

FILED MAR 14 2005

SENATE FILE 378
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 1050)

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

A BILL FOR

1 An Act relating to workers' compensation liability insurance, the
2 payment of certain weekly workers' compensation benefits, and
3 workers' compensation settlements and filings, and providing
4 for civil penalties.

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

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SENATE FILE 378

S-3027

- 1 Amend Senate File 378 as follows:
- 2 1. Page 1, line 2, by striking the word
- 3 "subsections" and inserting the following:
- 4 "subsection".
- 5 2. Page 1, by striking lines 6 through 8.
- 6 3. By striking page 6, line 28 through page 8,
- 7 line 27.
- 8 4. By renumbering as necessary.

By LARRY MCKIBBEN

S-3027 FILED MARCH 15, 2005

SF 378

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1 Section 1. Section 22.7, Code 2005, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 51. Confidential information, as defined
4 in section 86.45, subsection 1, filed with the workers'
5 compensation commissioner.

6 NEW SUBSECTION. 52. A report of issuance or cancellation
7 of a policy of workers' compensation liability insurance made
8 pursuant to section 87.1, subsection 4.

9 Sec. 2. Section 85.27, subsection 7, Code 2005, is amended
10 to read as follows:

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

33 Sec. 3. Section 85.35, Code 2005, is amended to read as
34 follows:

35 85.35 ~~SETTLEMENT-IN-CONTESTED-CASE~~ SETTLEMENTS.

1 1. The parties to a contested case or persons who are
2 involved in a dispute which could culminate in a contested
3 case may enter into a settlement of any claim arising under
4 this chapter or chapter 85A, 85B, or 86, providing for final
5 disposition of the claim, provided that no final disposition
6 affecting rights to future benefits may be had when the only
7 dispute is the degree of disability resulting from an injury
8 for which an award for payments or agreement for settlement
9 under section 86:13 has been made. The settlement shall be in
10 writing on forms prescribed by the workers' compensation
11 commissioner and submitted to the workers' compensation
12 commissioner for approval.

13 2. The parties may enter into an agreement for settlement
14 that establishes the employer's liability, fixes the nature
15 and extent of the employee's current right to accrued
16 benefits, and establishes the employee's right to statutory
17 benefits that accrue in the future.

18 3. The parties may enter into a compromise settlement of
19 the employee's claim to benefits as a full and final
20 disposition of the claim.

21 4. The parties may enter into a settlement that is a
22 combination of an agreement for settlement and a compromise
23 settlement that establishes the employer's liability for part
24 of a claim but makes a full and final disposition of other
25 parts of a claim.

26 5. A contingent settlement may be made and approved,
27 conditioned upon subsequent approval by a court or
28 governmental agency, or upon any other subsequent event that
29 is expected to occur within one year from the date of the
30 settlement. If the subsequent approval or event does not
31 occur, the contingent settlement and its approval may be
32 vacated by order of the workers' compensation commissioner
33 upon a petition for vacation filed by one of the parties or
34 upon agreement by all parties. If a contingent settlement is
35 vacated, the running of any period of limitation provided for

1 in section 85.26 is tolled from the date the settlement was
2 initially approved until the date that the settlement is
3 vacated, and the claim is restored to the status that the
4 claim held when the contingent settlement was initially
5 approved. The contingency on a settlement lapses and the
6 settlement becomes final and fully enforceable if an action to
7 vacate the contingent settlement or to extend the period of
8 time allowed for the subsequent approval or event to occur is
9 not initiated within one year from the date that the
10 contingent settlement was initially approved.

11 6. The parties may agree that settlement proceeds, which
12 are paid in a lump sum, are intended to compensate the injured
13 worker at a given monthly or weekly rate over the life
14 expectancy of the injured worker. If such an agreement is
15 reached, neither the weekly compensation rate which either has
16 been paid, or should have been paid, throughout the case, nor
17 the maximum statutory weekly rate applicable to the injury
18 shall apply. Instead, the rate set forth in the settlement
19 agreement shall be the rate for the case.

20 ~~The settlement shall not be approved unless evidence of a~~
21 ~~bona fide dispute exists concerning any of the following:~~

22 ~~1.--The claimed injury arose out of or in the course of the~~
23 ~~employment.~~

24 ~~2.--The injured employee gave notice under section 85.23.~~

25 ~~3.--Whether or not the statutes of limitations as provided~~
26 ~~in section 85.26 have run.--When the issue involved is whether~~
27 ~~or not the statute of limitations of section 85.26, subsection~~
28 ~~2, has run, the final disposition shall pertain to the right~~
29 ~~to weekly compensation unless otherwise provided for in~~
30 ~~subsection 7 of this section.~~

31 ~~4.--The injury was caused by the employee's willful intent~~
32 ~~to injure the employee's self or to willfully injure another.~~

33 ~~5.--Intoxication, which did not arise out of and in the~~
34 ~~course of employment but which was due to the effects of~~
35 ~~alcohol or another narcotic, depressant, stimulant,~~

1 hallucinogenic, or hypnotic drug not prescribed by an
2 authorized medical practitioner, was a substantial factor in
3 causing the employee's injury.

4 6. The injury was caused by the willful act of a third
5 party directed against the employee for reasons personal to
6 such employee.

7 7. This chapter or chapter 85A, 85B, 86 or 87 applies to
8 the party making the claim.

9 8. A substantial portion of the claimed disability is
10 related to physical or mental conditions other than those
11 caused by the injury.

12 7. A settlement shall be approved by the workers'
13 compensation commissioner if the parties show all of the
14 following:

15 a. Substantial evidence exists to support the terms of the
16 settlement.

17 b. Waiver of the employee's right to a hearing, decision,
18 and statutory benefits is made knowingly by the employee.

19 c. The settlement is a reasonable and informed compromise
20 of the competing interests of the parties.

21 If an employee is represented by legal counsel, it is
22 presumed that the required showing for approval of the
23 settlement has been made.

24 8. Approval of a settlement by the workers' compensation
25 commissioner shall be is binding on the parties and shall not
26 be construed as an original proceeding. Notwithstanding any
27 provisions of this chapter and chapters 85A, 85B, 86 and 87,
28 an approved compromise settlement shall constitute a final bar
29 to any further rights arising under this chapter and chapters
30 85A, 85B, 86, and 87. Such regarding the subject matter of
31 the compromise and a payment made pursuant to a compromise
32 settlement agreement shall not be construed as the payment of
33 weekly compensation.

34 Sec. 4. Section 86.24, subsection 4, Code 2005, is amended
35 to read as follows:

1 4. A transcript of a contested case proceeding shall be
2 provided by an appealing party at the party's cost and an
3 ~~affidavit shall be filed by the appealing party or the party's~~
4 ~~attorney with the workers' compensation commissioner within~~
5 ~~ten days after the filing of the appeal to the workers'~~
6 ~~compensation commissioner stating that the transcript has been~~
7 ~~ordered and identifying the name and address of the reporter~~
8 ~~or reporting firm from which the transcript has been ordered.~~

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

10 1. "Confidential information", for the purposes of this
11 section, means all information that is filed with the workers'
12 compensation commissioner as a result of an employee's injury
13 or death that would allow the identification of the employee
14 or the employee's dependents. Confidential information
15 includes first reports of injury and subsequent reports of
16 claim activity. Confidential information does not include
17 pleadings, motions, decisions, opinions, or applications for
18 settlement that are filed with the workers' compensation
19 commissioner.

20 2. The workers' compensation commissioner shall not
21 disclose confidential information except as follows:

22 a. Pursuant to the terms of a written waiver of
23 confidentiality executed by the employee or the dependents of
24 the employee whose information is filed with the workers'
25 compensation commissioner.

26 b. To another governmental agency, or to an advisory,
27 rating, or research organization, for the purpose of compiling
28 statistical data, evaluating the state's workers' compensation
29 system, or conducting scientific, medical, or public policy
30 research, where such disclosure will not allow the
31 identification of the employee or the employee's dependents.

32 c. To the employee or to the agent or attorney of the
33 employee whose information is filed with the workers'
34 compensation commissioner.

35 d. To the person or to the agent of the person who

1 submitted the information to the workers' compensation
2 commissioner.

3 e. To an agent, representative, attorney, investigator,
4 consultant, or adjuster of an employer, or insurance carrier
5 or third-party administrator of workers' compensation
6 benefits, who is involved in administering a claim for such
7 benefits related to the injury or death of the employee whose
8 information is filed with the workers' compensation
9 commissioner.

10 f. To all parties to a contested case proceeding before
11 the workers' compensation commissioner in which the employee
12 or a dependent of the employee, whose information is filed
13 with the workers' compensation commissioner, is a party.

14 g. In compliance with a subpoena.

15 h. To an agent, representative, attorney, investigator,
16 consultant, or adjuster of the employee, employer, or
17 insurance carrier or third-party administrator of insurance
18 benefits, who is involved in administering a claim for
19 insurance benefits related to the injury or death of the
20 employee whose information is filed with the workers'
21 compensation commissioner.

22 i. To another governmental agency that is charged with the
23 duty of enforcing liens or rights of subrogation or indemnity.

24 3. This section does not create a cause of action for a
25 violation of its provisions against the workers' compensation
26 commissioner or against the state or any governmental
27 subdivision of the state.

28 Sec. 6. Section 87.1, Code 2005, is amended to read as
29 follows:

30 87.1 INSURANCE OF LIABILITY REQUIRED.

31 1. Every employer subject to the provisions of this and
32 chapters 85, 85A, 85B, and 86, unless relieved therefrom as
33 hereinafter provided, shall insure the employer's liability
34 thereunder in some corporation, association, or organization
35 approved by the commissioner of insurance.

1 2. A motor carrier who contracts with an owner-operator
2 who is acting as an independent contractor pursuant to section
3 85.61, subsection 13, shall not be required to insure the
4 motor carrier's liability for the owner-operator. A motor
5 carrier may procure compensation liability insurance coverage
6 for these owner-operators, and may charge the owner-operator
7 for the costs of the premiums. A motor carrier shall require
8 the owner-operator to provide and maintain a certificate of
9 workers' compensation insurance covering the owner-operator's
10 employees. An owner-operator shall remain responsible for
11 providing compensation liability insurance for the owner-
12 operator's employees.

13 3. Every such employer shall exhibit, on demand of the
14 workers' compensation commissioner, evidence of the employer's
15 compliance with this section; and if such employer refuses, or
16 neglects to comply with this section, the employer shall be
17 liable in case of injury to any worker in the employer's
18 employ under the common law as modified by statute.

19 4. a. Every insurer that issues a policy of workers'
20 compensation liability insurance providing coverage required
21 by this section shall, within thirty days after issuance and
22 after subsequent cancellation of the policy, report such
23 issuance or cancellation to the workers' compensation
24 commissioner or to the commissioner's designee in the manner
25 prescribed by the commissioner by rule. Such report shall
26 include the name and address of the insured employer; the name
27 and address of the insurer that issued the policy; the
28 effective date of the policy; the effective date of the
29 cancellation, if applicable; any deductible included in the
30 policy; and such other information as the commissioner
31 requires by rule.

32 b. Notwithstanding chapter 22, a report of issuance or
33 cancellation of a policy of workers' compensation liability
34 insurance made pursuant to this subsection shall be kept
35 confidential and is not subject to public examination or

1 copying. The workers' compensation commissioner or the
2 commissioner's designee may publicly disclose information
3 contained in such a report to persons other than the insured,
4 the insurer, and persons servicing the policy, except that
5 information relating to experience, payroll, loss data, the
6 expiration date of the policy, and classification information
7 shall not be publicly disclosed except as is reasonably
8 necessary in the course of a regulatory investigation or
9 enforcement action.

10 c. The absence of a report showing that a policy of
11 workers' compensation liability insurance was issued to an
12 employer and was in effect on a particular date creates a
13 rebuttable presumption that such a policy was not issued or in
14 effect on that date.

15 d. If an insurer fails to report the issuance or
16 cancellation of a policy of workers' compensation liability
17 insurance in the time and manner required by this subsection
18 and by rule, the workers' compensation commissioner may assess
19 a civil penalty against the insurer in the amount of one
20 hundred dollars for each failure to report. The commissioner
21 may increase the civil penalty against the insurer to one
22 thousand dollars for each failure to report if such failure is
23 discovered in the course of a contested case proceeding that
24 was filed against an employer because the employer appeared to
25 be uninsured due to the absence of a report by the insurer
26 showing that a policy of workers' compensation liability
27 insurance was in effect for the employer.

28 Sec. 7. Section 87.11, unnumbered paragraph 1, Code 2005,
29 is amended to read as follows:

30 When an employer coming under this chapter furnishes
31 satisfactory proofs to the insurance commissioner of such
32 employer's solvency and financial ability to pay the
33 compensation and benefits as by law provided and to make such
34 payments to the parties when entitled thereto, or when such
35 employer deposits with the insurance commissioner security

1 satisfactory to the insurance commissioner ~~and-the-workers'~~
2 ~~compensation-commissioner~~ as guaranty for the payment of such
3 compensation, such employer shall be relieved of the
4 provisions of this chapter requiring insurance; but such
5 employer shall, from time to time, furnish such additional
6 proof of solvency and financial ability to pay as may be
7 required by such insurance commissioner ~~or-workers'~~
8 ~~compensation-commissioner~~. Such security shall be held in
9 trust for the sole purpose of paying compensation and benefits
10 and is not subject to attachment, levy, execution,
11 garnishment, liens, or any other form of encumbrance. A
12 political subdivision, including a city, county, community
13 college, or school corporation, that is self-insured for
14 workers' compensation is not required to submit a plan or
15 program to the insurance commissioner for review and approval.

16 Sec. 8. Section 87.11, unnumbered paragraph 3, Code 2005,
17 is amended to read as follows:

18 If an employer becomes insolvent and a debtor under 11
19 U.S.C., on or after January 1, 1990, or ceases doing business,
20 this paragraph applies. The ~~commissioner-of~~ insurance
21 commissioner may request of the workers' compensation
22 commissioner that all future payments of workers' compensation
23 weekly benefits, medical expenses, or other payments pursuant
24 to chapter 85, 85A, 85B, 86, or 87 be commuted to a present
25 lump sum. The workers' compensation commissioner shall fix
26 the lump sum of probable future medical expenses and weekly
27 compensation benefits, or other benefits payable pursuant to
28 chapter 85, 85A, 85B, 86, or 87, capitalized at their present
29 value upon the basis of interest at the rate provided in
30 section 535.3 for court judgments and decrees. If an employer
31 ceases doing business without becoming insolvent, the
32 insurance commissioner shall publish notice of the time and
33 manner for filing claims against the employer in a newspaper
34 of general circulation in the county or counties within this
35 state where the employer is known to have maintained a place

1 of business. The notice shall be published in two series of
2 publications. The first series of publications shall be
3 published once each week for three consecutive weeks as soon
4 as reasonably practical after the date that the insurance
5 commissioner becomes aware that the employer has ceased doing
6 business. The second series of publications shall be
7 published once each week for three consecutive weeks within
8 the period of one year before the time for filing claims
9 expires. Defects in the notice or publication shall not
10 affect the period for filing claims against the employer or
11 give rise to a claim against the insurance commissioner. All
12 claims that are not otherwise barred shall become barred if
13 not filed within five years after the date the employer ceased
14 doing business, as determined by the insurance commissioner,
15 including claims for review reopening, benefits under section
16 85.27, and latent injuries. The insurance commissioner of
17 insurance shall be discharged from all further liability for
18 the commuted workers' compensation claim upon payment of the
19 present lump sum to either the claimant, or a licensed insurer
20 for purchase of an annuity or other periodic payment plan for
21 the benefit of the claimant.

22 Sec. 9. Section 87.14A, Code 2005, is amended to read as
23 follows:

24 87.14A INSURANCE OR-BOND REQUIRED.

25 An employer subject to this chapter and chapters 85, 85A,
26 85B, and 86 shall not engage in business without first
27 obtaining insurance covering compensation benefits or
28 obtaining relief from insurance as provided in this chapter or
29 ~~furnishing a bond pursuant to section 87-16~~. A person who
30 willfully and knowingly violates this section is guilty of a
31 class "D" felony.

32 Sec. 10. Section 87.19, unnumbered paragraph 1, Code 2005,
33 is amended to read as follows:

34 Upon the receipt of information by the workers'
35 compensation commissioner of any employer failing to comply

1 with ~~sections-87-16-and-87-17~~ section 87.14A, the commissioner
2 shall at once notify such employer by certified mail that
3 unless such employer comply with the requirements of law,
4 legal proceedings will be instituted to enforce such
5 compliance.

6 Sec. 11. Section 87.20, Code 2005, is amended to read as
7 follows:

8 87.20 REVOCATION OF RELEASE FROM INSURANCE.

9 The insurance commissioner ~~with-the-concurrence-of-the~~
10 ~~workers'-compensation-commissioner~~ may, at any time, upon
11 reasonable notice to such employer and upon hearing, revoke
12 for cause any order theretofore made relieving any employer
13 from carrying insurance as provided by this chapter.

14 Sec. 12. Sections 87.16 and 87.17, Code 2005, are
15 repealed.

16 EXPLANATION

17 This bill contains various provisions relating to workers'
18 compensation liability insurance, payment of certain weekly
19 workers' compensation benefits, and workers' compensation
20 settlements and filings.

21 Code section 22.7 is amended to provide that confidential
22 information, as defined in new Code section 86.45 in the bill,
23 which is filed with the workers' compensation commissioner, is
24 a confidential public record for purposes of this state's
25 public records law.

26 Code section 22.7 is also amended to provide that a report
27 of issuance or cancellation of a policy of workers'
28 compensation liability insurance which is filed with the
29 workers' compensation commissioner, is a confidential public
30 record for purposes of this state's public records law.

31 Code section 85.27 is amended to provide that for purposes
32 of paying lost wages pursuant to subsection 7, "day of
33 incapacity to work" means eight hours of accumulated absence
34 from work due to incapacity to work or due to the receipt of
35 services pursuant to that section.

1 Code section 85.35 is amended to modify settlement
2 procedures for workers' compensation claims. The bill
3 provides that parties may enter into an agreement for
4 settlement that establishes the employer's liability, fixes
5 the nature and extent of the employee's rights to accrued
6 benefits, and establishes the employee's right to statutory
7 benefits that accrue in the future; a compromise settlement of
8 an employee's claim to benefits that is a full and final
9 disposition of the claim; or a settlement that is a
10 combination of an agreement for settlement and a compromise
11 settlement that establishes the employer's liability for part
12 of a claim but makes a full and final disposition of other
13 parts of a claim.

14 Code section 85.35 is also amended to provide for a
15 contingent settlement, which may be made and approved by the
16 workers' compensation commissioner, conditioned upon
17 subsequent approval by a court or governmental agency or upon
18 any other event that is expected to occur within one year from
19 the date of the settlement. The bill provides that if the
20 subsequent approval or event does not occur, the contingent
21 settlement and its approval can be vacated by order of the
22 workers' compensation commissioner upon a petition by one of
23 the parties or upon agreement by all parties. If such a
24 contingent settlement is vacated, the running of any statute
25 of limitations provided for in Code section 85.26 is
26 considered to be stopped from the date that the contingent
27 settlement was initially approved until the date that the
28 settlement is vacated and the claim is then restored to the
29 status that it held at the time the settlement was initially
30 approved. The contingency on a settlement lapses and the
31 settlement becomes final and fully enforceable if an action to
32 vacate the settlement or to extend the period of time allowed
33 for the subsequent approval or event to occur is not initiated
34 within one year from the date that the contingent settlement
35 was initially approved.

1 The bill strikes the requirement in Code section 85.35 that
2 the parties produce evidence of a bona fide dispute before a
3 final settlement can be approved by the workers' compensation
4 commissioner. The bill provides that a settlement cannot be
5 approved unless the parties show that substantial evidence
6 exists to support the terms of the settlement, waiver of the
7 employee's right to a hearing, decision, and statutory
8 benefits is made knowingly by the employee, and the settlement
9 is a reasonable and informed compromise of the competing
10 interests of the parties. The bill also provides that if an
11 employee is represented by legal counsel, it is presumed that
12 the required showing has been made.

13 The bill amends Code section 86.24, subsection 4, by
14 eliminating the requirement that a party filing an appeal must
15 file a notice of having ordered a transcript.

16 The bill enacts new Code section 86.45, which defines
17 "confidential information" to mean all information that is
18 filed with the workers' compensation commissioner as a result
19 of an employee's injury or death that would allow
20 identification of the employee or the employee's dependents.
21 "Confidential information" includes first reports of injury
22 and subsequent reports of claim activity but does not include
23 pleadings, motions, decisions, opinions, or applications for
24 settlement that are filed with the workers' compensation
25 commissioner.

26 The bill provides that the workers' compensation
27 commissioner shall not disclose such confidential information
28 except pursuant to the terms of a written waiver of
29 confidentiality executed by the employee or the dependents of
30 the employee whose information is filed with the workers'
31 compensation commissioner; to another governmental agency or
32 to an advisory, rating, or research organization for the
33 purpose of compiling statistical data, or conducting
34 scientific, medical, or public policy research, where such
35 disclosure will not allow identification of the employee or

1 the employee's dependents; to the employee or to the agent or
2 attorney of the employee whose information is filed with the
3 workers' compensation commissioner; to the person or agent of
4 the person who submitted the information to the workers'
5 compensation commissioner; to an agent, representative,
6 attorney, investigator, consultant, or adjuster of an
7 employer, or insurance carrier or third-party administrator of
8 workers' compensation benefits, who is involved in
9 administering a claim for such benefits related to the injury
10 or death of the employee whose information is filed with the
11 workers' compensation commissioner; to all parties to a
12 contested case proceeding before the workers' compensation
13 commissioner in which the employee or a dependent of the
14 employee, whose information is filed with the workers'
15 compensation commissioner, is a party; in compliance with a
16 subpoena; to an agent, representative, attorney, investigator,
17 consultant, or adjuster of the employee, employer, or
18 insurance carrier or third-party administrator of insurance
19 benefits, who is involved in administering a claim for
20 insurance benefits related to the injury or death of the
21 employee whose information is filed with the workers'
22 compensation commissioner; or to a governmental agency that is
23 charged with a duty to enforce liens or rights of subrogation
24 or indemnity.

25 The bill also provides that new Code section 86.45 does not
26 create a cause of action for a violation of its provisions
27 against the workers' compensation commissioner or against the
28 state or any governmental subdivision of the state.

29 Code section 87.1 adds a new provision requiring every
30 insurer that issues workers' compensation liability insurance
31 policies to file a report with the workers' compensation
32 commissioner within 30 days of the issuance or cancellation of
33 such a policy. The bill requires the reports to be kept
34 confidential, notwithstanding the public records law in Code
35 chapter 22. The workers' compensation commissioner may

1 publicly disclose some information contained in the reports
2 except that information relating to experience, payroll, loss
3 data, the policy's expiration date, or classification shall
4 not be disclosed unless the disclosure of that information is
5 reasonably necessary in the course of a regulatory
6 investigation or enforcement action. The bill also provides
7 that the absence of such a report creates a rebuttable
8 presumption that a policy of workers' compensation insurance
9 was not issued to an employer or was not in effect on a
10 particular date.

11 An insurer who fails to report the issuance or cancellation
12 of a workers' compensation insurance policy as required by the
13 provision may be assessed a civil penalty by the workers'
14 compensation commissioner in the amount of \$100 for each
15 failure to report and \$1,000 for each failure to report if
16 such failure is discovered in the course of a contested case
17 proceeding that was filed against an employer because the
18 employer appeared to be uninsured due to the absence of the
19 report.

20 Code section 87.11 is amended to provide that the amount of
21 security deposited by a self-insured employer shall be
22 determined by the insurance commissioner and not the workers'
23 compensation commissioner and that the security is held in
24 trust for the sole purpose of paying compensation and benefits
25 and is not subject to attachment, levy, execution,
26 garnishment, liens, or any other form of encumbrance. The
27 bill also provides that proof of solvency shall be given to
28 the insurance commissioner, not the workers' compensation
29 commissioner.

30 Code section 87.11 is also amended to provide that if a
31 self-insured employer ceases doing business without becoming
32 insolvent, the insurance commissioner shall publish notice of
33 the time and manner for filing claims against the employer as
34 specified in the bill. Defects in the notice or publication
35 do not affect the period for filing claims against the

1 employer or give rise to claims against the insurance
2 commissioner and certain claims not otherwise barred become
3 barred if not filed within five years after the date the
4 employer ceased doing business, as determined by the insurance
5 commissioner.

6 Code section 87.14A is amended to remove the reference to
7 the bonding requirements contained in Code section 87.16.

8 Code section 87.19 is amended to provide that an employer
9 that fails to comply with the provisions of Code chapters 85,
10 85A, 85B, 86, and 87, as set forth in Code section 87.14A, may
11 be subject to enforcement proceedings.

12 The bill amends Code section 87.20 to provide that the
13 insurance commissioner may revoke, for cause, an order
14 relieving an employer from carrying insurance as required by
15 Code chapter 87 without the concurrence of the workers'
16 compensation commissioner.

17 The bill repeals Code section 87.16, which requires an
18 employer who has failed to carry workers' compensation
19 insurance or to obtain relief from carrying such insurance, to
20 furnish a bond approved by the workers' compensation
21 commissioner.

22 The bill also repeals Code section 87.17, which requires an
23 employer to post a notice stating the nature of the security
24 furnished in lieu of insurance to secure workers' compensation
25 payments.

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SENATE FILE 378

S-3067

1 Amend Senate File 378 as follows:

2 1. Page 4, by inserting after line 33, the
3 following:

4 "Sec. _____. Section 85.38, subsection 2, unnumbered
5 paragraph 2, Code 2005, is amended to read as follows:

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

17 Sec. _____. Section 85.71, Code 2005, is amended by
18 adding the following new subsection:

19 NEW SUBSECTION. 5. The employer has a place of
20 business in Iowa, and the employee is working under a
21 contract of hire which provides that the employee's
22 workers' compensation claims be governed by Iowa law."

23 2. Page 5, line 2, by inserting after the word
24 "provided" the following: "to the workers'
25 compensation commissioner".

26 3. Page 9, line 11, by inserting after the word
27 "encumbrance." the following: "However, the insurance
28 commissioner shall be reimbursed from the security for
29 all costs and fees incurred by the insurance
30 commissioner in resolving disputes involving the
31 security."

32 4. By striking page 9, line 16, through page 10,
33 line 21.

34 5. By renumbering as necessary.

By LARRY McKIBBEN

S-3067 FILED MARCH 29, 2005

S-3077

1 Amend Senate File 378 as follows:

2 1. Page 4, by inserting after line 33, the
3 following:

4 "Sec. _____. Section 85.38, subsection 2, unnumbered
5 paragraph 2, Code 2005, is amended to read as follows:

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

18 Sec. _____. Section 85.71, Code 2005, is amended by
19 adding the following new subsection:

20 NEW SUBSECTION. 5. The employer has a place of
21 business in Iowa, and the employee is working under a
22 contract of hire which provides that the employee's
23 workers' compensation claims be governed by Iowa law."

24 2. Page 5, line 2, by inserting after the word
25 "provided" the following: "to the workers'
26 compensation commissioner".

27 3. Page 9, line 11, by inserting after the word
28 "encumbrance." the following: "However, the insurance
29 commissioner shall be reimbursed from the security for
30 all costs and fees incurred by the insurance
31 commissioner in resolving disputes involving the
32 security."

33 4. By striking page 9, line 16, through page 10,
34 line 21.

35 5. By renumbering as necessary.

By LARRY MCKIBBEN

S-3077 FILED APRIL 4, 2005

Courtney Co-chair
McKibben Co-chair
Dearden
Shull

Introduced By
SF 378

SSB# 1050
Business & Labor

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
WORKFORCE DEVELOPMENT
BILL)

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

A BILL FOR

1 An Act relating to workers' compensation liability insurance, and
2 providing for civil penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 22.7, Code 2005, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 51. A report of issuance or cancellation
4 of a policy of workers' compensation liability insurance made
5 pursuant to section 87.1, subsection 4.

6 Sec. 2. Section 85.1, subsection 6, Code 2005, is amended
7 to read as follows:

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

32 Sec. 3. Section 85.61, subsection 2, Code 2005, is amended
33 by adding the following new unnumbered paragraph:

34 NEW UNNUMBERED PARAGRAPH. "Employer" includes a person who
35 contracts with a contractor to perform an activity that is a

1 regular part of the person's trade or business and such person
2 is liable for the payment of benefits pursuant to the
3 provisions of this chapter, chapters 85A, 85B, and 86, as to
4 any and all personal injuries sustained by the employees of
5 the contractor arising out of and in the course of performance
6 of the contract with the person, if the contractor has failed
7 to insure the contractor's workers' compensation liability or
8 to obtain relief from insurance as provided in chapter 87. A
9 person who pays benefits pursuant to this paragraph is
10 considered to be the employer for purposes of the exclusive
11 remedy provisions of sections 85.3 and 85.20, and for purposes
12 of the subrogation and indemnity provisions of section 85.22.
13 A person who pays benefits to the employees of a contractor
14 pursuant to this paragraph is entitled to be indemnified by
15 the contractor with interest. A person shall not be charged a
16 premium for workers' compensation insurance for coverage of a
17 contractor's employees if the person holds a current
18 certificate of insurance or self-insurance showing that the
19 contractor with whom the person has a contract, is in
20 compliance with chapter 87.

21 Sec. 4. Section 87.1, Code 2005, is amended to read as
22 follows:

23 87.1 INSURANCE OF LIABILITY REQUIRED.

24 1. Every employer subject to the provisions of this and
25 chapters 85, 85A, 85B, and 86, unless relieved therefrom as
26 hereinafter provided, shall insure the employer's liability
27 thereunder in some corporation, association, or organization
28 approved by the commissioner of insurance.

29 2. A motor carrier who contracts with an owner-operator
30 who is acting as an independent contractor pursuant to section
31 85.61, subsection 13, shall not be required to insure the
32 motor carrier's liability for the owner-operator. A motor
33 carrier may procure compensation liability insurance coverage
34 for these owner-operators, and may charge the owner-operator
35 for the costs of the premiums. A motor carrier shall require

1 the owner-operator to provide and maintain a certificate of
2 workers' compensation insurance covering the owner-operator's
3 employees. An owner-operator shall remain responsible for
4 providing compensation liability insurance for the owner-
5 operator's employees.

6 3. Every such employer shall exhibit, on demand of the
7 workers' compensation commissioner, evidence of the employer's
8 compliance with this section; and if such employer refuses, or
9 neglects to comply with this section, the employer shall be
10 liable in case of injury to any worker in the employer's
11 employ under the common law as modified by statute.

12 4. a. Every insurer that issues a policy of workers'
13 compensation liability insurance providing coverage required
14 by this section shall, within thirty days after issuance and
15 after subsequent cancellation of the policy, report such
16 issuance or cancellation to the workers' compensation
17 commissioner or to the commissioner's designee in the manner
18 prescribed by the commissioner by rule. Such report shall
19 include the name and address of the insured employer; the name
20 and address of the insurer that issued the policy; the
21 effective date of the policy; the effective date of the
22 cancellation, if applicable; any deductible included in the
23 policy; and such other information as the commissioner
24 requires by rule.

25 b. Notwithstanding chapter 22, a report of issuance or
26 cancellation of a policy of workers' compensation liability
27 insurance made pursuant to this subsection shall be kept
28 confidential and is not subject to public examination or
29 copying. The workers' compensation commissioner or the
30 commissioner's designee may publicly disclose information
31 contained in such a report to persons other than the insured,
32 the insurer, and persons servicing the policy, except that
33 information relating to experience, payroll, loss data, the
34 expiration date of the policy, and classification information
35 shall not be publicly disclosed except as is reasonably

1 necessary in the course of a regulatory investigation of
2 enforcement action.

3 c. The absence of a report showing that a policy of
4 workers' compensation liability insurance was issued to an
5 employer and was in effect on a particular date creates a
6 rebuttable presumption that such a policy was not issued or in
7 effect on that date.

8 d. If an insurer fails to report the issuance or
9 cancellation of a policy of workers' compensation liability
10 insurance in the time and manner required by this subsection
11 and by rule, the workers' compensation commissioner may assess
12 a civil penalty against the insurer in the amount of one
13 hundred dollars for each failure to report. The commissioner
14 may increase the civil penalty against the insurer to one
15 thousand dollars for each failure to report if such failure is
16 discovered in the course of a contested case proceeding that
17 was filed against an employer because the employer appeared to
18 be uninsured due to the absence of a report by the insurer
19 showing that a policy of workers' compensation liability
20 insurance was in effect for the employer.

21 Sec. 5. NEW SECTION. 87.2A PENALTY FOR FAILURE TO
22 INSURE.

23 The workers' compensation commissioner may assess a civil
24 penalty against any employer who is required by this chapter
25 to purchase workers' compensation insurance or to qualify for
26 relief from such insurance and fails to do so. The amount of
27 the penalty shall be an amount equal to one hundred percent of
28 the employer's workers' compensation insurance premium for the
29 year for which the penalty is assessed, as determined by the
30 commissioner of insurance. In computing the premium, it shall
31 be conclusively presumed that the highest number of employees
32 employed by the employer at any time during that year were
33 employed throughout the entire year, that all employees earned
34 the statewide average weekly wage throughout the entire year,
35 and that all employees were in the classification carrying the

1 highest premium rate that existed in the employer's workforce
2 during that year. After deducting expenses, including
3 attorney fees, incurred in collecting the penalties assessed,
4 fifty percent of all penalties collected shall be deposited in
5 the general fund of the state and the remaining fifty percent
6 of the penalties collected shall be deposited in the second
7 injury fund.

8 Sec. 6. Section 87.8, Code 2005, is amended to read as
9 follows:

10 87.8 INSOLVENCY CLAUSE PROHIBITED.

11 No A policy of insurance issued under this chapter shall
12 not contain any provision relieving the insurer from payment
13 if the insured becomes insolvent or discharged in bankruptcy
14 during the period that the policy is in operation, or the
15 compensation, or any part of it, is unpaid, notwithstanding
16 any deductible contained in the policy.

17 Sec. 7. Section 87.11, unnumbered paragraph 1, Code 2005,
18 is amended to read as follows:

19 When an employer coming under this chapter furnishes
20 satisfactory proofs to the insurance commissioner of such
21 employer's solvency and financial ability to pay the
22 compensation and benefits as by law provided and to make such
23 payments to the parties when entitled thereto, or when such
24 employer deposits with the insurance commissioner security
25 satisfactory to the insurance commissioner ~~and-the-workers+~~
26 ~~compensation-commissioner~~ as guaranty for the payment of such
27 compensation, such employer shall be relieved of the
28 provisions of this chapter requiring insurance; but such
29 employer shall, from time to time, furnish such additional
30 proof of solvency and financial ability to pay as may be
31 required by such insurance commissioner ~~or-workers+~~
32 ~~compensation-commissioner~~. Such security shall be held in
33 trust for the sole purpose of paying compensation and benefits
34 and is not subject to attachment, levy, execution,
35 garnishment, liens, or any other form of encumbrance. A

1 political subdivision, including a city, county, community
2 college, or school corporation, that is self-insured for
3 workers' compensation is not required to submit a plan or
4 program to the insurance commissioner for review and approval.

5 Sec. 8. Section 87.11, unnumbered paragraph 3, Code 2005,
6 is amended to read as follows:

7 If an employer becomes insolvent and a debtor under 11
8 U.S.C., on or after January 1, 1990, or ceases doing business,
9 this paragraph applies. ~~The commissioner-of~~ insurance
10 commissioner may request of the workers' compensation
11 commissioner that all future payments of workers' compensation
12 weekly benefits, medical expenses, or other payments pursuant
13 to chapter 85, 85A, 85B, 86, or 87 be commuted to a present
14 lump sum. The workers' compensation commissioner shall fix
15 the lump sum of probable future medical expenses and weekly
16 compensation benefits, or other benefits payable pursuant to
17 chapter 85, 85A, 85B, 86, or 87, capitalized at their present
18 value upon the basis of interest at the rate provided in
19 section 535.3 for court judgments and decrees. If an employer
20 ceases doing business without becoming insolvent, the
21 insurance commissioner shall publish notice of the time and
22 manner for filing claims against the employer in a newspaper
23 of general circulation in the county or counties within this
24 state where the employer is known to have maintained a place
25 of business. The notice shall be published in two series of
26 publications. The first series of publications shall be
27 published once each week for three consecutive weeks as soon
28 as reasonably practical after the date that the insurance
29 commissioner becomes aware that the employer has ceased doing
30 business. The second series of publications shall be
31 published once each week for three consecutive weeks within
32 the period of one year before the time for filing claims
33 expires. Defects in the notice or publication shall not
34 affect the period for filing claims against the employer or
35 give rise to a claim against the insurance commissioner. All

1 claims that are not otherwise barred shall become barred if
2 not filed within five years after the date the employer ceased
3 doing business, as determined by the insurance commissioner,
4 including claims for review reopening, benefits under section
5 85.27, and latent injuries. The insurance commissioner of
6 insurance shall be discharged from all further liability for
7 the commuted workers' compensation claim upon payment of the
8 present lump sum to either the claimant, or a licensed insurer
9 for purchase of an annuity or other periodic payment plan for
10 the benefit of the claimant.

11 Sec. 9. Section 87.14A, Code 2005, is amended to read as
12 follows:

13 87.14A INSURANCE OR-BOND REQUIRED.

14 An employer subject to this chapter and chapters 85, 85A,
15 85B, and 86 shall not engage in business without first
16 obtaining insurance covering compensation benefits or
17 obtaining relief from insurance as provided in this chapter ~~or~~
18 ~~furnishing-a-bond-pursuant-to-section-87-16.~~ A person who
19 willfully and knowingly violates this section is guilty of a
20 class "D" felony.

21 Sec. 10. Section 87.19, unnumbered paragraph 1, Code 2005,
22 is amended to read as follows:

23 Upon the receipt of information by the workers'
24 compensation commissioner of any employer failing to comply
25 with ~~sections-87-16-and-87-17~~ section 87.14A, the commissioner
26 shall at once notify such employer by certified mail that
27 unless such employer comply with the requirements of law,
28 legal proceedings will be instituted to enforce such
29 compliance.

30 Sec. 11. Section 87.20, Code 2005, is amended to read as
31 follows:

32 87.20 REVOCATION OF RELEASE FROM INSURANCE.

33 The insurance commissioner ~~with-the-concurrence-of-the~~
34 ~~workers-compensation-commissioner~~ may, at any time, upon
35 reasonable notice to such employer and upon hearing, revoke

1 for cause any order theretofore made relieving any employer
2 from carrying insurance as provided by this chapter.

3 Sec. 12. NEW SECTION. 87.25 ENFORCEMENT PROCEEDINGS.

4 1. Notwithstanding the provisions of sections 17A.11 and
5 17A.17, subsection 8, the workers' compensation commissioner
6 or a deputy workers' compensation commissioner may preside
7 over any contested case proceeding brought under this chapter.

8 2. In any action brought for the purpose of assessing a
9 civil penalty pursuant to this chapter, official notice shall
10 be taken of the records of the workers' compensation
11 commissioner. A statement from the insurance commissioner
12 that an employer has not obtained relief from insurance
13 pursuant to this chapter is presumed to be accurate.

14 3. The workers' compensation commissioner may petition any
15 court of competent jurisdiction for an entry of judgment on
16 any order assessing a civil penalty imposed pursuant to this
17 chapter. A court shall enter judgment for the unpaid portion
18 of the civil penalty assessed, upon a verified statement by
19 the workers' compensation commissioner that a civil penalty
20 was assessed and the amount of the penalty that remains
21 unpaid. A fee shall not be charged to the workers'
22 compensation commissioner for filing a petition, return of
23 service, entry of judgment, or issuance of execution on a
24 judgment. The costs of an action brought pursuant to this
25 subsection may be assessed against the defendant. The sheriff
26 of any county in this state shall execute upon property to
27 enforce the judgment without payment of fees in advance.

28 4. If so requested by the workers' compensation
29 commissioner or the treasurer of state, the attorney general
30 or a county attorney of any county in this state shall assist
31 the workers' compensation commissioner in the collection of
32 penalties assessed. In addition, the workers' compensation
33 commissioner may contract with one or more attorneys licensed
34 in this state, to obtain and enforce judgments and subrogation
35 and indemnity rights on behalf of the workers' compensation

1 commissioner and to pay for the contracted services from the
2 penalties collected.

3 Sec. 13. Sections 87.16 and 87.17, Code 2005, are
4 repealed.

5

EXPLANATION

6 This bill contains various provisions relating to workers'
7 compensation liability insurance.

8 The bill amends Code section 85.1 to provide that certain
9 persons are exempt from workers' compensation coverage, such
10 as police officers and fire fighters who are entitled to
11 benefits under Code chapters 410 and 411, and certain officers
12 of a corporation other than a family farm corporation who
13 voluntarily reject workers' compensation coverage. Code
14 section 85.1 is also amended to provide that an employer may
15 assume liability for certain exempt employees by purchasing
16 workers' compensation insurance that does not exclude such
17 employees. Previously, such employees were covered only if
18 the workers' compensation insurance policy specifically
19 included them in the coverage.

20 The bill amends Code section 85.61, subsection 2, to
21 provide that a person who contracts with a contractor to
22 perform an activity that is a regular part of the person's
23 trade or business is liable as an employer for the payment of
24 workers' compensation benefits for personal injuries sustained
25 by the employees of the contractor while performing the
26 contract with the person, if the contractor has failed to
27 insure the contractor's workers' compensation liability or to
28 obtain relief from workers' compensation liability as provided
29 in Code chapter 87. A person who pays benefits pursuant to
30 this provision is considered to be the employer for purposes
31 of the exclusive remedy provisions and for purposes of
32 subrogation and indemnity provisions. A person who pays
33 benefits to the employees of a contractor is entitled to be
34 indemnified by the contractor with interest and shall not be
35 charged a premium for workers' compensation insurance coverage

1 for a contractor's employees if the person holds a current
2 certificate of insurance or self-insurance showing that the
3 contractor is in compliance with Code chapter 87.

4 Code section 87.1 adds a new provision requiring every
5 insurer that issues workers' compensation liability insurance
6 policies to file a report with the workers' compensation
7 commissioner within 30 days of the issuance or cancellation of
8 such a policy. The bill requires the reports to be kept
9 confidential, notwithstanding the public records law in Code
10 chapter 22. The workers' compensation commissioner may
11 publicly disclose some information contained in the reports
12 except that information relating to experience, payroll, loss
13 data, the policy's expiration date, or classification shall
14 not be disclosed unless the disclosure of that information is
15 reasonably necessary in the course of a regulatory
16 investigation or enforcement action. The bill also provides
17 that the absence of such a report creates a rebuttable
18 presumption that a policy of workers' compensation insurance
19 was not issued to an employer or was not in effect on a
20 particular date.

21 An insurer who fails to report the issuance or cancellation
22 of a workers' compensation insurance policy as required by the
23 provision may be assessed a civil penalty by the workers'
24 compensation commissioner in the amount of \$100 for each
25 failure to report and \$1,000 for each failure to report if
26 such failure is discovered in the course of a contested case
27 proceeding that was filed against an employer because the
28 employer appeared to be uninsured due to the absence of the
29 report.

30 The bill creates a new Code section 87.2A allowing the
31 workers' compensation commissioner to assess a civil penalty
32 against any employer who is required by Code chapter 87 to
33 purchase workers' compensation insurance or to qualify for
34 relief from such insurance and fails to do so. The bill
35 provides that the penalty assessed shall be an amount equal to

1 100 percent of the employer's workers' compensation premium
2 for the year for which the penalty is assessed, as determined
3 by the commissioner of insurance, and that in computing the
4 premium it shall be conclusively presumed that the highest
5 number of employees employed by the employer at any time
6 during that year were employed throughout the entire year,
7 that all employees earned the statewide average weekly wage
8 throughout the entire year, and that all employees were in the
9 classification carrying the highest premium rate that existed
10 in the employer's workforce during that year. The bill
11 further provides that after deducting the expenses, including
12 attorney fees, incurred in collecting the penalties assessed,
13 50 percent of all penalties collected shall be deposited in
14 the state general fund and the remaining 50 percent shall be
15 deposited in the second injury fund.

16 Code section 87.8 is amended to provide that a policy of
17 workers' compensation liability insurance shall not contain a
18 provision relieving the insurer from liability if the insured
19 becomes insolvent or bankrupt even if the policy contains a
20 deductible.

21 Code section 87.11 is amended to provide that the amount of
22 security deposited by a self-insured employer shall be
23 determined by the insurance commissioner and not the workers'
24 compensation commissioner and that the security is held in
25 trust for the sole purpose of paying compensation and benefits
26 and is not subject to attachment, levy, execution,
27 garnishment, liens, or any other form of encumbrance. The
28 bill also provides that proof of solvency shall be given to
29 the insurance commissioner, not the workers' compensation
30 commissioner.

31 Code section 87.11 is also amended to provide that if a
32 self-insured employer ceases doing business without becoming
33 insolvent, the insurance commissioner shall publish notice of
34 the time and manner for filing claims against the employer as
35 specified in the bill. Defects in the notice or publication

1 do not affect the period for filing claims against the
2 employer or give rise to claims against the insurance
3 commissioner and certain claims not otherwise barred become
4 barred if not filed within five years after the date the
5 employer ceased doing business, as determined by the insurance
6 commissioner.

7 The bill repeals Code section 87.16, which requires an
8 employer who has failed to carry workers' compensation
9 insurance or to obtain relief from carrying such insurance, to
10 furnish a bond approved by the workers' compensation
11 commissioner. Code section 87.14A is amended to remove the
12 reference to the bonding requirements contained in Code
13 section 87.16. The bill also repeals Code section 86.17,
14 which requires an employer to post a notice stating the nature
15 of the security furnished in lieu of insurance to secure
16 workers' compensation payments.

17 Code section 87.19 is amended to provide that an employer
18 that fails to comply with the provisions of Code chapters 85,
19 85A, 85B, 86, and 87, as set forth in Code section 87.14A, may
20 be subject to enforcement proceedings.

21 The bill amends Code section 87.20 to provide that the
22 insurance commissioner may revoke, for cause, an order
23 relieving an employer from carrying insurance as required by
24 Code chapter 87 without the concurrence of the workers'
25 compensation commissioner.

26 The bill adds a new Code section 87.25 concerning
27 enforcement proceedings. The bill gives the workers'
28 compensation commissioner or a deputy the authority to preside
29 over any contested case brought under Code chapter 87,
30 notwithstanding Code sections 17A.11 and 17A.17, subsection 8.

31 The bill provides that in an action brought for the purpose
32 of assessing a civil penalty, official notice shall be taken
33 of the workers' compensation commission's records. A
34 statement from the insurance commissioner that an employer has
35 not obtained relief from insurance pursuant to Code chapter 87

1 is presumed to be accurate.

2 The bill allows the workers' compensation commissioner to
3 petition any court of competent jurisdiction for an entry of
4 judgment on any order assessing a civil penalty. No fee can
5 be charged to the commissioner for filing a petition, return
6 of service, entry of judgment, or issuance of execution on a
7 judgment, although the costs of an action brought under this
8 section may be assessed against the defendant employer. The
9 sheriff of any county is required to execute upon property to
10 enforce a judgment received under this chapter without
11 prepayment of fees.

12 The bill requires the attorney general or a county attorney
13 of any county to assist the workers' compensation commissioner
14 in collecting penalties assessed, upon request of the
15 commissioner or the treasurer of state. In addition, the
16 workers' compensation commissioner has the authority to
17 contract with other attorneys licensed in Iowa to obtain and
18 enforce judgments and subrogation and indemnity rights on
19 behalf of the commissioner and to pay for the contracted
20 services from the penalties collected.

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Iowa Workforce Development

Thomas J. Vilsack, Governor

Sally J. Pederson, Lt. Governor

Richard V. Running, Director

Putting Iowa
to Work

MEMORANDUM

Date: January 10, 2005

To: General Assembly

From: Jane Barto, Deputy Director *JB*
Iowa Workforce Development
(515) 281-5082

RE: LSB #1208DP— An Act workers' compensation liability insurance, and providing for civil penalties.

This bill addresses seven topics affecting workers' compensation insurance. Unlawful failure to comply with Iowa's requirement for employers to insure their liability is detrimental to all Iowans. If an employee of an uninsured employer is seriously injured, adverse consequences affect several groups. The employee suffers reduced income and may default on financial obligations, harming the creditors. Physicians who provide medical care risk not being paid, shifting the cost of that care onto other patients. Businesses where the injured person was a consumer lose the injured person's business. The requirement for insurance benefits all Iowans and should be enforced.

Sections 1 and 4 create a requirement for insurance carriers to report when they issue or cancel a policy, a common requirement in many states. It also preserves the confidential nature of policy expiration dates.

Sections 5 and 12 create a system of civil sanctions to be imposed on illegally uninsured employers and the procedures for imposing the sanctions. The criminal sanctions impose a burden on county attorneys and prosecutions are rarely pursued. The civil sanctions will be more effective toward compelling compliance with the legal requirement for employers to be insured.

Section 2 is intended to change policy requirements so the policy must describe the employees who are not covered by the policy. This is in response to the case Zomer v. West River Farms, Inc., 666 N.W.2d 130 (Iowa 2003). Coverage can be purchased for some classifications of employees who are otherwise

exempt. A rider must be attached to the policy to actually cover those optional employees, but nothing in the policy alerts the policyholder that a rider is needed. As a result, employers pay premiums intending to cover exempt employees but when a claim arises, it is denied if the agent failed to cause the rider to be issued. This is a little-known and complex matter that produces errors and a risk of agent liability. Placing the exclusion in the policy will reduce the occurrence of errors.

Section 3 creates a "statutory employer" status similar what is found in the law of most states. This too is a response to the problem of businesses contracting with illegally uninsured employers. It is narrowly defined so only actions that are a regular part of the person's trade or business are covered. This eliminates any exposure to homeowners or businesses who hire a contractor to perform a special project or repair.

Section 6 addresses an uncertainty that was created when the law was changed to permit policy deductibles. This makes it clear that the insurer is liable for paying all benefits if the employer becomes insolvent. The only reasonable alternative is to require employers with a deductible to qualify with the Insurance Commissioner to become self insured, a very burdensome requirement.

Sections 7 and 8 address gaps in the law governing employers who are authorized by the insurance commissioner to be self insured. This is offered in response to recent litigation where the employer had gone out of business. This clarifies that the security held by the insurance commissioner cannot be diverted to other creditors until the workers' compensation liability is extinguished. It creates a procedure for closing out the security when there is not a bankruptcy or other insolvency proceeding.

Sections 9, 10, 11 and 13 remove redundancies and obsolete provisions in the law governing self insurance. It removes references to the workers' compensation commissioner in matters that are regulated by the insurance commissioner.