

Reprinted 2/23/83

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SENATE FILE 423

BY COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS

Approved 2/14/83 (p. 147)
(FORMERLY SSB 173)

Passed Senate, Date 3-22-83 (p. 903) Passed House, Date 4-14-83 (P. 1297)
Vote: Ayes 45 Nays 0 Vote: Ayes 98 Nays 0
Approved May 9, 1983 (P. 1641)

A BILL FOR

1 An Act relating to workers' compensation by modifying the
2 intoxication defense, raising the interest rate on
3 subrogation recoveries, providing that the statute of
4 limitations does not run on certain medical benefits,
5 deleting the memorandum of agreement for inmate benefit
6 procedures, transferring the authority to act as con-
7 servator of the second injury fund to the treasurer of
8 state, and eliminating the industrial commissioner as
9 a respondent in appeals from final agency action.

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

11

SENATE FILE 423

S-3260

- 1 Amend Senate File 423 as follows:
- 2 1. By striking page 2, line 20 through page 3,
- 3 line 4.
- 4 2. Title page, by striking lines 5 and 6 and
- 5 inserting in lieu thereof the words "transferring
- 6 the authority to act as con-".

S-3260 FILED

BY MILO COLTON

MARCH 21, 1983

Adopted 3/22/83 (p. 903)

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SF 11-2

1 Section 1. Section 85.16, subsection 2, Code 1983, is
2 amended to read as follows:

3 2. ~~When~~ By the employee's intoxication of-the-employee
4 ~~was-the-proximate-cause-of,~~ which did not arise out of and
5 in the course of employment but which was due to the effects
6 of alcohol or another narcotic, depressant, stimulant, hallu-
7 cinogenic, or hypnotic drug not prescribed by an authorized
8 medical practitioner, if the intoxication was a substantial
9 factor in causing the injury.

10 Sec. 2. Section 85.22, subsection 2, paragraph b, Code
11 1983, is amended to read as follows:

12 b. A sum sufficient to pay the employer the present worth,
13 computed ~~on-a-six-percent-basis~~ at the interest rate pro-
14 vided in section 535.3 for court judgments and decrees, of
15 the future payments of compensation for which ~~he~~ the employer
16 is liable, but ~~such~~ the sum ~~thus-found-shall~~ is not be
17 ~~considered-as~~ a final adjudication of the future payments
18 which the employee ~~shall~~ is entitled to receive and if the
19 ~~amount~~ sum received by the employer, ~~-if-any,~~ is in excess
20 of ~~that~~ the amount required to pay the compensation, the
21 excess shall be paid to the employee.

22 Sec. 3. Section 85.26, subsection 2, Code 1983, is amended
23 to read as follows:

24 2. ~~Any~~ An award for payments or an agreement for settlement
25 provided by section 86.13 for benefits under ~~the-workers'~~
26 ~~compensation-or-occupational-disease-law-of-the-owa~~
27 ~~occupational-hearing-loss-act-(chapter 85, 85A, or 85B)-may,~~
28 where the amount has not been commuted, may be reviewed upon
29 commencement of reopening proceedings by the employer or the
30 employee within three years from the date of the last payment
31 of weekly benefits made under ~~such~~ the award or agreement.
32 ~~Once~~ If an award for payments or agreement for settlement
33 as provided by section 86.13 for benefits under ~~the-workers'~~
34 ~~compensation-or-occupational-disease-law-of-the-owa~~
35 ~~occupational-hearing-loss-act-(chapter 85, 85A, or 85B)~~ has

1 been made ~~where~~ and the amount has not been commuted, or if
2 a denial of liability is not filed with the industrial
3 commissioner and notice of the denial is not mailed to the
4 employee, on forms prescribed by the commissioner, within
5 six months of the commencement of weekly compensation bene-
6 fits, the commissioner may at any time upon proper application
7 make a determination and appropriate order concerning the
8 entitlement of an employee to benefits provided for in section
9 85.27. The failure to file a denial of liability does not
10 constitute an admission of liability under this chapter or
11 chapter 85A, 85B, or 86.

12 Sec. 4. Section 85.35, subsection 5, Code 1983, is amended
13 to read as follows:

14 5. Intoxication of the employee, which did not arise out
15 of and in the course of employment but which was due to the
16 effects of alcohol or another narcotic, depressant, stimulant,
17 hallucinogenic, or hypnotic drug not prescribed by an
18 authorized medical practitioner, was the proximate cause of
19 a substantial factor in causing the employee's injury.

20 Sec. 5. Section 85.59, unnumbered paragraphs 7 and 8,
21 Code 1983, are amended to read as follows:

22 The time limit for commencing an original proceeding to
23 determine entitlement to benefits under the section ~~shall~~
24 be is the same as set forth in section 85.26. If an injury
25 occurs to an inmate so as to qualify the inmate for benefits
26 under this section, notwithstanding the fact that payments
27 of weekly benefits are not commenced, ~~a memorandum of agreement~~
28 an acknowledgement of compensability shall be filed with the
29 industrial commissioner within thirty days of the time the
30 responsible authority receives notice or knowledge of the
31 injury as required by section 85.23.

32 If a dispute arises as to the extent of disability when
33 ~~a memorandum of agreement~~ an acknowledgement of compensability
34 is on file or when an award determining liability has been
35 made, an action to determine the extent of disability must

1 be commenced within one year of the time of the release of
2 the inmate from the institution. ~~This shall not bar~~ However,
3 the inmate retains the right to reopen the claim as provided
4 by section ~~86-34~~ 85.26.

5 Sec. 6. Section 85.66, Code 1983, is amended to read as
6 follows:

7 85.66 SECOND INJURY FUND--PAYMENTS--CUSTODIAN. When the
8 total amount of the payments provided for in the preceding
9 section, together with accumulated interest and earnings,
10 equals or exceeds five hundred thousand dollars no further
11 contributions to the fund shall be required; but when,
12 thereafter, the amount of the sum is reduced below three
13 hundred thousand dollars by reason of payments made to
14 employees pursuant to this division, contributions shall be
15 resumed and shall continue until the sum, together with
16 accumulated interest and earnings, again amounts to five
17 hundred thousand dollars. ~~The industrial commissioner shall~~
18 ~~adopt rules for the maintenance of the second injury fund~~
19 ~~and the making of contributions to the fund, and~~ treasurer
20 of state shall determine when contributions shall be made
21 to the fund and when they shall be suspended, and the
22 ~~commissioner~~ may enforce ~~the rules and~~ the collection of
23 contributions.

24 Moneys so collected shall constitute a "Second Injury
25 Fund", in the custody of the treasurer of state, to be
26 disbursed only for the purposes stated in this division, and
27 shall not at any time be appropriated or diverted to any other
28 use or purpose. The treasurer of state shall invest any
29 surplus moneys ~~thereof~~ of the fund in securities which
30 constitute legal investments for state funds under the laws
31 of this state, and may sell any of the securities in which
32 ~~said~~ the fund is invested, if necessary, for the proper
33 administration or in the best interests of ~~said~~ the fund.
34 Disbursements from ~~such~~ the fund shall be paid by the treasurer
35 of state only upon the written order of the industrial

1 commissioner. The treasurer of state as ~~eustodian of such~~
2 fund shall quarterly ~~furnish to the industrial commissioner~~
3 prepare a statement of the fund, setting forth the balance
4 of moneys in ~~said~~ the fund, the income of the fund, specifying
5 the source of all income, the payments out of the fund,
6 specifying the various items of ~~such~~ payments, and setting
7 forth the balance of the fund remaining to its credit. ~~Such~~
8 The statement shall be open to public inspection in the office.
9 of the ~~industrial commissioner~~ treasurer of state.

10 Sec. 7. Section 85.67, Code 1983, is amended to read as
11 follows:

12 85.67 ADMINISTRATION OF FUND--SPECIAL COUNSEL. The
13 ~~industrial commissioner~~ treasurer of state shall be charged
14 with the conservation of the assets of the second injury fund,
15 and the collection of contributions ~~therein~~ to the fund.
16 ~~in furtherance of this purpose, the~~ The attorney general shall
17 appoint a staff member ~~of his staff~~ to represent the ~~industrial~~
18 ~~commissioner~~ treasurer of state and the fund in all proceedings
19 and matters arising under this division. In ~~his~~ making an
20 award under this division, the industrial commissioner shall
21 specifically find the amount the injured employee shall be
22 paid weekly, the number of weeks of compensation which shall
23 be paid by the employer, the date upon which payments out
24 of the fund shall begin, and, if possible, the length of time
25 ~~such~~ the payments shall continue. ~~The industrial commissioner~~
26 ~~shall administer the provisions of this division in connection~~
27 ~~with and under the same procedure as other cases arising under~~
28 ~~this chapter.~~

29 Sec. 8. Section 85.68, Code 1983, is amended to read as
30 follows:

31 85.68 ACTIONS. The ~~industrial commissioner~~ treasurer
32 of state, on behalf of the second injury fund created under
33 ~~the provisions of~~ this division, shall have a cause of action
34 under ~~the provisions of~~ section 85.22 to the same extent as
35 an employer against any person not in the same employment

1 by reason of whose negligence or wrong the subsequent injury
2 of ~~such~~ the previously disabled person was caused. ~~Any-such~~
3 The action shall be brought by the ~~industrial-commissioner~~
4 treasurer of state on behalf of ~~said~~ the fund, and any
5 recovery, less the necessary and reasonable expenses incurred
6 by the ~~industrial-commissioner~~ treasurer of state, shall be
7 paid to the treasurer of state and credited to ~~said~~ the fund.

8 Sec. 9. Section 86.29, Code 1983, is amended to read as
9 follows:

10 86.29 THE JUDICIAL REVIEW PETITION. Notwithstanding ~~the~~
11 ~~terms-of-the-Iowa-administrative-procedure-Act~~ chapter 17A,
12 in a petition for judicial review of a final agency decision
13 in a contested case under ~~any-provision-of-the-"Workers'~~
14 ~~Compensation-Act"~~ chapter 85, 85A, 85B, 86, or 87, the name
15 ~~of-the~~ opposing party shall ~~precede-the-name-of~~ be named the
16 respondent, and the agency shall not be named as a respondent.

17 EXPLANATION

18 Sections 1 and 4 of this bill expand the intoxication
19 defense to a workers' compensation claim to include
20 intoxication due to drug abuse and modify the defense to
21 require only that intoxication was a substantial factor in
22 causing the injury, rather than the proximate cause.

23 Section 2 raises the interest rate on subrogation recoveries
24 by the employer to the rate provided for court judgments.

25 Section 3 provides that the statute of limitations does
26 not run on compensable medical benefits if a denial of
27 liability is not filed and mailed to an employee within six
28 months of the commencement of weekly compensation benefits.

29 Section 5 conforms the procedure for awarding workers'
30 compensation to inmates to the abolishment of the memorandum
31 of agreement in the 1982 legislation. The section substitutes
32 an acknowledgement of compensability for the memorandum of
33 agreement.

34 Sections 6 through 8 transfer the authority to act as
35 conservator of the second injury fund from the industrial

1 commissioner to the treasurer of state, in order to avoid
2 conflicts of interest as may currently occur when the
3 industrial commissioner is required to act as both conservator
4 and adjudicator.

5 Section 9 eliminates the requirement that the industrial
6 commissioner be named as a respondent when a final agency
7 decision is appealed to the district court.

8 This bill takes effect July 1 following enactment.

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SENATE FILE 423--FISCAL NOTE

REQUESTED BY SENATOR ANDERSON

In compliance with a written request there is hereby submitted a Fiscal Note for Senate File 423 pursuant to Joint Rule 17.

Senate File 423 makes a number of changes in the statutes governing workers' compensation. The intoxication defense is expanded to include intoxication due to drug abuse, and the defense is modified to require only that intoxication was a substantial factor in causing the injury, rather than the proximate cause. The statute of limitations and interest rate are revised, and the procedure for awarding workers' compensation to inmates is conformed to current law. Authority to act as conservator of the second injury fund is changed from the industrial commissioner to the treasurer of state to avoid conflicts of interest as may currently occur when the industrial commissioner is required to act as both conservator and adjudicator. The respondent in appeals of final agency decision is changed from the industrial commissioner to the opposing party.

This bill is estimated to have no significant effect upon the revenues or expenditures of the Industrial Commissioner's office.

SOURCE: INDUSTRIAL COMMISSIONER

(925S, 83-383, JMN)

FILED:

BY LEGISLATIVE FISCAL BUREAU
DENNIS C. PROUTY, DIRECTOR

MARCH 23, 1983

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LSB 925S 70

rj/jw/5

SENATE FILE 423

BY COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS

(AS AMENDED AND PASSED BY THE SENATE MARCH 22, 1983)

Passed Senate, Date 3-22-83 (p. 903) Passed House, Date 4-14-83 (p. 1297)

Vote: Ayes 45 Nays 0 Vote: Ayes 98 Nays 0

Approved May 9, 1983 (p. 1641)

A BILL FOR

1 An Act relating to workers' compensation by modifying the
 2 intoxication defense, raising the interest rate on
 3 subrogation recoveries, providing that the statute of
 4 limitations does not run on certain medical benefits,
 * 5 transferring the authority to act as conservator of the
 6 second injury fund to the treasurer of state, and
 7 eliminating the industrial commissioner as a respondent in
 8 appeals from final agency action.

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

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* = Language Stricken
by the Senate

1 Section 1. Section 85.16, subsection 2, Code 1983, is
2 amended to read as follows:

3 2. ~~When~~ By the employee's intoxication of-the-employee
4 ~~was-the-proximate-cause-of,~~ which did not arise out of and
5 in the course of employment but which was due to the effects
6 of alcohol or another narcotic, depressant, stimulant, hallu-
7 cinogenic, or hypnotic drug not prescribed by an authorized
8 medical practitioner, if the intoxication was a substantial
9 factor in causing the injury.

10 Sec. 2. Section 85.22, subsection 2, paragraph b, Code
11 1983, is amended to read as follows:

12 b. A sum sufficient to pay the employer the present worth,
13 computed ~~on-a-six-percent-basis~~ at the interest rate pro-
14 vided in section 535.3 for court judgments and decrees, of
15 the future payments of compensation for which ~~he~~ the employer
16 is liable, but ~~such~~ the sum ~~thus-found-shall~~ is not be
17 ~~considered-as~~ a final adjudication of the future payments
18 which the employee ~~shall~~ is entitled to receive and if the
19 ~~amount~~ sum received by the employer, ~~if-any,~~ is in excess
20 of ~~that~~ the amount required to pay the compensation, the
21 excess shall be paid to the employee.

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23 to read as follows:

24 2. ~~Any~~ An award for payments or an agreement for settlement
25 provided by section 86.13 for benefits under ~~the-workers-~~
26 ~~compensation-or-occupational-disease-law-or-the-Iowa~~
27 ~~occupational-hearing-loss-Act-(chapter~~ 85, 85A, or 85B) ~~may,~~
28 where the amount has not been commuted, may be reviewed upon
29 commencement of reopening proceedings by the employer or the
30 employee within three years from the date of the last payment
31 of weekly benefits made under ~~such~~ the award or agreement.
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1 been made where and the amount has not been commuted, or if
2 a denial of liability is not filed with the industrial
3 commissioner and notice of the denial is not mailed to the
4 employee, on forms prescribed by the commissioner, within
5 six months of the commencement of weekly compensation bene-
6 fits, the commissioner may at any time upon proper application
7 make a determination and appropriate order concerning the
8 entitlement of an employee to benefits provided for in section
9 85.27. The failure to file a denial of liability does not
10 constitute an admission of liability under this chapter or
11 chapter 85A, 85B, or 86.

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13 to read as follows:

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16 effects of alcohol or another narcotic, depressant, stimulant,
17 hallucinogenic, or hypnotic drug not prescribed by an
18 authorized medical practitioner, was the-proximate-cause-of
19 a substantial factor in causing the employee's injury.

* 20 Sec. 5. Section 85.66, Code 1983, is amended to read as
21 follows:

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23 total amount of the payments provided for in the preceding
24 section, together with accumulated interest and earnings,
25 equals or exceeds five hundred thousand dollars no further
26 contributions to the fund shall be required; but when,
27 thereafter, the amount of the sum is reduced below three
28 hundred thousand dollars by reason of payments made to
29 employees pursuant to this division, contributions shall be
30 resumed and shall continue until the sum, together with
31 accumulated interest and earnings, again amounts to five
32 hundred thousand dollars. The industrial-commissioner-shall
33 adopt-rules-for-the-maintenance-of-the-second-injury-fund
34 and-the-making-of-contributions-to-the-fund,-and treasurer
35 of state shall determine when contributions shall be made

1 to the fund and when they shall be suspended, and the
2 commissioner may enforce ~~the rules and~~ the collection of
3 contributions.

4 Moneys so collected shall constitute a "Second Injury
5 Fund", in the custody of the treasurer of state, to be
6 disbursed only for the purposes stated in this division, and
7 shall not at any time be appropriated or diverted to any other
8 use or purpose. The treasurer of state shall invest any
9 surplus moneys ~~thereof~~ of the fund in securities which
10 constitute legal investments for state funds under the laws
11 of this state, and may sell any of the securities in which
12 ~~said~~ the fund is invested, if necessary, for the proper
13 administration or in the best interests of ~~said~~ the fund.
14 Disbursements from ~~such~~ the fund shall be paid by the treasurer
15 of state only upon the written order of the industrial
16 commissioner. The treasurer of state ~~as custodian of such~~
17 ~~fund~~ shall quarterly ~~furnish to the industrial commissioner~~
18 prepare a statement of the fund, setting forth the balance
19 of moneys in ~~said~~ the fund, the income of the fund, specifying
20 the source of all income, the payments out of the fund,
21 specifying the various items of ~~such~~ payments, and setting
22 forth the balance of the fund remaining to its credit. ~~Such~~
23 The statement shall be open to public inspection in the office
24 of the ~~industrial commissioner~~ treasurer of state.

25 Sec. 6. Section 85.67, Code 1983, is amended to read as
26 follows:

27 85.67 ADMINISTRATION OF FUND--SPECIAL COUNSEL. The
28 ~~industrial commissioner~~ treasurer of state shall be charged
29 with the conservation of the assets of the second injury fund,
30 and the collection of contributions ~~thereto~~ to the fund.
31 ~~In furtherance of this purpose, the~~ The attorney general shall
32 appoint a staff member ~~of his staff~~ to represent the ~~industrial~~
33 ~~commissioner~~ treasurer of state and the fund in all proceedings
34 and matters arising under this division. In ~~his~~ making an
35 award under this division, the industrial commissioner shall

1 specifically find the amount the injured employee shall be
 2 paid weekly, the number of weeks of compensation which shall
 3 be paid by the employer, the date upon which payments out
 4 of the fund shall begin, and, if possible, the length of time
 5 ~~such~~ the payments shall continue. ~~The industrial commissioner~~
 6 ~~shall administer the provisions of this division in connection~~
 7 ~~with and under the same procedure as other cases arising under~~
 8 ~~this chapter.~~

9 Sec. 7. Section 85.68, Code 1983, is amended to read as
 10 follows:

11 85.68 ACTIONS. The ~~industrial commissioner~~ treasurer
 12 of state, on behalf of the second injury fund created under
 13 ~~the provisions of~~ this division, shall have a cause of action
 14 under ~~the provisions of~~ section 85.22 to the same extent as
 15 an employer against any person not in the same employment
 16 by reason of whose negligence or wrong the subsequent injury
 17 of ~~such~~ the previously disabled person was caused. ~~Any such~~
 18 The action shall be brought by the ~~industrial commissioner~~
 19 treasurer of state on behalf of ~~said~~ the fund, and any
 20 recovery, less the necessary and reasonable expenses incurred
 21 by the ~~industrial commissioner~~ treasurer of state, shall be
 22 paid to the treasurer of state and credited to ~~said~~ the fund.

23 Sec. 8. Section 86.29, Code 1983, is amended to read as
 24 follows:

25 86.29 THE JUDICIAL REVIEW PETITION. Notwithstanding ~~the~~
 26 ~~terms of the Iowa administrative procedure Act~~ chapter 17A,
 27 in a petition for judicial review of a final agency decision
 28 in a contested case under ~~any provision of the "Workers'~~
 29 ~~Compensation Act"~~ chapter 85, 85A, 85B, 86, or 87, the name
 30 ~~of the~~ opposing party shall ~~precede the name of~~ be named the
 31 respondent, and the agency shall not be named as a respondent.

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SENATE FILE 423

AN ACT

RELATING TO WORKERS' COMPENSATION BY MODIFYING THE INTOXICATION DEFENSE, RAISING THE INTEREST RATE ON SUBROGATION RECOVERIES, PROVIDING THAT THE STATUTE OF LIMITATIONS DOES NOT RUN ON CERTAIN MEDICAL BENEFITS, TRANSFERRING THE AUTHORITY TO ACT AS CONSERVATOR OF THE SECOND INJURY FUND TO THE TREASURER OF STATE, AND ELIMINATING THE INDUSTRIAL COMMISSIONER AS A RESPONDENT IN APPEALS FROM FINAL AGENCY ACTION.

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

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b. A sum sufficient to pay the employer the present worth, computed on-a-six-percent-basis at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of compensation for which ~~he~~ the employer is liable, but ~~such the sum thus found shall~~ is not be considered as a final adjudication of the future payments which the employee shall be entitled to receive and if the amount sum received by the employer, if any, is in excess of that the amount required to pay the compensation, the excess shall be paid to the employee.

Sec. 3. Section 85.26, subsection 2, Code 1983, is amended to read as follows:

2. Any an award for payments or an 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 (chapter 85, 85A, or 85B)~~ may, where the amount has not been commuted, may 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 the~~ the award or agreement. ~~Once~~ If 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 (chapter 85, 85A, or 85B)~~ has been made where and the amount has not been commuted, or if a denial of liability is not filed with the industrial commissioner and notice of the denial is not mailed to the employee, on forms prescribed by the commissioner, within six months of the commencement of weekly compensation benefits, 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. The failure to file a denial of liability does not constitute an admission of liability under this chapter or chapter 85A, 85B, or 86.

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Sec. 5. Section 85.66, Code 1983, is amended to read as follows:

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ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 423, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 9, 1983

TERRY E. BRANSTAD
Governor

S.F. 423