

published in Muscatine, Iowa, and in the Carroll Daily Times-Herald, a newspaper published in Carroll, Iowa.

Approved May 20, 1980

I hereby certify that the foregoing Act, Senate File 2282, was published in the Muscatine Journal, Muscatine, Iowa on May 29, 1980 and republished on June 6, 1980 and published in the Carroll Daily Times-Herald, Carroll, Iowa on May 29, 1980 and republished June 10, 1980.

MELVIN D. SYNHORST, *Secretary of State*

CHAPTER 1026
OCCUPATIONAL HEARING LOSS

S. F. 359

AN ACT relating to workers' compensation for occupational hearing loss.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. Sections two (2) through fifteen (15) of this Act shall be known as the "Iowa occupational hearing loss Act".

Sec. 2. NEW SECTION. All employers as defined in chapter eighty-five (85) of the Code are subject to sections two (2) through fifteen (15) of this Act.

Sec. 3. NEW SECTION. All employees as defined in chapter eighty-five (85) of the Code who incur an occupational hearing loss arising out of and in the course of employment, are subject to sections two (2) through fifteen (15) of this Act.

Sec. 4. NEW SECTION.

1. "Occupational hearing loss" means a permanent sensorineural loss of hearing in one or both ears in excess of twenty-five decibels if measured from international standards organization or American national standards institute zero reference level, which arises out of and in the course of employment caused by prolonged exposure to excessive noise levels.

In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of five hundred, one thousand, two thousand, and three thousand Hertz shall be considered.

2. "Excessive noise level" means sound capable of producing occupational hearing loss.

Sec. 5. NEW SECTION. An excessive noise level is sound which exceeds the times and intensities listed in the following table:

<u>Duration</u> <u>per day</u> <u>hours</u>	<u>Sound level,</u> <u>dBA slow</u> <u>response</u>	<u>Duration</u> <u>per day</u> <u>minutes</u>	<u>Sound level,</u> <u>dBA slow</u> <u>response</u>
8	90	52	106
7	91	45	107
6	92	37	108

5	93	33	109
4 1/2	94	30	110
4	95	26	111
3 1/2	96	22	112
3	97	18	113
2 1/2	98	16	114
2 1/4	99	15	115
2	100	No exposure	Greater than
1 3/4	101	permitted	115
1 1/2	102		
1 1/4	103		
1 1/8	104		
1	105		

The industrial commissioner may promulgate rules pursuant to chapter seventeen A (17A) of the Code to amend this table based upon changes recommended in nationally recognized consensus standards.

An employer shall immediately inform an employee if the employer learns that the employee is being subjected to sound levels and duration in excess of those indicated in the above table. In instances of occupational hearing loss alleged to have occurred, either in whole or in part prior to the effective date of this Act, an employer shall provide upon request by an affected employee whatever evidence is available to the employer of the date, duration, and intensities of noise to which the employee was subjected in employment.

Sec. 6. NEW SECTION. Compensation is payable for a maximum of one hundred seventy-five weeks for total occupational hearing loss. For partial occupational hearing loss compensation is payable for a period proportionate to the relation which the calculated binaural, both ears, hearing loss bears to one hundred percent, or total loss of hearing.

Sec. 7. NEW SECTION. Compensation is not payable to an employee who willfully fails to submit for reasonable periodic physical and audiometric examinations. Reasonable written notice of the dates and times of examinations required by the employer shall be given the employee. Examinations shall be scheduled during times the employee, examining personnel, and examination facilities are reasonably available. Physical and audiometric examinations shall be at the expense of the employer. The employee shall be compensated for any time lost from work occasioned by employer examinations. Compensation is not payable to an employee if the employee fails or refuses to use employer-provided hearing protective devices required by the employer and communicated in writing to the employee at the time the employee is employed or at the time the protective devices are provided by the employer.

Sec. 8. NEW SECTION. A claim for occupational hearing loss due to excessive noise levels may be filed six months after separation from the employment in which the employee was exposed to excessive noise levels. The date of the injury shall be the date of occurrence of any one of the following events:

1. Transfer from excessive noise level employment by an employer.
2. Retirement.
3. Termination of the employer-employee relationship.

The date of injury for a layoff which continues for a period longer than one year shall be six months after the date of the layoff. However, the date of the injury for any loss of hearing incurred prior to the effective date of this Act shall not be earlier than the occurrence of any one of the above events.

Sec. 9. NEW SECTION. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards used to define occupational hearing loss shall be used for measuring hearing loss, and the audiograms shall be taken and the tests given in an environment such as is prescribed by accepted national standards. If more than one audiogram is taken following notice of an occupational hearing loss claim, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average less than those levels that constitute an occupational hearing loss, the losses of hearing are not a compensable hearing disability. If the losses of hearing average ninety-two decibels American national standards institute (ANSI) or international standards organization (ISO), or more in the four frequencies, then the losses are total, or one hundred percent, compensable hearing loss. In measuring hearing impairment the lowest measured losses in each of the four frequencies shall be added together and divided by four to determine the average decibel loss. For each resulting decibel of loss exceeding twenty-five decibels ANSI or ISO, an allowance of one and one-half percent shall be made up to the maximum of one hundred percent, which is reached at ninety-two decibels ANSI or ISO. In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment. Audiometric examinations shall be made by persons trained by formal course work in air conduction audiometry at an accredited educational institution or licensed as audiologists under chapter one hundred forty-seven (147) of the Code, as physicians under chapter one hundred forty-eight (148) of the Code, as osteopathic physicians under chapter one hundred fifty (150) of the Code, or as osteopathic physicians and surgeons under chapter one hundred fifty A (150A) of the Code if such licensed persons are trained in air conduction audiometry. The interpretation of the audiometric examination shall be by the employer's regular or consulting physician who is trained and has had experience with such interpretation, or by a licensed audiologist. If the employee disputes the interpretation, the employee may select a physician similarly trained and experienced or a licensed audiologist to give an interpretation of the audiometric examination. This section is applicable in the event of partial permanent or total permanent occupational hearing loss in one or both ears.

Sec. 10. NEW SECTION. The employer shall communicate to the employee, in writing, the results of an audiometric examination or physical examination of an employee which reflects an average hearing loss of the employee in one or

both ears in excess of twenty-five decibels ANSI or ISO for the test frequencies of five hundred, one thousand, two thousand, and three thousand Hertz, as soon as practicable after the examination. The communication shall include the name and address of the person conducting the audiometric examination or physical examination, the kind or type of test or examinations given, the results of each, the average decibel loss, in the four frequencies, in each ear, if any, and, if known to the employer, whether the loss is sensorineural hearing loss and, if the hearing loss resulted from another cause, the name of the cause.

Sec. 11. NEW SECTION. An employer is liable, as provided in this Act and subject to the provisions of chapter eighty-five (85) of the Code, for an occupational hearing loss to which the employment has contributed, but if previous hearing loss, whether occupational or not, is established by an audiometric examination or other competent evidence, whether or not the employee was exposed to excessive noise level within six months preceding the test, the employer is not liable for the previous loss, nor is the employer liable for a loss for which compensation has previously been paid or awarded. The employer is liable only for the difference between the percent of occupational hearing loss determined as of the date of the audiometric examination used to determine occupational hearing loss and the percentage of loss established by the preemployment audiometric examination. An amount paid to an employee for occupational hearing loss by any other employer shall be credited against compensation payable by an employer for the hearing loss. An employee shall not receive in the aggregate greater compensation from all employers for occupational hearing loss than that provided in this section for total occupational hearing loss. A payment shall not be made to an employee unless the employee has worked in excessive noise level employment for a total period of at least ninety days for the employer from whom compensation is claimed.

Sec. 12. NEW SECTION. A reduction of the compensation payable to an employee for occupational hearing loss shall not be made because the employee's ability to communicate may be improved by the use of a hearing aid. An employer who is liable for occupational hearing loss of an employee is required to provide the employee with a hearing aid unless it will not materially improve the employee's ability to communicate.

Sec. 13. NEW SECTION. Payments of compensation and compliance with other provisions of sections two (2) through fifteen (15) of this Act by the employer or the employer's insurance carrier in accordance with the findings and orders of the industrial commissioner or a court making a final adjudication in appealed cases, discharges the employer from further obligation.

Sec. 14. NEW SECTION. Chapters seventeen A (17A), eighty-five (85), and eighty-six (86) of the Code, so far as applicable, and not inconsistent with sections two (2) through fifteen (15) of this Act, apply in cases of compensable occupational hearing loss.

Sec. 15. NEW SECTION. The industrial commissioner has jurisdiction over the operation and administration of the compensation provisions of sections two (2) through fifteen (15) of this Act.

Sec. 16. Section eighty-five point three (85.3), subsection two (2), Code 1979, is amended to read as follows:

2. Any employer who is a nonresident of the state, for whom services are performed within the state by employees entitled to rights under this ~~or~~ chapter, chapter 85A or sections two (2) through fifteen (15) of this Act, by virtue of having such services performed shall be subject to the jurisdiction of the industrial commissioner and to all of the provisions of this chapter, chapters 85A, 86, ~~and~~ 87, and sections two (2) through fifteen (15) of this Act, as to any and all personal injuries sustained by an employee arising out of and in the course of such employment within this state.

In addition to those persons authorized to receive personal service as in civil actions as permitted by chapter 17A, such employer shall be deemed to have appointed the secretary of state of this state as its lawful attorney upon whom may be served or delivered any and all notices authorized or required by the provisions of this chapter, chapters 85A, 86, 87, and 17A, and sections two (2) through fifteen (15) of this Act, and to agree that any and all such services or deliveries of notice on the secretary of state shall be of the same legal force and validity as if personally served upon or delivered to such nonresident employer in this state.

Sec. 17. Section eighty-five point twenty (85.20), Code 1979, is amended to read as follows:

85.20 RIGHTS OF EMPLOYEE EXCLUSIVE. The rights and remedies provided in this chapter ~~or~~, chapter 85A or sections two (2) through fifteen (15) of this Act for an employee on account of injury ~~or~~, occupational disease or occupational hearing loss for which benefits under this chapter ~~or~~, chapter 85A or sections two (2) through fifteen (15) of this Act are recoverable, shall be the exclusive rights and remedies of such employee, ~~his~~ the employee's personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury ~~or~~, occupational disease, or occupational hearing loss against his or her employer; or any other employee of such employer, provided that such injury ~~or~~, occupational disease, or occupational hearing loss arises out of and in the course of such employment and is not caused by the other employee's gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another.

Sec. 18. Section eighty-five point twenty-two (85.22), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

When an employee receives an injury or incurs an occupational disease or an occupational hearing loss for which compensation is payable under this chapter ~~or~~, chapter 85A or sections two (2) through fifteen (15) of this Act, and which injury or occupational disease or occupational hearing loss is caused under circumstances creating a legal liability against some person, other than his or her employer or any employee of such employer as provided in section 85.20 to pay damages, the employee, or ~~his~~ the employee's dependent, or the trustee of such dependent, may take proceedings against ~~his~~ the employer for compensation, and the employee or, in case of death, ~~his~~ the employee's legal representative may also maintain an action against such third party for damages. When an injured employee or ~~his~~ the employee's

legal representative brings an action against such third party, a copy of the original notice shall be served upon the employer by the plaintiff, not less than ten days before the trial of the case, but a failure to give such notice shall not prejudice the rights of the employer, and the following rights and duties shall ensue:

Sec. 19. Section eighty-five point twenty-six (85.26), subsections one (1), two (2) and three (3), Code 1979, are amended to read as follows:

1. No original proceedings for benefits under this chapter, chapter 85A or 86 or sections two (2) through fifteen (15) of this Act, shall be maintained in any contested case unless such proceedings shall be commenced within two years from the date of the occurrence of the injury for which benefits are claimed except as provided by section 86.20.

2. Any award for payments or agreement for settlement provided by section 86.13 for benefits under the workers' compensation or occupational disease law or the Iowa occupational hearing loss Act may, where the amount has not been commuted, be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made under such award or agreement. Once an award for payments or agreement for settlement as provided by section 86.13 for benefits under the workers' compensation or occupational disease law or the Iowa occupational hearing loss Act has been made where the amount has not been commuted, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section 85.27.

3. Notwithstanding the terms of chapter 17A, the filing with the industrial commissioner of the original notice or petition for an original proceeding or an original notice or petition to reopen an award or agreement of settlement provided by section 86.13, for benefits under the workers' compensation or occupational disease law or the Iowa occupational hearing loss Act shall be the only act constituting "commencement" for purposes of this statutory section.

Sec. 20. Section eighty-five point thirty-four (85.34), subsection two (2), paragraph r, Code 1979, is amended by striking the paragraph and inserting in lieu thereof the following:

r. For the loss of hearing, other than occupational hearing loss as defined in section four (4), subsection one (1) of this Act, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks. For occupational hearing loss, weekly compensation as provided in the Iowa occupational hearing loss Act.

Sec. 21. Section eighty-five point thirty-four (85.34), subsection three (3), unnumbered paragraph two (2), Code 1979, is amended to read as follows:

Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter ~~or~~, chapter 85A or sections two (2) through fifteen (15) of this Act for the same injury producing a total

permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability.

Sec. 22. Section eighty-five point thirty-five (85.35), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

The parties to a contested case, or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter, chapter 85A ~~or~~, chapter 86, or sections two (2) through fifteen (15) of this Act providing for final disposition of the claim, provided that no final disposition affecting rights to future benefits may be had when the only dispute is the degree of disability resulting from an injury for which an award for payments or agreement for settlement under section 86.13 has been made. The settlement shall be in writing and submitted to the industrial commissioner for approval. The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

Sec. 23. Section eighty-five point thirty-five (85.35), subsection seven (7) and unnumbered paragraph two (2), Code 1979, are amended to read as follows:

7. This chapter or chapter 85A, 86 ~~or~~, 87 or sections two (2) through fifteen (15) of this Act, applies to the party making the claim.

Approval by the industrial commissioner shall be binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 86, ~~and~~ 87, and sections two (2) through fifteen (15) of this Act, an approved settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 86, ~~and~~ 87 and sections two (2) through fifteen (15) of this Act. Such payment shall not be construed as the payment of weekly compensation.

Sec. 24. Section eighty-five point thirty-eight (85.38), subsection two (2), Code 1979, is amended to read as follows:

2. CREDIT FOR BENEFITS PAID UNDER GROUP PLANS. In the event the disabled employee shall receive any benefits, including medical, surgical or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under this chapter ~~or~~, chapter 85A or sections two (2) through fifteen (15) of this Act, then such amounts so paid to said employee from any such group plan shall be credited to or against any compensation payments, including medical, surgical or hospital, made or to be made under this chapter ~~or~~, chapter 85A or sections two (2) through fifteen (15) of this Act. Such amounts so credited shall be deducted from the payments made under these chapters. Any nonoccupational plan shall be reimbursed in the amount so deducted. This section shall not apply to payments made under any group plan which would have been payable even though there was an injury under this chapter or an occupational disease under chapter 85A or an occupational hearing loss under sections two (2) through fifteen (15) of this Act. Any employer receiving such credit shall keep such employee safe and harmless from any and all claims or liabilities that may be made against them by reason of having received such payments only to the extent of such credit.

Sec. 25. Section eighty-five point forty-nine (85.49), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

When a minor or mentally incompetent dependent is entitled to weekly benefits under this chapter ~~or~~ chapter 85A or sections two (2) through fifteen (15) of this Act, payment shall be made to the clerk of the district court for the county in which the injury occurred, who shall act as trustee, and the money coming into ~~his~~ the clerk's hands shall be expended for the use and benefit of the person entitled thereto under the direction and orders of a judge of the district court, in which such county is located. The clerk of the district court, as ~~such~~ trustee, shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best. The cost of such bond shall be paid by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county. If the domicile or residence of such minor or mentally incompetent dependent be within the state but in a county other than that in which the injury to the employee occurred the industrial commissioner may order and direct that weekly benefits to such minors or incompetents be paid to the clerk of the district court of the county wherein they shall be domiciled or reside.

Sec. 26. This Act is effective January first following its enactment.

Approved April 21, 1980

CHAPTER 1027
EMERGENCY PROCLAMATIONS

H. F. 2596

AN ACT to provide a penalty for violations of an executive order issued by the governor pursuant to a proclamation of an emergency by the governor under section ninety-three point eight (93.8) of the Code or a declaration of an energy emergency by the president of the United States under Pub. L. No. 96.102.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section ninety-three point eight (93.8), unnumbered paragraph two (2), Code 1979, is amended to read as follows:

Pursuant to the proclamation of an emergency or in response to a declaration of an energy emergency by the president of the United States under the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102, the governor by executive order may:

Sec. 2. Section ninety-three point eight (93.8), Code 1979, is amended by adding the following new subsection: