

FILED MAR 6 1980

SENATE FILE 359
By DeKOSTER and ROBINSON

Passed Senate, Date 2-21-80 (p. 618) Passed House, Date _____
Vote: Ayes 43 Nays 4 . Vote: Ayes _____ Nays _____
Approved April 21, 1980

A BILL FOR

- 1 An Act relating to worker's compensation for occupational
- 2 hearing loss.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 4
- 5
- 6
- 7

SENATE FILE 359
FISCAL NOTE

DATE: FEBRUARY 21, 1980
REQUESTED BY: SENATOR HULSE

In compliance with a written request received February 14, 19 80, there is hereby submitted a Fiscal Note for S-5124 to S.F. 359 pursuant to Joint Rule 16. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

Amendment S-5124 to Senate File 359

S.F. 359, An Act relating to worker's compensation for occupational hearing loss.

Amendment S-5124 has no fiscal impact.

SOURCE: INDUSTRIAL COMMISSIONER

FILED:
FEBRUARY 25, 1980

BY GERRY RANKIN, DIRECTOR
LEGISLATIVE FISCAL BUREAU

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

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

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

11 Sec. 4. NEW SECTION.

12 1. "Occupational hearing loss" means a permanent sen-
13 sorineural loss of hearing in one or both ears in excess of
14 fifteen decibels if measured from American standards
15 association zero reference level, or twenty-six decibels if
16 measured from international standards organization or American
17 national standards institute zero reference level, which
18 arises out of and in the course of employment caused by pro-
19 longed exposure to excessive noise levels.

20 In the evaluation of occupational hearing loss, only the
21 hearing levels at the frequencies of five hundred, one thou-
22 sand and two thousand Hertz shall be considered.

23 2. "Excess noise level" means sound capable of producing
24 occupational hearing loss.

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

| 28 Duration | Sound level, | Duration | Sound level, |
|-----------------|-----------------|----------------|-----------------|
| 29 per day | dBA slow | per day | dBA slow |
| 30 <u>hours</u> | <u>response</u> | <u>minutes</u> | <u>response</u> |
| 31 8 | 90 | 52 | 106 |
| 32 7 | 91 | 45 | 107 |
| 33 6 | 92 | 37 | 108 |
| 34 5 | 93 | 33 | 109 |
| 35 4 1/2 | 94 | 30 | 110 |

| | | | | |
|----|-------|-----|-------------|--------------|
| 1 | 4 | 95 | 26 | 111 |
| 2 | 3 1/2 | 96 | 22 | 112 |
| 3 | 3 | 97 | 18 | 113 |
| 4 | 2 1/2 | 98 | 16 | 114 |
| 5 | 2 1/4 | 99 | 15 | 115 |
| 6 | 2 | 100 | No exposure | Greater than |
| 7 | 1 3/4 | 101 | permitted | 115 |
| 8 | 1 1/2 | 102 | | |
| 9 | 1 1/4 | 103 | | |
| 10 | 1 1/8 | 104 | | |
| 11 | 1 | 105 | | |

12 The industrial commissioner may promulgate rules amending
 13 this table based upon changes recommended in nationally
 14 recognized consensus standards. Written notice of changes
 15 shall be given to employers.

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

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

31 Sec. 7. NEW SECTION. Compensation is not payable to an
 32 employee who willfully fails to submit for reasonable periodic
 33 physical and audiometric examinations. Reasonable written
 34 notice of the dates and times of examinations required by
 35 the employer shall be given the employee. Examinations shall

1 be scheduled during times the employee, examining personnel,
2 and examination facilities are reasonably available. Physical
3 and audiometric examinations shall be at the expense of the
4 employer. The employee shall be compensated for any time
5 lost from work occasioned by employer examinations.
6 Compensation is not payable to an employee if the employee
7 fails or refuses to use employer-provided ear protective
8 devices required by the employer and communicated in writing
9 to the employee at the time the employee is employed or at
10 the time the protective devices are provided by the employer.

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

17 1. Transfer from excessive noise level employment by an
18 employer.

19 2. Retirement.

20 3. Termination of the employer-employee relationship.

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

27 Sec. 9. NEW SECTION. Pure tone air conduction audiometric
28 instruments, properly calibrated according to accepted national
29 standards used to define occupational hearing loss shall be
30 used for measuring hearing loss, and the audiograms shall
31 be taken and the tests given in an environment such as is
32 prescribed by accepted national standards. If more than one
33 audiogram is taken, the audiogram having the lowest threshold
34 will be used to calculate occupational hearing loss. If the
35 losses of hearing average less than those levels that

1 constitute an occupational hearing loss, the losses of hearing
2 are not a compensable hearing disability. If the losses of
3 hearing average eighty-two decibels American standard
4 association (ASA), ninety-three decibels American national
5 standards institute (ANSI) or international standards
6 organization (ISO), or more in the three frequencies, then
7 the losses are total, or one hundred percent, compensable
8 hearing loss. In measuring hearing impairment the lowest
9 measured losses in each of the three frequencies shall be
10 added together and divided by three to determine the average
11 decibel loss. For each resulting decibel of loss exceeding
12 fifteen decibels ASA or exceeding twenty-six decibels ANSI
13 or ISO, an allowance of one and one-half percent shall be
14 made up to the maximum of one hundred percent, which is reached
15 at eighty-two decibels ASA, ninety-three decibels ANSI or
16 ISO. In determining the binaural percentage of loss, the
17 percentage of impairment in the better ear shall be multiplied
18 by five. The resulting figure shall be added to the percent-
19 age of impairment in the poorer ear, and the sum of the two
20 divided by six. The final percentage shall represent the
21 binaural hearing impairment. Audiometric examinations shall
22 be made by persons trained in air conduction audiometry,
23 either by formal course work at audiological centers of
24 accredited educational institutions or individual instruc-
25 tion by a physician experienced in audiometric testing or
26 by an audiologist certified by the American speech and hear-
27 ing association. The interpretation of the audiometric ex-
28 amination shall be by the employer's regular or consulting
29 physician who is trained and has had experience with such
30 interpretation, or by an audiologist certified by the American
31 speech and hearing association. If the employee disputes
32 the interpretation, the employee may select a person similarly
33 trained and experienced or an audiologist certified by the
34 American speech and hearing association to give an
35 interpretation of the audiometric examination. This section

1 is applicable in the event of partial permanent or total
2 permanent occupational hearing loss in one or both ears.

3 Sec. 10. NEW SECTION. The employer shall communicate
4 to the employee, in writing, the results of an audiometric
5 examination or physical examination of an employee which
6 reflects a hearing loss of the employee, as soon as practicable
7 after the examination. The communication shall include the
8 name and address of the person conducting the audiometric
9 examination or physical examination, the kind or type of test
10 or examinations given, the results of each, the average decibel
11 loss, in the three frequencies, in each ear, if any, and,
12 if known to the employer, whether the loss is sensorineural
13 hearing loss and, if the hearing loss resulted from another
14 cause, the name of the cause.

15 Sec. 11. NEW SECTION. An employer is liable, as provided
16 in this Act and subject to the provisions of chapter eighty-
17 five (85) of the Code, for an occupational hearing loss to
18 which the employment has contributed, but if previous hearing
19 loss, whether occupational or not, is established by an
20 audiometric examination or other competent evidence, whether
21 or not the employee was exposed to excessive noise level
22 within six months preceding the test, the employer is not
23 liable for the previous loss, nor is the employer liable for
24 a loss for which compensation has previously been paid or
25 awarded. The employer is liable only for the difference
26 between the percent of occupational hearing loss determined
27 as of the date of disability and the percentage of loss
28 established by the preemployment and audiometric examination.
29 An amount paid to an employee for occupational hearing loss
30 by any other employer shall be credited against compensation
31 payable by an employer for the hearing loss. An employee
32 shall not receive in the aggregate greater compensation from
33 all employers for occupational hearing loss than that provided
34 in this section for total occupational hearing loss. A payment
35 shall not be made to an employee unless the employee has

1 worked in excessive noise level employment for a total period
2 of at least ninety days for the employer from whom compensation
3 is claimed.

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

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

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

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

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

29 2. Any employer who is a nonresident of the state, for
30 whom services are performed within the state by employees
31 entitled to rights under this ~~or~~ chapter, chapter 85A or
32 sections two (2) through fifteen (15) of this Act, by virtue
33 of having such services performed shall be subject to the
34 jurisdiction of the industrial commissioner and to all of
35 the provisions of this chapter, chapters 85A, 86, and 87,

1 and sections two (2) through fifteen (15) of this Act, as
2 to any and all personal injuries sustained by an employee
3 arising out of and in the course of such employment within
4 this state.

5 In addition to those persons authorized to receive personal
6 service as in civil actions as permitted by chapter 17A, such
7 employer shall be deemed to have appointed the secretary of
8 state of this state as its lawful attorney upon whom may be
9 served or delivered any and all notices authorized or required
10 by the provisions of this chapter, chapters 85A, 86, 87, and
11 17A, and sections two (2) through fifteen (15) of this Act,
12 and to agree that any and all such services or deliveries
13 of notice on the secretary of state shall be of the same legal
14 force and validity as if personally served upon or delivered
15 to such nonresident employer in this state.

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

18 85.20 RIGHTS OF EMPLOYEE EXCLUSIVE. The rights and
19 remedies provided in this chapter ~~or~~, chapter 85A or sections
20 two (2) through fifteen (15) of this Act for an employee on
21 account of injury ~~or~~, occupational disease or occupational
22 hearing loss for which benefits under this chapter ~~or~~, chapter
23 85A or sections two (2) through fifteen (15) of this Act are
24 recoverable, shall be the exclusive rights and remedies of
25 such employee, ~~his~~ the employee's personal or legal
26 representatives, dependents, or next of kin, at common law
27 or otherwise, on account of such injury ~~or~~, occupational
28 disease, or occupational hearing loss against his or her
29 employer; or any other employee of such employer, provided
30 that such injury ~~or~~, occupational disease, or occupational
31 hearing loss arises out of and in the course of such employment
32 and is not caused by the other employee's gross negligence
33 amounting to such lack of care as to amount to wanton neglect
34 for the safety of another.

35 Sec. 18. Section eighty-five point twenty-two (85.22),

1 unnumbered paragraph one (1), Code 1979, is amended to read
2 as follows:

3 When an employee receives an injury or incurs an
4 occupational disease or an occupational hearing loss for which
5 compensation is payable under this chapter ~~or~~, chapter 85A
6 or sections two (2) through fifteen (15) of this Act, and
7 which injury or occupational disease or occupational hearing
8 loss is caused under circumstances creating a legal liability
9 against some person, other than his or her employer or any
10 employee of such employer as provided in section 85.20 to
11 pay damages, the employee, or ~~his~~ the employee's dependent,
12 or the trustee of such dependent, may take proceedings against
13 ~~his~~ the employer for compensation, and the employee or, in
14 case of death, ~~his~~ the employee's legal representative may
15 also maintain an action against such third party for damages.
16 When an injured employee or ~~his~~ the employee's legal
17 representative brings an action against such third party,
18 a copy of the original notice shall be served upon the employer
19 by the plaintiff, not less than ten days before the trial
20 of the case, but a failure to give such notice shall not
21 prejudice the rights of the employer, and the following rights
22 and duties shall ensue:

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

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

32 2. Any award for payments or agreement for settlement
33 provided by section 86.13 for benefits under the workers'
34 compensation or occupational disease law or the Iowa
35 occupational hearing loss Act may, where the amount has not

1 been commuted, be reviewed upon commencement of reopening
2 proceedings by the employer or the employee within three years
3 from the date of the last payment of weekly benefits made
4 under such award or agreement. Once an award for payments
5 or agreement for settlement as provided by section 86.13 for
6 benefits under the workers' compensation or occupational
7 disease law or the Iowa occupational hearing loss Act has
8 been made where the amount has not been commuted, the
9 commissioner may at any time upon proper application make
10 a determination and appropriate order concerning the
11 entitlement of an employee to benefits provided for in section
12 85.27.

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

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

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

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

1 Such compensation shall be in addition to the benefits
2 provided in sections 85.27 and 85.28. No compensation shall
3 be payable under this subsection for any injury for which
4 compensation is payable under subsection 2 of this section.
5 In the event compensation has been paid to any person under
6 any provision of this chapter ~~or~~, chapter 85A or sections
7 two (2) through fifteen (15) of this Act for the same injury
8 producing a total permanent disability, any such amounts so
9 paid shall be deducted from the total amount of compensation
10 payable for such permanent total disability.

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

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

27 Sec. 23. Section eighty-five point thirty-five (85.35),
28 subsection seven (7) and unnumbered paragraph two (2), Code
29 1979, are amended to read as follows:

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

33 Approval by the industrial commissioner shall be binding
34 on the parties and shall not be construed as an original
35 proceeding. Notwithstanding any provisions of this chapter

1 and chapters 85A, 86, and 87, and sections two (2) through
2 fifteen (15) of this Act, an approved settlement shall
3 constitute a final bar to any further rights arising under
4 this chapter and chapters 85A, 86, and 87 and sections two
5 (2) through fifteen (15) of this Act. Such payment shall
6 not be construed as the payment of weekly compensation.

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

9 2. CREDIT FOR BENEFITS PAID UNDER GROUP PLANS. In the
10 event the disabled employee shall receive any benefits,
11 including medical, surgical or hospital benefits, under any
12 group plan covering nonoccupational disabilities contributed
13 to wholly or partially by the employer, which benefits should
14 not have been paid or payable if any rights of recovery existed
15 under this chapter ~~or~~, chapter 85A or sections two (2) through
16 fifteen (15) of this Act, then such amounts so paid to said
17 employee from any such group plan shall be credited to or
18 against any compensation payments, including medical, surgical
19 or hospital, made or to be made under this chapter ~~or~~, chapter
20 85A or sections two (2) through fifteen (15) of this Act.
21 Such amounts so credited shall be deducted from the payments
22 made under these chapters. Any nonoccupational plan shall
23 be reimbursed in the amount so deducted. This section shall
24 not apply to payments made under any group plan which would
25 have been payable even though there was an injury under this
26 chapter or an occupational disease under chapter 85A or an
27 occupational hearing loss under sections two (2) through
28 fifteen (15) of this Act. Any employer receiving such credit
29 shall keep such employee safe and harmless from any and all
30 claims or liabilities that may be made against them by reason
31 of having received such payments only to the extent of such
32 credit.

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

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

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

25 EXPLANATION

26 This bill incorporates accepted standards of percentage
27 of hearing loss into the workers' compensation law by providing
28 new sections entitled the "Iowa Occupational Hearing Loss
29 Act." The bill defines occupational hearing loss as loss of
30 hearing, above a certain level, which arises out of and in
31 the course of employment caused by prolonged exposure to
32 excessive noise levels. The bill specifies the measurement
33 of hearing loss and the instruments by which loss shall be
34 measured, provides that the employer is not liable for
35 occupational hearing loss suffered by the employee in previous

1 employment if the previous loss is established by competent
2 evidence and that the employer is liable for occupational
3 hearing loss due to harmful noise while working for an employer
4 for a total period of at least ninety days. The bill further
5 provides that compensation shall not be reduced because of
6 improved hearing due to the use of a hearing aid. The bill
7 also provides that an employer shall provide an employee,
8 who has suffered occupational hearing loss while in the course
9 of employment, a hearing aid unless it will not materially
10 improve the employee's hearing. An employer is not liable,
11 under certain circumstances, for occupational hearing loss
12 if the employee fails or refuses to use employer-provided
13 ear protective devices.

14 The current workers' compensation law provides for loss
15 of hearing but does not incorporate specific standards for
16 measuring degree of loss. Sections 16 through 25 of this
17 bill make appropriate references to this Act in Chapter 85,
18 Workers' Compensation.

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SENATE FILE 359

S-5234

- 1 Amend Senate File 359 as follows:
- 2 1. Page 4, line 32, by striking the word "person"
- 3 and inserting in lieu thereof the word "physician".

S-5234 FILED & ADOPTED (p 617) BY JOHN W. JENSEN
FEBRUARY 28, 1980

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S-5124

- 1 Amend Senate File 359 as follows:
- 2 1. Page 1, by striking lines 14 and 15 and
3 inserting in lieu thereof the words "twenty-five
4 decibels if".
- 5 2. Page 1, by striking line 22 and inserting in
6 lieu thereof the words "and, two thousand, and three
7 thousand Hertz shall be considered."
- 8 3. Page 2, line 12, by striking the word "amending"
9 and inserting in lieu thereof the words and figures
10 "pursuant to chapter seventeen A (17A) of the Code
11 to amend".
- 12 4. Page 2, lines 14 and 15, by striking the words
13 "Written notice of changes shall be given to
14 employers."
- 15 5. Page 3, line 7, by striking the word "ear"
16 and inserting in lieu thereof the word "hearing".
- 17 6. Page 3, line 33, by inserting after the word
18 "taken" the words "following notice of an occupational
19 hearing loss claim".
- 20 7. Page 4, lines 3 and 4, by striking the words
21 "eighty-two decibels American standard association
22 (ASA), ninety-three" and inserting in lieu thereof
23 the words "ninety-two".
- 24 8. Page 4, line 6, by striking the word "three"
25 and inserting in lieu thereof the word "four".
- 26 9. Page 4, line 9, by striking the word "three"
27 and inserting in lieu thereof the word "four".
- 28 10. Page 4, line 10, by striking the word "three"
29 and inserting in lieu thereof the word "four".
- 30 11. Page 4, by striking line 12 and inserting
31 in lieu thereof the words "twenty-five decibels ANSI".
- 32 12. Page 4, line 15, by striking the words "eighty-
33 two decibels ASA, ninety-three" and inserting in lieu
34 thereof the words "ninety-two".
- 35 13. Page 4, by striking lines 22 through 27 and
36 inserting in lieu thereof the words and figure "be
37 made by persons licensed as audiologists under chapter
38 one hundred forty-seven (147) of the Code. The
39 interpretation of the audiometric ex-".
- 40 14. Page 4, lines 30 and 31, by striking the words
41 "an audiologist certified by the American speech and
42 hearing association" and inserting in lieu thereof
43 the words "a licensed audiologist".
- 44 15. Page 4, lines 33 and 34, by striking the words
45 "an audiologist certified by the American speech and
46 hearing association" and inserting in lieu thereof
47 the words "a licensed audiologist".
- 48 16. Page 5, line 6, by striking the words "a
49 hearing loss of the employee" and inserting in lieu
50 thereof "an average hearing loss of the employee in

S-5124
Page 2

- 1 one or both ears in excess of twenty-five decibels
- 2 ANSI or ISO for the test frequencies of five hundred,
- 3 one thousand, two thousand, and three thousand Hertz".
- 4 17. Page 5, line 11, by striking the word "three"
- 5 and inserting in lieu thereof the word "four".
- 6 18. Page 5, line 27, by striking the word
- 7 "disability" and inserting in lieu thereof the words
- 8 "the audiometric examination used to determine
- 9 occupational hearing loss".
- 10 19. Page 5, line 28, by striking the word "and".
- 11 20. Page 6, line 6, by striking the word "hear"
- 12 and inserting in lieu thereof the word "communicate".
- 13 21. Page 6, line 10, by striking the word "hear"
- 14 and inserting in lieu thereof the word "communicate".

S-5124 FILED

FEBRUARY 14, 1980

Adopted as amended by
5206, 5207, 5234 2/28 (p. 617)

BY COMMITTEE ON LABOR &

INDUSTRIAL RELATIONS

MERLIN HULSE, CHAIRPERSON

SENATE FILE 359

S-5206

- 1 Amend Senate File 359 as follows:
- 2 1. Page 1, line 23, by striking the word
- 3 "Excess" and inserting in lieu thereof the word
- 4 "Excessive".

S-5206 FILED

FEBRUARY 26, 1980

Adopted 2/28 (p. 617)

BY JOHN W. JENSEN

SENATE FILE 359

S-5207

- 1 Amend the Senate Committee amendment, S-5124, to
- 2 Senate File 359 as follows:
- 3 1. Page 1, by striking lines 35 through 39 and
- 4 inserting in lieu thereof the following:
- 5 "13. Page 4, by striking lines 22 through 27
- 6 and inserting in lieu thereof the words and figures
- 7 "be made by persons trained by formal course work in
- 8 air conduction audiometry at an accredited educational
- 9 institution or licensed as audiologists under chapter
- 10 one hundred forty-seven (147) of the Code, as physicians
- 11 under chapter one hundred forty-eight (148) of the Code,
- 12 as osteopathic physicians under chapter one hundred
- 13 fifty (150) of the Code, or as osteopathic physicians
- 14 and surgeons under chapter one hundred fifty A (150A)
- 15 of the Code if such licensed persons are trained in
- 16 air conduction audiometry."

S-5207 FILED

FEBRUARY 26, 1980

Adopted 2/28 (p. 617)

BY JOHN W. JENSEN

LUCAS J. DeKOSTER

2 Labor 3/5
Dr. Passer 3/27

SENATE FILE 359

By DeKOSTER and ROBINSON

(AS AMENDED AND PASSED BY THE SENATE FEBRUARY 28, 1980)

Passed Senate, Date 2/28/80 (p. 617) Passed House, Date 4/3/80 (p. 1362)

Vote: Ayes 73 Nays 4 Vote: Ayes 89 Nays 0

Approved April 2, 1980

A BILL FOR

1 An Act relating to workers' compensation for occupational
2 hearing loss.

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

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————— = New Language

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* = Language Stricken

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by the Senate

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SENATE FILE 359



H-5853

1 Amend Senate File 359 as follows:

2 1. Page 6, line 10, by inserting after the
3 word "to" the words "hear and".

4 2. Page 6, line 14, by inserting after the
5 word "to" the words "hear and".



H-5853 FILED *Law 4/3*
APRIL 2, 1980 *(p. 1363)*

BY SPEAR of Lee



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

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

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

11 Sec. 4. NEW SECTION.

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

19 In the evaluation of occupational hearing loss, only the
20 hearing levels at the frequencies of five hundred, one thou-
21 sand, two thousand, and three thousand Hertz shall be
22 considered.

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

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

| 28 Duration | Sound level, | Duration | Sound level, |
|-----------------|-----------------|----------------|-----------------|
| 29 per day | dBA slow | per day | dBA slow |
| 30 <u>hours</u> | <u>response</u> | <u>minutes</u> | <u>response</u> |
| 31 8 | 90 | 52 | 106 |
| 32 7 | 91 | 45 | 107 |
| 33 6 | 92 | 37 | 108 |
| 34 5 | 93 | 33 | 109 |
| 35 4 1/2 | 94 | 30 | 110 |

| | | | | |
|----|-------|-----|-------------|--------------|
| 1 | 4 | 95 | 26 | 111 |
| 2 | 3 1/2 | 96 | 22 | 112 |
| 3 | 3 | 97 | 18 | 113 |
| 4 | 2 1/2 | 98 | 16 | 114 |
| 5 | 2 1/4 | 99 | 15 | 115 |
| 6 | 2 | 100 | No exposure | Greater than |
| 7 | 1 3/4 | 101 | permitted | 115 |
| 8 | 1 1/2 | 102 | | |
| 9 | 1 1/4 | 103 | | |
| 10 | 1 1/8 | 104 | | |
| 11 | 1 | 105 | | |

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

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

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

31 Sec. 7. NEW SECTION. Compensation is not payable to an
 32 employee who willfully fails to submit for reasonable periodic
 33 physical and audiometric examinations. Reasonable written
 34 notice of the dates and times of examinations required by
 35 the employer shall be given the employee. Examinations shall

1 be scheduled during times the employee, examining personnel,
2 and examination facilities are reasonably available. Physical
3 and audiometric examinations shall be at the expense of the
4 employer. The employee shall be compensated for any time
5 lost from work occasioned by employer examinations.

6 Compensation is not payable to an employee if the employee
7 fails or refuses to use employer-provided hearing protective
8 devices required by the employer and communicated in writing
9 to the employee at the time the employee is employed or at
10 the time the protective devices are provided by the employer.

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

17 1. Transfer from excessive noise level employment by an
18 employer.

19 2. Retirement.

20 3. Termination of the employer-employee relationship.

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

27 Sec. 9. NEW SECTION. Pure tone air conduction audiometric
28 instruments, properly calibrated according to accepted national
29 standards used to define occupational hearing loss shall be
30 used for measuring hearing loss, and the audiograms shall
31 be taken and the tests given in an environment such as is
32 prescribed by accepted national standards. If more than one
33 audiogram is taken following notice of an occupational hearing
34 loss claim, the audiogram having the lowest threshold will
35 be used to calculate occupational hearing loss. If the losses

1 of hearing average less than those levels that constitute
2 an occupational hearing loss, the losses of hearing are not
3 a compensable hearing disability. If the losses of hearing
4 average ninety-two decibels American national standards
5 institute (ANSI) or international standards organization
6 (ISO), or more in the four frequencies, then the losses are
7 total, or one hundred percent, compensable hearing loss.
8 In measuring hearing impairment the lowest measured losses
9 in each of the four frequencies shall be added together and
10 divided by four to determine the average decibel loss. For
11 each resulting decibel of loss exceeding twenty-five decibels
12 ANSI or ISO, an allowance of one and one-half percent shall
13 be made up to the maximum of one hundred percent, which is
14 reached at ninety-two decibels ANSI or ISO. In determining
15 the binaural percentage of loss, the percentage of impairment
16 in the better ear shall be multiplied by five. The resulting
17 figure shall be added to the percentage of impairment in the
18 poorer ear, and the sum of the two divided by six. The final
19 percentage shall represent the binaural hearing impairment.
20 Audiometric examinations shall be made by persons trained
21 by formal course work in air conduction audiometry at an
22 accredited educational institution or licensed as audiologists
23 under chapter one hundred forty-seven (147) of the Code, as
24 physicians under chapter one hundred forty-eight (148) of
25 the Code, as osteopathic physicians under chapter one hundred
26 fifty (150) of the Code, or as osteopathic physicians and
27 surgeons under chapter one hundred fifty A (150A) of the Code
28 if such licensed persons are trained in air conduction
29 audiometry. The interpretation of the audiometric examination
30 shall be by the employer's regular or consulting physician
31 who is trained and has had experience with such interpretation,
32 or by a licensed audiologist. If the employee disputes the
33 interpretation, the employee may select a physician similarly
34 trained and experienced or a licensed audiologist to give
35 an interpretation of the audiometric examination. This section

1 is applicable in the event of partial permanent or total
2 permanent occupational hearing loss in one or both ears.

3 Sec. 10. NEW SECTION. The employer shall communicate
4 to the employee, in writing, the results of an audiometric
5 examination or physical examination of an employee which
6 reflects an average hearing loss of the employee in one or
7 both ears in excess of twenty-five decibels ANSI or ISO for
8 the test frequencies of five hundred, one thousand, two
9 thousand, and three thousand Hertz, as soon as practicable
10 after the examination. The communication shall include the
11 name and address of the person conducting the audiometric
12 examination or physical examination, the kind or type of test
13 or examinations given, the results of each, the average decibel
14 loss, in the four frequencies, in each ear, if any, and, if
15 known to the employer, whether the loss is sensorineural
16 hearing loss and, if the hearing loss resulted from another
17 cause, the name of the cause.

18 Sec. 11. NEW SECTION. An employer is liable, as provided
19 in this Act and subject to the provisions of chapter eighty-
20 five (85) of the Code, for an occupational hearing loss to
21 which the employment has contributed, but if previous hearing
22 loss, whether occupational or not, is established by an
23 audiometric examination or other competent evidence, whether
24 or not the employee was exposed to excessive noise level
25 within six months preceding the test, the employer is not
26 liable for the previous loss, nor is the employer liable for
27 a loss for which compensation has previously been paid or
28 awarded. The employer is liable only for the difference
29 between the percent of occupational hearing loss determined
30 as of the date of the audiometric examination used to determine
31 occupational hearing loss and the percentage of loss
* 32 established by the preemployment audiometric examination.
33 An amount paid to an employee for occupational hearing loss
34 by any other employer shall be credited against compensation
35 payable by an employer for the hearing loss. An employee

1 shall not receive in the aggregate greater compensation from
2 all employers for occupational hearing loss than that provided
3 in this section for total occupational hearing loss. A payment
4 shall not be made to an employee unless the employee has
5 worked in excessive noise level employment for a total period
6 of at least ninety days for the employer from whom compensation
7 is claimed.

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

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

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

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

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

34 2. Any employer who is a nonresident of the state, for
35 whom services are performed within the state by employees

1 entitled to rights under this ~~ex~~ chapter, chapter 85A or
2 sections two (2) through fifteen (15) of this Act, by virtue
3 of having such services performed shall be subject to the
4 jurisdiction of the industrial commissioner and to all of
5 the provisions of this chapter, chapters 85A, 86, and 87,
6 and sections two (2) through fifteen (15) of this Act, as
7 to any and all personal injuries sustained by an employee
8 arising out of and in the course of such employment within
9 this state.

10 In addition to those persons authorized to receive personal
11 service as in civil actions as permitted by chapter 17A, such
12 employer shall be deemed to have appointed the secretary of
13 state of this state as its lawful attorney upon whom may be
14 served or delivered any and all notices authorized or required
15 by the provisions of this chapter, chapters 85A, 86, 87, and
16 17A, and sections two (2) through fifteen (15) of this Act,
17 and to agree that any and all such services or deliveries
18 of notice on the secretary of state shall be of the same legal
19 force and validity as if personally served upon or delivered
20 to such nonresident employer in this state.

21 Sec. 17. Section eighty-five point twenty (85.20), Code
22 1979, is amended to read as follows:

23 85.20 RIGHTS OF EMPLOYEE EXCLUSIVE. The rights and
24 remedies provided in this chapter ~~ex~~, chapter 85A or sections
25 two (2) through fifteen (15) of this Act for an employee on
26 account of injury ~~ex~~, occupational disease or occupational
27 hearing loss for which benefits under this chapter ~~ex~~, chapter
28 85A or sections two (2) through fifteen (15) of this Act are
29 recoverable, shall be the exclusive rights and remedies of
30 such employee, ~~his~~ the employee's personal or legal
31 representatives, dependents, or next of kin, at common law
32 or otherwise, on account of such injury ~~ex~~, occupational
33 disease, or occupational hearing loss against his or her
34 employer; or any other employee of such employer, provided
35 that such injury ~~ex~~, occupational disease, or occupational

1 hearing loss arises out of and in the course of such employment
2 and is not caused by the other employee's gross negligence
3 amounting to such lack of care as to amount to wanton neglect
4 for the safety of another.

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

8 When an employee receives an injury or incurs an
9 occupational disease or an occupational hearing loss for which
10 compensation is payable under this chapter ~~or~~ chapter 85A
11 or sections two (2) through fifteen (15) of this Act, and
12 which injury or occupational disease or occupational hearing
13 loss is caused under circumstances creating a legal liability
14 against some person, other than his or her employer or any
15 employee of such employer as provided in section 85.20 to
16 pay damages, the employee, or ~~his~~ the employee's dependent,
17 or the trustee of such dependent, may take proceedings against
18 ~~his~~ the employer for compensation, and the employee or, in
19 case of death, ~~his~~ the employee's legal representative may
20 also maintain an action against such third party for damages.
21 When an injured employee or ~~his~~ the employee's legal
22 representative brings an action against such third party,
23 a copy of the original notice shall be served upon the employer
24 by the plaintiff, not less than ten days before the trial
25 of the case, but a failure to give such notice shall not
26 prejudice the rights of the employer, and the following rights
27 and duties shall ensue:

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

31 1. No original proceedings for benefits under this chapter,
32 chapter 85A or 86 or sections two (2) through fifteen (15)
33 of this Act, shall be maintained in any contested case unless
34 such proceedings shall be commenced within two years from
35 the date of the occurrence of the injury for which benefits

1 are claimed except as provided by section 86.20.

2 2. Any award for payments or agreement for settlement
3 provided by section 86.13 for benefits under the workers'
4 compensation or occupational disease law or the Iowa
5 occupational hearing loss Act may, where the amount has not
6 been commuted, be reviewed upon commencement of reopening
7 proceedings by the employer or the employee within three years
8 from the date of the last payment of weekly benefits made
9 under such award or agreement. Once an award for payments
10 or agreement for settlement as provided by section 86.13 for
11 benefits under the workers' compensation or occupational
12 disease law or the Iowa occupational hearing loss Act has
13 been made where the amount has not been commuted, the
14 commissioner may at any time upon proper application make
15 a determination and appropriate order concerning the
16 entitlement of an employee to benefits provided for in section
17 85.27.

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

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

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

1 loss, weekly compensation as provided in the Iowa occupational
2 hearing loss Act.

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

6 Such compensation shall be in addition to the benefits
7 provided in sections 85.27 and 85.28. No compensation shall
8 be payable under this subsection for any injury for which
9 compensation is payable under subsection 2 of this section.
10 In the event compensation has been paid to any person under
11 any provision of this chapter ~~or~~, chapter 85A or sections
12 two (2) through fifteen (15) of this Act for the same injury
13 producing a total permanent disability, any such amounts so
14 paid shall be deducted from the total amount of compensation
15 payable for such permanent total disability.

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

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

32 Sec. 23. Section eighty-five point thirty-five (85.35),
33 subsection seven (7) and unnumbered paragraph two (2), Code
34 1979, are amended to read as follows:

35 7. This chapter or chapter 85A, 86 ~~or~~, 87 or sections

1 two (2) through fifteen (15) of this Act, applies to the party
2 making the claim.

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

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

14 2. CREDIT FOR BENEFITS PAID UNDER GROUP PLANS. In the
15 event the disabled employee shall receive any benefits,
16 including medical, surgical or hospital benefits, under any
17 group plan covering nonoccupational disabilities contributed
18 to wholly or partially by the employer, which benefits should
19 not have been paid or payable if any rights of recovery existed
20 under this chapter ~~or~~, chapter 85A or sections two (2) through
21 fifteen (15) of this Act, then such amounts so paid to said
22 employee from any such group plan shall be credited to or
23 against any compensation payments, including medical, surgical
24 or hospital, made or to be made under this chapter ~~or~~, chapter
25 85A or sections two (2) through fifteen (15) of this Act.

26 Such amounts so credited shall be deducted from the payments
27 made under these chapters. Any nonoccupational plan shall
28 be reimbursed in the amount so deducted. This section shall
29 not apply to payments made under any group plan which would
30 have been payable even though there was an injury under this
31 chapter or an occupational disease under chapter 85A or an
32 occupational hearing loss under sections two (2) through
33 fifteen (15) of this Act. Any employer receiving such credit
34 shall keep such employee safe and harmless from any and all
35 claims or liabilities that may be made against them by reason

1 of having received such payments only to the extent of such
2 credit.

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

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

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

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SF 359
glk/slc/26c

SENATE FILE 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:

| Duration per day hours..... | Sound level, dBA slow response..... | Duration per day minutes.. | Sound level, dBA slow response..... |
|-----------------------------------|---|----------------------------------|---|
| 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 permitted | Greater than 115 |
| 1 3/4 | 101 | | |
| 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 ~~the~~ 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.

TERRY E. BRANSTAD
President of the Senate

WILLIAM H. HARBOR
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 359, Sixty-eighth General Assembly.

FRANK J. STORK
Secretary of the Senate

Approved April 21, 1980

ROBERT D. RAY
Governor