and supplies therefor and shall
16 allow reasonably necessary transportation expenses
17 incurred for such services. The employer shall also
18 furnish reasonable and necessary crutches, artificial
19 members and appliances ~~but shall not be required to~~
20 ~~furnish more than one set of permanent prosthetic~~
21 ~~devices."~~

22 2. By renumbering as necessary.

By JOHNIE HAMMOND

S-5360 FILED APRIL 3, 2002

lost
4-8-02
(P. 1013)

SENATE FILE 2190**S-5361**

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, line 45, by striking the figure "6."
5 and inserting the following: "6, and inserting the
6 following:

7 "Sec. ____ . Section 86.13, unnumbered paragraph 4,
8 Code 2001, is amended by striking the unnumbered
9 paragraph and inserting in lieu thereof the following:

10 Unless the employer proves as an affirmative
11 defense that the employer had a reasonable excuse for
12 not paying or for paying amounts after their due dates
13 fixed by law or by a health care provider, including
14 all benefits provided by sections 85.27 through 85.34
15 or section 86.13, whether constituting compensation,
16 interest, penalties, or other benefits, the denial or
17 delay of which payment is proven by the employee, the
18 workers' compensation commissioner shall order the
19 employer to pay the employee a penalty equal to treble
20 the amount or the value, as the case may be, of the
21 payment which was denied or delayed past the due
22 date.""

23 2. By renumbering as necessary.

By MIKE CONNOLLY

S-5361 FILED APRIL 3, 2002

lost
4-8-02 (P.1026)

SENATE FILE 2190**S-5362**

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by striking line 45 and inserting the
5 following: "line 6, and inserting the following:

6 "Sec. ____ . Section 86.13, unnumbered paragraph 4,
7 Code 2001, is amended by striking the unnumbered
8 paragraph and inserting in lieu thereof the following:

9 Unless the employer proves as an affirmative
10 defense that the employer had a reasonable excuse for
11 not paying or for paying weekly compensation after its
12 due date, the denial or delay of which is proven by
13 the employee, the workers' compensation commissioner
14 shall order the employer to pay the employee a penalty
15 equal to treble the amount of the weekly compensation,
16 the payment of which was denied or delayed past the
17 due date.""

18 2. By renumbering as necessary.

By MIKE CONNOLLY

S-5362 FILED APRIL 3, 2002

lost
4-8-02
(P.1027)

SENATE FILE 2190

S-5363

1 Amend the House amendment, S-5727, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 3, by inserting after line 2 the
5 following:
6 "____. Page 5, by inserting after line 5 the
7 following:
8 "Sec. ____ WORKERS' COMPENSATION APPORTIONMENT
9 INTERIM STUDY. The legislative council is requested
10 to authorize an interim study committee to study
11 issues concerning compensation that should be payable
12 to an employee for a permanent partial disability when
13 the employee has previously suffered an injury or
14 previously received workers' compensation benefits.
15 In addition, the interim study committee shall examine
16 whether racial discrimination impacts the payment of
17 workers' compensation benefits. The interim study
18 committee shall receive testimony from organizations
19 representing employees, employers, and workers'
20 compensation insurers concerning the impact of
21 modifying current law concerning the apportionment of
22 workers' compensation benefits. The interim study
23 committee shall submit a report of its findings and
24 recommendations, including proposed legislation, if
25 any, to the general assembly on or before January 13,
26 2003.""
27 2. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-5363 FILED APRIL 3, 2002

*Loot**4-8-02**(p. 1030)*

SENATE FILE 2190

S-5364

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 43 the
5 following:

6 "Sec. ____ Section 85.36, unnumbered paragraph 1,
7 Code Supplement 2001, is amended to read as follows:

8 The basis of compensation shall be the weekly
9 earnings of the injured employee at the time of the
10 injury. "Weekly earnings" means gross earnings as
11 defined in section 85.61. "Weekly earnings" also
12 means gross salary, wages, or earnings of an employee
13 to which such employee would have been entitled had
14 the employee worked the customary hours for the full
15 pay period in which the employee was injured, as
16 regularly required by the employee's employer for the
17 work or employment for which the employee was
18 employed, computed or determined as follows and then
19 rounded to the nearest dollar:"

20 2. Page 2, by inserting after line 45 the
21 following:

22 " ____ . Page 3, by inserting before line 7 the
23 following:

24 "Sec. ____ . Section 85.61, subsection 3, Code
25 Supplement 2001, is amended to read as follows:

26 3. "Gross earnings" means recurring payments by
27 employer to the employee for employment, before any
28 authorized or lawfully required deduction or
29 withholding of funds by the employer, excluding
30 irregular bonuses, retroactive pay, overtime, and
31 penalty pay, reimbursement of expenses, expense
32 allowances, and the employer's contribution for
33 welfare benefits and specifically including earnings
34 representing payments in kind, such as fringe
35 benefits."

36 3. By renumbering as necessary.

By BILL FINK

S-5364 FILED APRIL 3, 2002

Lost
4-8-02
(P. 1024)

SENATE FILE 2190

S-5365

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 45 the
5 following:
6 "____. Page 3, by inserting before line 7 the
7 following:
8 "Sec. ____ Section 85.39, unnumbered paragraph 2,
9 Code 2001, is amended to read as follows:
10 If an ~~evaluation of permanent disability~~
11 examination has been made by a physician retained by
12 the employer and the employee believes ~~this evaluation~~
13 ~~to be too low~~ that any opinion rendered as the result
14 of the examination and affecting benefits entitlement
15 is incorrect, the employee shall, upon application to
16 the commissioner and upon delivery of a copy of the
17 application to the employer and its insurance carrier,
18 be reimbursed by the employer the reasonable fee for a
19 subsequent examination by a physician of the
20 employee's own choice, and reasonably necessary
21 transportation expenses incurred for the examination.
22 The physician chosen by the employee has the right to
23 confer with and obtain from the employer-retained
24 physician sufficient history of the injury to make a
25 proper examination. This paragraph applies regardless
26 of whether or not the employer denies or accepts
27 liability for benefits."
28 2. By renumbering as necessary.

By JACK HOLVECK

S-5365 FILED APRIL 3, 2002

lost
4-8-02 (p. 1029) SENATE FILE 2190
S-5366

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 45 the
5 following:
6 "____. Page 3, by inserting before line 7 the
7 following:
8 "Sec. ____ Section 85.71, Code 2001, is amended by
9 adding the following new subsection:
10 NEW SUBSECTION. 5. The employee resides in this
11 state."
12 2. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-5366 FILED APRIL 3, 2002

lost
4-8-02
(p. 1030)

SENATE FILE 2190**S-5367**

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 43 the
5 following:
6 "Sec. ____ . Section 85.37, Code 2001, is amended by
7 adding the following new unnumbered paragraph:
8 NEW UNNUMBERED PARAGRAPH. The workers'
9 compensation commissioner shall adopt rules providing
10 for an annual adjustment from the date of injury of
11 the weekly benefit amount in accordance with a
12 generally recognized cost-of-living standard.""
13 2. By renumbering as necessary.

By MARK SHEARER

S-5367 FILED APRIL 3, 2002

lost
4-8-02 (P1024) **SENATE FILE 2190**

S-5368

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, line 43, by inserting after the word
5 "benefits." the following: "However, the
6 apportionment authorized by this paragraph shall not
7 apply to those workers who are generally engaged in
8 "high-injury-risk" industries in which multiple
9 injuries over an individual's work life would be
10 anticipated. The workers' compensation commissioner
11 and the labor commissioner shall jointly identify on
12 an annual basis which industries are high-injury-risk
13 industries.""

By DICK L. DEARDEN

S-5368 FILED APRIL 3, 2002

lost
4-8-02
(P1024)

SENATE FILE 2190

S-5369

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 43 the
5 following:
6 "Sec. ____ Section 85.34, Code 2001, is amended by
7 adding the following new subsection:
8 NEW SUBSECTION. 8. REINSTATEMENT TO WORK. An
9 employee who has suffered an injury which is
10 compensable under this chapter or chapter 85A shall
11 not have the employee's employment terminated by the
12 employee's employer as a result of the injury. If an
13 employee suffers a permanent partial disability under
14 this chapter or chapter 85A, the employer shall return
15 the employee to work performing duties that shall be
16 consistent with any restrictions on the employee as a
17 result of the disability."
18 2. By renumbering as necessary.

By DICK L. DEARDEN

S-5369 FILED APRIL 3, 2002

Lost
4-8-02 (p. 1025)

SENATE FILE 2190

S-5370

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 2, by inserting after line 43, the
5 following:
6 "c. This subsection does not apply to an employee
7 who receives an injury as a police officer or fire
8 fighter."
9 2. By renumbering as necessary.

By JOHN P. KIBBIE

S-5370 FILED APRIL 3, 2002

Lost
4-8-02
(p. 1026)

SENATE FILE 2190

S-5371

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 2, by inserting after line 43 the
5 following:

6 "Sec. ____ . Section 85.36, subsections 6 and 7,
7 Code Supplement 2001, are amended to read as follows:

8 6. In the case of an employee who is paid on a
9 daily or hourly basis, or by the output of the
10 employee, the weekly earnings shall be computed by
11 dividing by thirteen the earnings, ~~not including~~
12 ~~overtime or premium pay~~, of the employee earned in the
13 employ of the employer in the last completed period of
14 thirteen consecutive calendar weeks immediately
15 preceding the injury. If the employee was absent from
16 employment for reasons personal to the employee during
17 part of the thirteen calendar weeks preceding the
18 injury, the employee's weekly earnings shall be the
19 amount the employee would have earned had the employee
20 worked when work was available to other employees of
21 the employer in a similar occupation. A week which
22 does not fairly reflect the employee's customary
23 earnings shall be replaced by the closest previous
24 week with earnings that fairly represent the
25 employee's customary earnings.

26 7. In the case of an employee who has been in the
27 employ of the employer less than thirteen calendar
28 weeks immediately preceding the injury, the employee's
29 weekly earnings shall be computed under subsection 6,
30 taking the earnings, ~~not including overtime or premium~~
31 ~~pay~~, for such purpose to be the amount the employee
32 would have earned had the employee been so employed by
33 the employer the full thirteen calendar weeks
34 immediately preceding the injury and had worked, when
35 work was available to other employees in a similar
36 occupation. If the earnings of other employees cannot
37 be determined, the employee's weekly earnings shall be
38 the average computed for the number of weeks the
39 employee has been in the employ of the employer.""

40 2. Page 2, by inserting after line 45 the
41 following:

42 "____ . Page 3, by inserting before line 7 the
43 following:

44 "Sec. ____ . Section 85.61, subsection 3, Code
45 Supplement 2001, is amended to read as follows:

46 3. "Gross earnings" means recurring payments by
47 employer to the employee for employment, before any
48 authorized or lawfully required deduction or
49 withholding of funds by the employer, excluding
50 irregular bonuses, retroactive pay, ~~overtime~~, penalty

S-5371

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Page 2

1 pay, reimbursement of expenses, expense allowances,
 2 and the employer's contribution for welfare benefits,
 3 and specifically including overtime pay at the
 4 overtime rate."

5 3. By renumbering as necessary.

By MATT McCOY

S-5371 FILED APRIL 3, 2002

Foot
4-8-02 (p. 1026)

SENATE FILE 2190**S-5372**

1 Amend the House amendment, S-5272, to Senate File
 2 2190, as amended, passed, and reprinted by the Senate,
 3 as follows:

4 1. Page 1, by inserting after line 2 the
 5 following:

6 "____. Page 1, by inserting after line 4 the
 7 following:

8 "Sec. ____ Section 85.26, subsection 2, Code 2001,
 9 is amended by striking the subsection and inserting in
 10 lieu thereof the following:

11 2. If an award for payment of benefits under
 12 chapter 85, 85A, or 85B has been filed by the workers'
 13 compensation commissioner, and not commuted, or if an
 14 agreement for settlement pursuant to section 86.13 has
 15 been filed with and approved by the commissioner and
 16 not commuted, or if within six months of the
 17 commencement of any kind of disability benefits a
 18 denial of liability has not been filed with the
 19 commissioner and notice of the denial delineating the
 20 grounds of denial has not been mailed to the employee
 21 in the form and manner required by the commissioner,
 22 the amount of benefits due by an employer to an
 23 employee may be reviewed at any time upon commencement
 24 of reopening proceedings by the employee."

25 2. By renumbering as necessary.

By THOMAS FIEGEN

S-5372 FILED APRIL 3, 2002

Foot 4-8-02
(p. 1014)

SENATE FILE 2190**S-5378**

1 Amend the House amendment, S-5272, to Senate File
 2 2190, as amended, passed, and reprinted by the Senate,
 3 as follows:

4 1. By striking page 1, line 1, through page 3,
 5 line 4.

By MICHAEL E. GRONSTAL

S-5378 FILED APRIL 3, 2002

Foot
4-8-02
(p. 1012)

SENATE FILE 2190

S-5383

1 Amend the House amendment, S-5272, to Senate File
2 2190, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting before line 7 the
5 following:

6 "Sec. ____ . Section 85.31, subsection 1,
7 unnumbered paragraph 1, Code 2001, is amended to read
8 as follows:

9 When death results from the injury, the employer
10 shall pay the dependents who were wholly dependent on
11 the earnings of the employee for support at the time
12 of the injury, during their lifetime, compensation
13 upon the basis of eighty one hundred percent per week
14 of the employee's average weekly spendable earnings,
15 commencing from the date of death as follows:

16 Sec. ____ . Section 85.34, subsection 2, unnumbered
17 paragraph 1, Code 2001, is amended to read as follows:

18 Compensation for permanent partial disability shall
19 begin at the termination of the healing period
20 provided in subsection 1. The compensation shall be
21 in addition to the benefits provided by sections 85.27
22 and 85.28. The compensation shall be based upon the
23 extent of the disability and upon the basis of eighty
24 one hundred percent per week of the employee's average
25 spendable weekly earnings, but not more than a weekly
26 benefit amount, rounded to the nearest dollar, equal
27 to one hundred eighty-four percent of the statewide
28 average weekly wage paid employees as determined by
29 the department of workforce development under section
30 96.19, subsection 36, and in effect at the time of the
31 injury. The minimum weekly benefit amount shall be
32 equal to the weekly benefit amount of a person whose
33 gross weekly earnings are thirty-five percent of the
34 statewide average weekly wage. For all cases of
35 permanent partial disability compensation shall be
36 paid as follows:

37 Sec. ____ . Section 85.34, subsection 3, unnumbered
38 paragraph 1, Code 2001, is amended to read as follows:

39 Compensation for an injury causing permanent total
40 disability shall be upon the basis of eighty one
41 hundred percent per week of the employee's average
42 spendable weekly earnings, but not more than a weekly
43 benefit amount, rounded to the nearest dollar, equal
44 to two hundred percent of the statewide average weekly
45 wage paid employees as determined by the department of
46 workforce development under section 96.19, subsection
47 36, and in effect at the time of the injury. The
48 minimum weekly benefit amount is equal to the weekly
49 benefit amount of a person whose gross weekly earnings
50 are thirty-five percent of the statewide average

S-5383

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Page 2

1 weekly wage. The weekly compensation is payable
2 during the period of the employee's disability."

3 2. Page 2, by inserting after line 43 the
4 following:

5 "Sec. ____ . Section 85.37, Code 2001, is amended to
6 read as follows:

7 85.37 COMPENSATION SCHEDULE.

8 If an employee receives a personal injury causing
9 temporary total disability, or causing a permanent
10 partial disability for which compensation is payable
11 during a healing period, compensation for the
12 temporary total disability or for the healing period
13 shall be upon the basis provided in this section. The
14 weekly benefit amount payable to any employee for any
15 one week shall be upon the basis of eighty one hundred
16 percent of the employee's weekly spendable earnings,
17 but shall not exceed an amount, rounded to the nearest
18 dollar, equal to sixty-six and two-thirds percent of
19 the statewide average weekly wage paid employees as
20 determined by the department of workforce development
21 under section 96.19, subsection 36, and in effect at
22 the time of the injury. However, as of July 1, 1975;
23 July 1, 1977; July 1, 1979; and July 1, 1981, the
24 maximum weekly benefit amount rounded to the nearest
25 dollar shall be increased so that it equals one
26 hundred percent, one hundred thirty-three and one-
27 third percent, one hundred sixty-six and two-thirds
28 percent, and two hundred percent, respectively, of the
29 statewide average weekly wage as determined above.
30 Total weekly compensation for any employee shall not
31 exceed eighty one hundred percent per week of the
32 employee's weekly spendable earnings. The minimum
33 weekly benefit amount shall be equal to the weekly
34 benefit amount of a person whose gross weekly earnings
35 are thirty-five percent of the statewide average
36 weekly wage, or to the spendable weekly earnings of
37 the employee, whichever are less.

38 Such compensation shall be in addition to the
39 benefits provided by sections 85.27 and 85.28.""

40 3. By renumbering as necessary.

By DICK L. DEARDEN

S-5383 FILED APRIL 3, 2002

Loat
4-8-02
(P. 018)



OFFICE OF THE GOVERNOR

May 9, 2002

THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

RECEIVED

MAY 13 2002

LEGISLATIVE SERVICE
BUREAU

Dear Mr. Secretary:

I hereby transmit Senate File 2190, an Act concerning workers' compensation, which among other things, would reduce workers' compensation payments made to injured employees by expanding the ability of employers to apportion compensation payments made to employees who suffer more than one work-related injury, or a single injury that follows a preexisting functional condition.

The workers' compensation statute has historically struck a carefully crafted balance between the interests of employers and employees in the state of Iowa. Legislators originally enacted the statute to create a consistent and fair compensation schedule for workers who suffered injuries during the course of their employment. Like the acts of most other states, the Iowa workers' compensation statute guaranteed prompt, yet limited, compensation for employee work-related injuries. Legislators also crafted the original statute to promote industrial and workplace safety, and reduce the likelihood that injured workers and their dependants would be forced to seek public assistance. In exchange for this well-defined and structured system, employees gave up all rights to seek full and fair compensation for their work-related injuries in a court of law. Thus, the Iowa workers' compensation statute became the exclusive remedy for all work-related injuries, regardless of the circumstance.

Senate File 2190 destroys the effective balance between the interests of employers and the well-being of injured workers by expanding an employer's ability to apportion workers' compensation payments due and owing when the employer received a prior payment for a prior injury. In essence, Senate File 2190 would allow an employer to receive a 'credit' for any pre-existing condition that affected the employability of a worker, whenever a subsequent workplace injury increased the industrial disability of the worker, regardless of the nature of the subsequent injury, or its relationship to the prior one. Senate File 2190 would also allow an employer to apportion a work-related injury, even where a prior injury or disease would not cause an ascertainable portion of the work-related injury, and wouldn't independently produce some degree of disability before the subsequent injury. This change would be clearly divergent from the common law of tortious liability, and it would contravene the initial intent of the worker's compensation statute.



Under Senate File 2190, a worker who has suffered a partial disability of 35 percent for a damaged shoulder tendon, can only recover a workers' compensation payment of 15 percent, for a subsequent and unrelated back injury, sustained on the job, which results in an additional 50 percent loss to the worker's earning capacity. As such, this worker, whose working capacity has fallen from 100% to 15%, would see his or her compensation payment reduced under Senate File 2190 from 85% to 50%. This result would be unjust and untenable. Not only would it lead to an unconscionable windfall for employers, at the expense of working Iowans, but it would also jeopardize the safety of workers by removing a powerful incentive for Iowa companies to maintain safe working environments.

Workers' compensation is widely regarded as an important tool to ensure that employers update working environments and minimize any hazardous working conditions that may jeopardize the health and safety of their workforce. Workers' compensation also constitutes the first line of defense against economic catastrophe, whenever a wage earner sustains a substantial work-related injury. Senate File 2190 would impose undue hardships on injured workers and their dependants by shifting the fiscal responsibility for support following a work-related injury from the employer to the injured employee. Senate File 2190 may also have the unintended consequence of increasing the tax burden placed on Iowa taxpayers, who fund public assistance programs that support injured and/or displaced workers with reduced earning capacities.

The state of Iowa must protect its workers. Protection cannot be provided without ensuring that workers who suffer a substantial work-related injury have access to a balanced and consistent compensation schedule. Senate File 2190 would create a plainly inequitable compensation schedule by expanding apportionment limitations in a manner that would substantially reduce compensation payments made to employees who suffer more than one work-related injury, or a single injury that follows a preexisting functional condition. This bill would shift an unjust portion of the burden of diminished employability away from employers, and place it squarely on the shoulders of injured workers.

For this reason, I hereby respectfully disapprove Senate File 2190.

Sincerely,



Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House

vetoed

SENATE FILE 2190

AN ACT
CONCERNING WORKERS' COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 22.7, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 43. Confidential information relating to an injured employee as provided in section 86.45.

Sec. 2. Section 85.27, subsection 7, Code Supplement 2001, is amended to read as follows:

7. If, after the third day of incapacity to work following the date of sustaining a compensable injury which does not result in permanent partial disability, or if, at any time after sustaining a compensable injury which results in permanent partial disability, an employee, who is not receiving weekly benefits under section 85.33 or section 85.34, subsection 1, returns to work and is required to leave work for one full day or less to receive services pursuant to this section, the employee shall be paid an amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work. For the purposes of this subsection, "day of incapacity to work" means eight hours of accumulated absence from work due to incapacity to work or due to the receipt of services pursuant to this section. The employer shall make the payments under this subsection as wages to the employee after making such deductions from the amount as legally required or customarily made by the employer from wages. Payments made under this subsection shall be required to be reimbursed pursuant to any insurance policy covering workers' compensation. Payments under this subsection shall not be construed to be payment of weekly benefits.

Sec. 3. Section 85.34, subsection 5, Code 2001, is amended to read as follows:

5. RECOVERY OF EMPLOYEE OVERPAYMENT. If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee. An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under section 86.13, pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action in a contested case for a prior injury to the same employee. The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to this subsection, the employee and employer may enter into a written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement. However, an overpayment shall not be created if an employee has been paid compensation for either a functional loss or industrial disability from an injury resulting in permanent partial disability and who subsequently suffers an injury in which the finding of functional loss or industrial disability is less than the amount or percentage of the earlier compensation paid.

Sec. 4. Section 85.34, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 7. APPORTIONMENT. Compensation for a permanent partial disability which would otherwise be payable

pursuant to this section shall be reduced as provided in this subsection as follows:

a. If an employee has a preexisting functional loss under subsection 2, paragraphs "a" through "t", or a preexisting industrial disability under subsection 2, paragraph "u", the preexisting functional loss or industrial disability shall be apportioned and the employer shall not be liable for that preexisting loss or disability with respect to claims for a permanent partial disability resulting from subsequent injuries which result in an increase in the permanent impairment to the same member or an increase in industrial disability with respect to any condition affecting employability. However, the apportionment authorized by this paragraph shall not apply if the preexisting functional loss or preexisting industrial disability was the product of a work injury with the same employer and the employee did not recover benefits pursuant to this chapter for that preexisting functional loss or preexisting industrial disability, or if the preexisting functional loss or preexisting industrial disability resulted from any physical or mental injury sustained by the employee while in the service of the armed forces of this country, or if the preexisting functional loss or preexisting industrial disability resulted from a congenital defect or condition which manifested itself and was apparent at birth.

b. If an employee has received a benefit under this chapter, chapter 85A, or chapter 85B, for a previous injury to a portion of the body as described in subsection 2, the employer shall not be liable for the amount representing the applicable previous payment with respect to claims for a permanent partial disability resulting from subsequent injuries to the same portion of the body. For purposes of this paragraph, the applicable previous payment is the percentage of disability that resulted from the previous injury for which compensation was received under this chapter,

chapter 85A, or chapter 85B, or the dollar amount received in a contested case settlement, disregarding any dollars received in a contested case settlement related to past or future medical benefits, interest, temporary total disability benefits, healing period benefits, penalty benefits, or any other dollars paid for any consideration received by the injured worker for anything other than permanent impairment benefits.

Sec. 5. Section 86.42, Code 2001, is amended to read as follows:

86.42 JUDGMENT BY DISTRICT COURT ON AWARD.

Any party in interest may present a certified copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or an order or decision of a deputy commissioner from which a timely appeal has not been taken within the agency and which has become final by the passage of time as provided by rule and section 17A.15, or an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced. The court shall render a decree or judgment and cause the clerk to notify the parties. The decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the workers' compensation commissioner, or in the absence of an act of any party which prevents a decision of a deputy workers' compensation commissioner from becoming final, has the same effect and in all proceedings in relation thereto is the same as though rendered in a suit duly heard and determined by the court.

Sec. 6. Section 86.43, Code 2001, is amended to read as follows:

86.43 JUDGMENT -- MODIFICATION OF.

Upon the presentation to the court of a certified copy of a decision of the workers' compensation commissioner, ending, diminishing, or increasing the compensation under the provisions of this chapter, the court shall revoke or modify the decree or judgment to conform to such decision.

Sec. 7. NEW SECTION. 86.45 CONFIDENTIAL INFORMATION.

1. For purposes of this section, "confidential information" means all information filed with the workers' compensation commissioner as a result of an individual's injury or death that would allow the identification of an injured employee or that employee's dependents. "Confidential information" includes first reports of injury and claim activity reports. Pleadings, motions, orders, decisions, opinions, and applications for approval of settlements are not confidential information.

2. The workers' compensation commissioner shall not disclose confidential information except under any of the following circumstances:

a. Pursuant to the terms of a written waiver of confidentiality.

b. To another governmental agency, or an advisory, rating, or research organization, for the purpose of compiling statistical data, evaluating the state's workers' compensation system, or conducting scientific, medical, or public policy research, that will not disclose the identity of the injured employee or that employee's dependents.

c. To the individual, or the individual's agent or attorney, whose information is contained in the reports and records.

d. To the person, entity, or agent who submitted the reports, records, or information.

e. To the agents, attorneys, investigators, consultants, and adjusters for an employer, insurance carrier, or third-party administrator of workers' compensation claims who are involved in administering a claim for benefits made with respect to injury or the death of the individual.

f. To all parties in a contested case proceeding before the workers' compensation commissioner in which the injured employee or the injured employee's representative or dependent is a party.

g. In compliance with a subpoena.

h. To attorneys, investigators, agents, or adjusters on behalf of an employee, employer, insurance carrier, or third-party administrator in connection with an insurance claim.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2190, Seventy-ninth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Veter 5/9
Approved _____, 2002

THOMAS J. VILSACK
Governor