

SENATE FILE 2249  
BY COMMITTEE ON BUSINESS  
AND LABOR RELATIONS  
(Approved p. 347)  
(SUCCESSOR TO SSB 2091)

FILED FEB 7 1990

Passed Senate, Date 3/6/90 (p. 298) Passed House, Date 3/21/90 (p. 1306)  
Vote: Ayes 28 Nays 18 Vote: Ayes 58 Nays 33  
Approved Vetted 4/3/90  
*motion to reconsider (p. 901) w/OS 3/8*

A BILL FOR

53141 An Act relating to workers' health, safety, and welfare, by  
2 providing an expedited hearing process for certain contested  
3 cases, requiring payment of medical expenses of an injured  
4 employee in certain circumstances, staying debt collection  
5 proceedings against an employee by a person providing  
6 treatment pending resolution of a contested case before the  
7 industrial commissioner, altering certain formulas for the  
8 calculation of benefits, establishing initial hearing  
9 deadlines, requiring certain unannounced inspections,  
10 authorizing certain administrative search warrants, and  
11 imposing certain benefit payment requirements and penalties  
12 for unreasonable denial or nonpayment of medical benefits,  
13 exempting union agents and employees from certain tort  
14 liability, and providing applicability and effective dates.

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

16  
17  
18  
19  
20  
21  
22

SF 2249

5c77 1 Section 1. Section 85.20, Code 1989, is amended to read as  
2 follows:

3 85.20 RIGHTS OF EMPLOYEE EXCLUSIVE.

4 The rights and remedies provided in this chapter, chapter  
5 85A or chapter 85B for an employee on account of injury,  
6 occupational disease or occupational hearing loss for which  
7 benefits under this chapter, chapter 85A or chapter 85B are  
8 recoverable, ~~shall be~~ are the exclusive and only rights and  
9 remedies of such the employee, the employee's personal or  
10 legal representatives, dependents, or next of kin, at common  
11 law or otherwise, on account of such the injury, occupational  
12 disease, or occupational hearing loss against any or all of  
13 the following persons:

- 14 1. ~~the~~ The employee's employer; ~~or.~~
- 15 2. any ~~Any~~ other employee of such the employee's employer,  
16 provided that such the injury, occupational disease, or  
17 occupational hearing loss arises out of and in the course of  
18 such the employment and is not caused by the other employee's  
19 gross negligence amounting to such lack of care as to amount  
20 to wanton neglect for the safety of another.
- 21 3. An employee or agent of a union which represents a  
22 bargaining unit with the employee's employer, provided that  
23 the injury, occupational disease, or occupational hearing loss  
24 arises out of and in the course of the employment and is not  
25 caused by the union agent's or union employee's gross  
26 negligence amounting to such lack of care as to amount to  
27 wanton neglect for the safety of another.

5547  
5315 28 Sec. 2. Section 85.27, Code 1989, is amended by adding the  
29 following new unnumbered paragraph:

30 NEW UNNUMBERED PARAGRAPH. An action shall not be commenced  
31 or maintained in a court of this state by a person rendering  
32 treatment to an employee against the employee for charges in  
33 connection with the treatment while a contested case  
34 proceeding for determination of liability is pending before  
35 the industrial commissioner relating to an injury alleged to

1 have given rise to the treatment.

2 Sec. 3. NEW SECTION. 85.29A PAYMENT OF MEDICAL EXPENSES  
3 PENDING DETERMINATION OF COVERAGE OR LIABILITY.

5220 4 1. TWO OR MORE INSURANCE CARRIERS POSSIBLY LIABLE FOR  
5 MEDICAL COVERAGE. If an injured employee potentially has  
6 insurance coverage under two or more insurance policies or  
7 other third-party payor contracts, pending a determination of  
8 liability by the commissioner, the employee shall receive  
9 workers' compensation medical benefits. If it is later  
10 determined that the employee's injuries were not work-related,  
11 or that the employer is not liable for workers' compensation  
12 medical benefits, the employer or the employer's insurance  
13 carrier has the right of subrogation to recover medical  
14 expenses paid on the employee's behalf from any other  
15 insurance carrier or third-party payor liable for the medical  
16 benefits received by the employee.

5220 17 2. EMPLOYER LIABILITY FOR MEDICAL BENEFITS OR SERVICES  
18 RECEIVED UNDER EMPLOYER'S CHOICE OF CARE. If an injured  
19 employee is provided with medical services under the  
20 employer's choice of care, pending a determination of  
21 liability by the commissioner, the employee shall receive  
22 workers' compensation benefits. If it is later determined  
23 that the employee's injuries were not work-related, the  
24 employer's insurance carrier has the right of subrogation  
25 against the employer for the cost of medical services  
26 delivered pursuant to the employer's choice of care. The  
27 employee who received medical benefits or services pursuant to  
28 the employer's choice of care, is not liable for such medical  
29 benefits or services, and shall not be required to pay for or  
30 reimburse the provider, employer, or insurance carrier for any  
31 such benefits or services received.

32 Sec. 4. Section 85.30, Code 1989, is amended by adding the  
33 following new unnumbered paragraph:

34 NEW UNNUMBERED PARAGRAPH. If the charges for medical  
35 benefits provided in section 85.27 are not paid by the

1 employer or insurance carrier when due, interest shall be  
2 added to the charges for medical benefits at the rate provided  
537 3 in section 535.3 for court judgments and decrees. Interest on  
4 medical benefit charges shall accrue from the date the charges  
5 were due. The interest awarded shall be paid to the person  
6 rendering treatment unless the charges for treatment have  
7 previously been paid by the injured employee or by a third  
8 party on the employee's behalf. If the charges for treatment  
9 have previously been paid by the injured employee or a third  
10 party on the employee's behalf, the interest shall be paid to  
11 the injured employee or to the third party which made the  
12 payment.

532 13 Sec. 5. Section 85.34, subsection 2, unnumbered paragraph  
14 1, Code 1989, is amended to read as follows:

15 Compensation for permanent partial disability shall begin  
16 at the termination of the healing period provided in  
17 subsection 1 of this section. The compensation shall be in  
18 addition to the benefits provided by sections 85.27 and 85.28.  
19 The compensation shall be based upon the extent of the  
20 disability and upon the basis of eighty percent per week of  
21 the employee's average weekly spendable earnings, but not more  
22 than a weekly benefit amount, rounded to the nearest dollar,  
23 equal to sixty-one and one-third percent of the statewide  
24 average weekly wage paid employees as determined by the  
25 department of employment services under section 96.19,  
26 subsection 42, and in effect at the time of the injury.  
27 However, as of July 1, 1975; July 1, 1977; July 1, 1979; and  
28 July 1, 1981, the maximum weekly benefit amount rounded to the  
29 nearest dollar shall be increased so that it equals ninety-two  
30 percent, one hundred twenty-two and two-thirds percent, one  
31 hundred fifty-three and one-third percent, and one hundred  
32 eighty-four percent, respectively, of the statewide average  
33 weekly wage as determined above. The minimum weekly benefit  
34 amount shall be equal to the weekly benefit amount of a person  
35 whose gross weekly earnings are thirty-five percent of the

1 statewide average weekly wage, or to the spendable weekly  
2 earnings of the employee, whichever are less. However, if the  
3 employee is a minor or a full-time student under the age of  
4 twenty-five in an accredited educational institution, the  
5 minimum weekly benefit amount shall be equal to the weekly  
6 benefit amount of a person whose gross weekly earnings are  
7 thirty-five percent of the statewide average weekly wage. For  
8 all cases of permanent partial disability compensation shall  
9 be paid as follows:

10 Sec. 6. Section 85.34, subsection 3, unnumbered paragraph  
11 1, Code 1989, is amended to read as follows:

12 Compensation for an injury causing permanent total  
13 disability shall be upon the basis of eighty percent per week  
14 of the employee's average weekly spendable earnings, but not  
15 more than a weekly benefit amount, rounded to the nearest  
16 dollar, equal to sixty-six and two-thirds percent of the  
17 statewide average weekly wage paid employees as determined by  
18 the department of employment services under section 96.19,  
19 subsection 42, and in effect at the time of the injury.  
20 However, as of July 1, 1975; July 1, 1977; July 1, 1979; and  
21 July 1, 1981, the maximum weekly benefit amount rounded to the  
22 nearest dollar shall be increased so that it equals one  
23 hundred percent, one hundred thirty-three and one-third  
24 percent, one hundred sixty-six and two-thirds percent and two  
25 hundred percent, respectively, of the statewide average weekly  
26 wage as determined above. The minimum weekly benefit amount  
27 is equal to the weekly benefit amount of a person whose gross  
28 weekly earnings are thirty-five percent of the statewide  
29 average weekly wage, or to the spendable weekly earnings of  
30 the employee, whichever are less. However, if the employee is  
31 a minor or a full-time student under the age of twenty-five in  
32 an accredited educational institution the minimum weekly  
33 benefit amount shall be equal to the weekly benefit amount of  
34 a person whose gross weekly earnings are thirty-five percent  
35 of the statewide average weekly wage. --The weekly compensation

1 ~~is payable during the period of the employee's disability.~~

5343 2 Sec. 7. Section 86.13, unnumbered paragraph 4, Code 1989,  
3 is amended to read as follows:

4 If a delay in commencement or termination of weekly  
5 compensation or medical benefits occurs without reasonable or  
6 probable cause or excuse, the industrial commissioner shall  
7 award weekly compensation or medical benefits in addition to  
8 those weekly compensation or medical benefits payable under  
9 this chapter, or chapter 85, 85A, or 85B, up to fifty percent  
10 of the amount of weekly compensation or medical benefits that  
11 were unreasonably delayed or denied. In addition, interest at  
12 the rate provided in section 535.3 for court judgments and  
13 decrees shall be awarded based upon the amount of weekly  
14 compensation or medical benefits that were unreasonably  
15 delayed or denied. The additional weekly compensation or  
16 medical benefits awarded pursuant to this paragraph shall be  
17 paid to the claimant. Interest on the additional weekly  
18 compensation or medical benefits shall accrue from the date of  
19 the arbitration decision or review reopening decision awarding  
20 the additional weekly compensation or medical benefits and the  
21 interest shall also be paid to the claimant.

22 Sec. 8. Section 86.14, Code 1989, is amended by adding the  
23 following new subsection:

52713 24 NEW SUBSECTION. 3. a. Once an original proceeding or a  
5356 25 proceeding to reopen an award has been filed, a party may file  
26 an application for an expedited hearing limited to any claim  
27 under section 85.27, section 85.33, subsection 1, section  
28 85.34, subsection 1, or section 85.39, after filing an  
52713 29 original proceeding or a proceeding to reopen an award.

30 b. An application for an expedited hearing shall include  
31 at minimum all of the following:

32 (1) An affidavit and any other evidence in support of the  
33 claim.

34 (2) A statement of the relief sought.

35 (3) A statement describing the applicant's efforts to

1 resolve the claim.

2 c. The respondent shall have forty-five days from receipt  
3 of the application by the respondent or insurance carrier of  
4 the respondent to file a response to the claim. The response  
5 shall include whether or not an agreement has been reached  
6 regarding the relief sought or any portion of the relief  
7 sought. The response shall state any legal defense and may  
8 dispute any facts by affidavit or any other evidence.

9 d. A decision shall be made on the application for  
10 expedited hearing by a hearing officer within five days of the  
11 filing of the response. The ruling shall include at minimum  
12 any or all of the following, as applicable:

5351, 5372 13 (1) In those cases where the deputy industrial  
14 commissioner finds that a substantial doubt exists concerning  
15 the issues of liability and causal connection, the application  
16 shall be denied.

17 (2) Whether or not the application states grounds upon  
18 which relief may be granted under this section.

19 (3) If entitled to relief under either section 85.33,  
20 subsection 1, or section 85.34, subsection 1, the relief shall  
5374 21 be limited to ninety days and the ruling shall state when the  
22 relief should commence and when it should end in accordance  
23 with the expedited hearing proceedings.

5374 24 (4) If entitled to any relief under section 85.27, that  
25 relief shall be prospective and effective only from the date  
26 of the filing of the application for expedited hearing. Any  
27 relief granted under this subparagraph shall extend to the  
28 date of decision on the contested case proceeding or until  
29 thirty days after the hearing on the contested case  
30 proceeding, whichever shall occur first.

31 (5) If entitled to any relief under section 85.39, the  
32 decision shall state the nature of an appropriate evaluation  
33 under that section.

34 e. The effect of the decision and these proceedings shall  
35 be binding on the parties until a decision at any later

1 hearing of the full case.

2 f. The decision in the expedited proceedings shall be  
3 subject to de novo challenge by either party at the later  
4 hearing of the full case.

5296  
5300  
5304

5 Sec. 9. NEW SECTION. 86.17A DEADLINE FOR INITIAL  
6 HEARING.

7 The industrial commissioner or a deputy industrial  
8 commissioner shall conduct the initial hearing for a contested  
9 case within six months of the filing of the contested case  
10 petition, unless the deadline is waived by the claimant  
11 employee.

5307

12 Sec. 10. Section 88.6, Code 1989, is amended by adding the  
13 following new subsection:

14 NEW SUBSECTION. 8. COMPULSORY PROCESS FOR INSPECTION --  
15 ADMINISTRATIVE SEARCH WARRANTS. The commissioner or the  
16 commissioner's agent may apply to the court for compulsory  
17 process for enforcement of the department's inspection  
18 authority, in the form of an administrative search warrant  
19 pursuant to section 808.14, if one or more of the following  
20 conditions is satisfied:

21 a. FOLLOW-UP INSPECTIONS. The person or site to be  
22 inspected was previously cited for a violation, and either a  
23 subsequent inspection revealed that one or more violations had  
24 not yet been corrected, or a subsequent inspection had not yet  
25 been conducted. The filing of an abatement statement by the  
26 employer cited for a violation is not grounds for denial of an  
27 administrative search warrant.

28 b. NEUTRAL SELECTION. The person or site to be inspected  
29 was selected through a neutral selection process according to  
30 the state enforcement plan approved by the United States  
31 occupational safety and health administration, and entry has  
32 been denied after request pursuant to subsection 1, or entry  
33 has previously been denied upon prior requests to permit an  
34 inspection.

35 c. COMPLAINT OF AN EXISTING VIOLATION. A complaint has

1 been submitted to the commissioner alleging the existence of  
2 an existing violation. The application for an administrative  
3 search warrant shall to the extent constitutionally  
4 permissible protect the identity of the complainant.

5 d. PROBABLE CAUSE. Probable cause sufficient to justify  
6 an administrative search warrant is otherwise shown.

7 Sec. 11. NEW SECTION. 88.6A UNANNOUNCED COMPULSORY  
8 INSPECTIONS OF RECENT VIOLATORS.

9 The commissioner of labor shall include as part of future  
10 proposed state enforcement plans, provisions to require  
11 annually reinspection or follow-up inspections of at least  
12 five percent of the employers cited for a violation within the  
13 immediately preceding three years, based upon a neutral system  
14 of random selection. An inspection pursuant to this section  
15 shall be performed unannounced and the commissioner shall seek  
16 to obtain in advance an administrative search warrant pursuant  
17 to section 88.6, subsection 8, to permit a compulsory  
18 inspection in the event that the employer refuses voluntary  
19 access.

Sec 77

20 Sec. 12.

21 Section 9 of this Act is effective July 1, 1991, and  
22 applies to all contested cases originally filed on or after  
23 that date.

24 EXPLANATION

25 Section 1 of the bill extends the exclusive remedy rule to  
26 agents and employees of a union, so that the negligence of a  
27 union agent is remediable under workers' compensation and not  
28 tort law to the same extent as a fellow employee's negligence  
29 under current law.

30 Section 2 prohibits a medical provider from suing to  
31 collect charges in connection with an employee's injuries  
32 while a contested case is pending to determine liability for  
33 those injuries.

34 Section 3 of the bill provides for payment of medical  
35 benefits to an injured employee pending determination of

1 liability when either of two situations exist, when two or  
2 more possible insurance carriers are obligated to provide  
3 coverage, or when the employer exercises choice of care.

4 Section 4 grants interest on fees due to the medical  
5 provider who is unable to collect fees in connection with  
6 treatment of injuries which are the subject of a contested  
7 case.

8 Sections 5 and 6 alter the formulas for calculating minimum  
9 weekly benefit amounts for permanent partial disability and  
10 permanent total disability.

11 Section 7 amends Code section 86.13 to permit imposition of  
12 penalties for unreasonable delay in commencement or  
13 termination of medical benefits. Current law only permits a  
14 penalty in connection with weekly compensation benefits. The  
15 amendment does not alter current law which provides that an  
16 employer may voluntarily undertake to provide medical benefits  
17 without an admission of liability, but once undertaken, a  
18 delay or termination without reasonable or probable cause or  
19 excuse could give rise to imposition of a penalty.  
20 Additionally, payment of interest is required on unreasonably  
21 delayed or denied benefits.

22 Section 8 provides an expedited hearing process in certain  
23 circumstances.

24 Section 9 imposes a six-month deadline for initial hearing  
25 unless waived by the claimant employee. This section is given  
26 a delayed effective date of July 1, 1991, by section 12 of the  
27 bill.

28 Section 10 details the ground for permitting the labor  
29 commissioner to obtain an administrative search warrant from  
30 the district court in limited circumstances to allow  
31 compulsory inspection for enforcement of occupational health  
32 and safety standards. Section 10 is not intended to alter or  
33 limit the scope of administrative search warrants issued  
34 pursuant to section 808.14.

35 Section 11 requires surprise compulsory searches be

1 performed of a limited number of employers randomly selected  
2 from a list of violators within the immediately preceding  
3 three years.

4 Section 12 provides that section 9's new six-month deadline  
5 for holding the initial hearing is effective July 1, 1991.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

**SENATE FILE 2249  
FISCAL NOTE**

---

A fiscal note for Senate File 2249 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

---

Senate File 2249 provides relief in several areas for a worker involved in a contested workers' compensation case. The bill requires payment of the employee's medical expenses in certain circumstances, staying debt collection by medical providers pending resolution of a contested case before the Industrial Commissioner, alters certain formulas for the calculation of benefits, establishes initial hearing deadlines, requires certain unannounced inspections, authorizes certain administrative search warrants, imposes certain benefit payment requirements and penalties for unreasonable denial or nonpayment of medical benefits, and exempts union agents and employees from certain tort liability.

**ASSUMPTIONS:** The expedited hearing process will require additional staff to implement. Since that portion of the bill does not become effective until July 1, 1991, the fiscal impact is estimated using six months of cost during FY 1991 for training and full year of staff cost for FY 1992. Additional staff required include two deputy industrial commissioners, one clerk IV, one insurance program specialist and one word processor for a total of 5 FTE positions.

The additional FTEs and funding required by this bill have been requested through the Regulation Appropriations Bill (Senate File 2328). If Senate File 2328 passes with no revisions in this area, there will be no additional fiscal impact for this bill.

**FISCAL IMPACT:** This legislation will require an addition of 5 FTE positions for the Industrial Division of the Department of Employment Services. The cost for salaries and support for FY 1991 is \$99,461. The cost of salaries and support for FY 1992 is \$198,921.

Source: (Department of Employment Services,  
Industrial Services Division)

(LSB 7719SV.2, MAS)

FILED FEBRUARY 28, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2249  
FISCAL NOTE

REQ. BY SENATOR HUTCHINS

A fiscal note for Amendment S-5296 to Senate File 2249 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate Amendment S-5296 provides that if workers' compensation benefits are paid to an employee as a result of the expedited hearing process in Section 8 of Senate File 2287, and final determination of the case later finds on behalf of the employer, funds to reimburse the employer or the employer's worker's compensation carrier will be paid from the General Fund, under the following conditions:

1. The employee is unable to repay the benefits received.
2. The employer or the employer's workers' compensation insurance carrier is unable to recover the benefits paid from a group health insurance plan.
3. The employer or the employer's workers' compensation insurance carrier, whichever paid the benefits, submits a written claim to the State Treasurer.

**FISCAL IMPACT:** The Department of Employment Services is unable to provide an estimate of the fiscal impact because this is a new procedure and the cost is dependent on the number of cases that qualify per the above criteria, and the amount of benefits paid would vary from case to case.

Source: (Department of Employment Services,  
Industrial Services Division)

(LSB 7719sv.3, MAS)

FILED MARCH 6, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2249

S-5280

1 Amend Senate File 2249 as follows:

2 1. Page 2, by striking lines 4 through 16, and  
3 inserting the following:

4 "If a dispute exists as to whether an employee's  
5 injury is compensable under this chapter or chapter  
6 85A, 85B, or 86, and the employee is otherwise  
7 entitled to payment of benefits, including medical,  
8 surgical, or hospital benefits by any group plan  
9 covering nonoccupational injuries or disabilities,  
10 contributed to in whole or in part by the employer,  
11 the employer has the right and option to require the  
12 group plan to pay such benefits as would be payable as  
13 if there were no such claim that the injury is  
14 compensable."

15 2. Page 2, by striking lines 17 through 31.

16 3. By renumbering as necessary.

By CALVIN O. HULTMAN

S-5280 FILED FEBRUARY 28, 1990

*B-Last 3/5 (p. 876)  
A-Clare 2/10 (p. 875)*

SENATE FILE 2249

S-5296

1 Amend Senate File 2249, as follows:

2 1. Page 7, by inserting after line 4, the  
3 following:

4 "g. The treasurer of state shall indemnify either  
5 the employer or the employer's workers' compensation  
6 carrier from the state treasury from funds not  
7 otherwise appropriated if all of the following  
8 conditions are satisfied:

9 (1) A decision in an expedited hearing pursuant to  
10 this subsection finds on behalf of the claimant.

11 (2) Benefits under this subsection are paid out to  
12 the successful claimant.

13 (3) Subsequent to the expedited hearing, a final  
14 determination on the full contested case finds on  
15 behalf of the employer in relation to such benefit  
16 liability.

17 (4) The claimant is subsequently unable to repay  
18 such benefits paid out.

19 (5) The employer or the employer's workers'  
20 compensation insurance carrier is unable to recover  
21 such benefits from a group health insurance carrier.

22 (6) Either the employer or the employer's workers'  
23 compensation insurance carrier, whichever in fact paid  
24 the benefits, submits a written claim in a form, and  
25 providing such information, as the treasurer of state  
26 requires."

27 2. By renumbering as necessary.

By MAGGIE TINSMAN

S-5296 FILED MARCH 1, 1990

*Law 3/6 (p. 875)*

SENATE FILE 2249

S-5077

- 1 Amend Senate File 2249 as follows:  
2 1. Page 1, by striking lines 1 through 27.  
3 2. Page 8, by inserting after line 19, the  
4 following:  
5 "Sec. \_\_\_\_ . NEW SECTION. 613.20 UNION AGENT  
6 LIABILITY.  
7 An inspection or failure to inspect any place of  
8 employment by an employee or agent of a union, which  
9 represents a bargaining unit with the employer of an  
10 injured employee, shall not be the basis for  
11 imposition of civil liability for negligence upon the  
12 employee or agent of the union. However, this section  
13 shall not prevent civil liability for gross negligence  
14 amounting to such lack of care as to amount to wanton  
15 neglect for the safety of another."  
16 3. By renumbering as necessary.

By JOHN A. PETERSON

S-5077 FILED FEBRUARY 9, 1990

*Adopted 3/5 (p. 375)*

SENATE FILE 2249

S-5272

- 1 Amend Senate File 2249 as follows:  
2 1. Page 6, by striking lines 13 through 16, and  
3 inserting the following:  
4 " \_\_\_\_ . In those cases where the deputy industrial  
5 commissioner finds there is no substantial doubt about  
6 liability and causal connection, the application shall  
7 be accepted."  
8 2. By renumbering as necessary.

By LINN FUHRMAN

S-5272 FILED FEBRUARY 28, 1990

*Adopted 3/6 (p. 384)*

SENATE FILE 2249

S-5273

- 1 Amend Senate File 2249 as follows:  
2 1. Page 5, line 26, by striking the word  
3 "hearing" and inserting the following:  
4 "determination".  
5 2. Page 5, line 30, by striking the word  
6 "hearing" and inserting the following:  
7 "determination".  
8 3. Page 6, line 10, by striking the word  
9 "hearing" and inserting the following:  
10 "determination".  
11 4. Page 6, line 23, by striking the word  
12 "hearing" and inserting the following:  
13 "determination".  
14 5. Page 6, line 26, by striking the word  
15 "hearing" and inserting the following:  
16 "determination".

By LINN FUHRMAN

S-5273 FILED FEBRUARY 28, 1990

*Adopted 3/6 (p. 396)*

SENATE FILE 2249

S-5315

1 Amend Senate File 2249 as follows:  
 2 1. By striking page 1, line 28, through page 2,  
 3 line 1, and inserting the following:  
 4 "Sec. \_\_\_\_ . Section 85.27, unnumbered paragraph 3,  
 5 Code 1989, is amended to read as follows:  
 6 Charges believed to be excessive or unnecessary may  
 7 be referred to the industrial commissioner for  
 8 determination, and the commissioner may, in connection  
 9 therewith, utilize the procedures provided in sections  
 10 86.38 and 86.39 and conduct such inquiry as the  
 11 commissioner shall deem necessary. Any institution or  
 12 person rendering treatment to an employee whose injury  
 13 is compensable under this section agrees to be bound  
 14 by such charges as allowed by the industrial  
 15 commissioner and shall not recover in law or equity  
 16 any amount in excess of that set by the commissioner.  
 17 An action shall not be commenced or maintained in a  
 18 court of this state by a person rendering treatment to  
 19 an employee against the employee for charges in  
 20 connection with the treatment while a contested case  
 21 proceeding for determination of liability is pending  
 22 before the industrial commissioner relating to an  
 23 injury alleged to have given rise to the treatment."  
 24 2. By renumbering as necessary.

By LINN FUHRMAN

S-5315 FILED MARCH 1, 1990

*Loose 3/5 (p. 275)*

SENATE FILE 2249

S-5316

1 Amend Senate File 2249 as follows:  
 2 1. Page 6, by striking line 21 and inserting the  
 3 following: "be limited to the lesser of the actual  
 4 relief or ninety days, and the ruling shall state when  
 5 the".

By LINN FUHRMAN

S-5316 FILED MARCH 1, 1990

*Loose 2/6 (p. 284)*

SENATE FILE 2249

S-5339

1 Amend Senate File 2249 as follows:  
 A 2 1. Page 2, by striking lines 4 through 16.  
 B 3 2. Page 2, line 17, by striking the figure "2."  
 By JOHN PETERSON

S-5339 FILED MARCH 5, 1990

DIVISION A-ADOPTED, DIVISION B-ADOPTED (*pp. 875-76*)

SENATE FILE 2249

S-5311

1 Amend Senate File 2249 as follows:

- 2 1. Page 3, line 3, by inserting after the word
- 3 "decrees." the following: "As used in this section,
- 4 the term "when due" means that all conditions
- 5 precedent under applicable state law concerning the
- 6 medical charges have been met."

By LINN FUHRMAN

S-5311 FILED MARCH 1, 1990

*Lord 3/5 (p 876)*

SENATE FILE 2249

S-5312

1 Amend Senate File 2249 as follows:

- 2 1. Page 6, line 24, by inserting after the figure
- 3 "85.27," the following: "such relief shall be limited
- 4 solely to disputes over the choice of care and".

By CALVIN O. HULTMAN

LINN FUHRMAN

S-5312 FILED MARCH 1, 1990

*Lord 3/6 (p 884)*

SENATE FILE 2249

S-5313

1 Amend Senate File 2249 as follows:

- 2 1. Page 5, by striking lines 2 through 21.
- 3 2. By renumbering as necessary.

By LINN FUHRMAN

S-5313 FILED MARCH 1, 1990

*Lord 3/5 (p 876)*

SENATE FILE 2249

S-5314

1 Amend Senate File 2249 as follows:

- 2 1. By striking page 7, line 12 through page 8,
- 3 line 19.
- 4 2. Title, by striking lines 9 and 10, and
- 5 inserting the following: "deadlines, and".

By LINN FUHRMAN

S-5314 FILED MARCH 1, 1990

*Lord 3/6 (p 884)*

## SENATE FILE 2249

S-5347

Amend Senate File 2249 as follows:

1. Page 1, by inserting after line 27 the following:
  - "Sec. \_\_\_\_ . Section 85.21, Code 1989, is amended to read as follows:
    - 85.21 PAYMENTS CONCERNING LIABILITY DISPUTES.
      1. The industrial commissioner ~~may~~ shall order any number or combination of alleged workers' compensation insurance carriers, third-party payors, and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, or in the case of a third-party payor which may have responsibility, if not work related, to pay all or part of the benefits due to an employee or an employee's dependent or legal representative if any of the carriers, third-party payors, or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers, third-party payors, or employers is liable to the employee or to the employee's dependent or legal representative for benefits under this chapter or under chapter 85A or 85B, or pursuant to contract or agreement, but the carriers, third-party payors, or employers cannot agree, or the commissioner has not determined which carriers, third-party payors, or employers are liable.
      2. Unless waived by the carriers, third-party payors, or employers ordered to pay benefits, the industrial commissioner shall order an employer, which is not ordered to pay benefits and which does not have in force a policy of workers' compensation insurance issued by any carrier which is a party to the case or dispute and covering the claim made by the employee or the employee's dependent or legal representative, to post a bond or to deposit cash with the commissioner equal to the benefits paid or to be paid by the carriers or employers ordered to pay benefits. If any employer is ordered by the commissioner to post bond or to deposit cash, the employers, third-party payors, or carriers ordered to pay benefits are not obligated to pay benefits until the bond is posted or the cash is deposited. The commissioner may order the bond or cash deposit to be increased.
      3. When liability is finally determined by the industrial commissioner, the commissioner shall order the carriers, third-party payors, or employers liable to the employee or to the employee's dependent or legal representative to reimburse the carriers, third-party payors, or employers which are not liable but were required to pay benefits. Benefits paid or reimbursed pursuant to an order authorized by this

S-5347

Page 2

1 section do not require the filing of a memorandum of  
2 agreement. However, a contested case for benefits  
3 under this chapter or under chapter 85A or 85B shall  
4 not be maintained against a party to a case or dispute  
5 resulting in an order authorized by this section  
6 unless the contested case is commenced within three  
7 years from the date of the last benefit payment under  
8 the order. The commissioner may determine liability  
9 for the payment of workers' compensation benefits  
10 under this section."

By WALLY HORN

S-5347 FILED MARCH 6, 1990  
ADOPTED 3/6 (p. 286)

## SENATE FILE 2249

S-5360

Amend Senate File 2249 as follows:

1. Page 3, by striking line 13 through page 4,  
3 line 9.
- 4 2. By renumbering as necessary.

By LINN FUHRMAN

S-5360 FILED MARCH 6, 1990

LOST (p. 877)

## SENATE FILE 2249

S-5361

1 Amend Senate File 2249 as follows:

- 2 1. Page 7, line 11, by inserting after the word
- 3 "employee" the following: "or the employer, or the
- 4 employer's workers' compensation carrier".

By LINN FUHRMAN

S-5361 FILED MARCH 6, 1990

LOST (p. 878)

## SENATE FILE 2249

S-5362

1 Amend Senate File 2249 as follows:

- 2 1. Page 5, line 29, by inserting after the word
- 3 "award" the following: "provided that at least nine
- months has elapsed since the filing of the original
- proceeding or a proceeding to reopen an award".

By LINN FUHRMAN

S-5362 FILED MARCH 6, 1990

LOST (p. 877)

## SENATE FILE 2249

S-5363

1 Amend Senate File 2249 as follows:

- 2 1. Page 7, by inserting after line 4 the
- 3 following:
- 4 "g. An applicant for an expedited hearing under
- 5 this subsection is limited to one expedited hearing
- 6 per original proceeding or proceeding to reopen an
- 7 award that the applicant has filed."

By LINN FUHRMAN

S-5363 FILED MARCH 6, 1990

LOST (p. 877)

SENATE FILE 2249

S-5350

- 1 Amend Senate File 2249 as follows:
- 2 1. Page 5, line 25, by inserting after the word
- 3 "filed," the following: "notwithstanding the
- 4 provisions of chapter 17A,"

By TOM MANN, Jr.

S-5350 FILED MARCH 6, 1990

ADOPTED (p. 876)

SENATE FILE 2249

S-5351

- 1 Amend Senate File 2249 as follows:
- 2 1. Page 6, by striking lines 13 through 16 and
- 3 inserting the following:
- 4 "(1) In those cases, where the deputy industrial
- 5 commissioner finds that there is probable cause to
- 6 believe that the claimant is likely to succeed on the
- 7 merits of the case, the application shall be granted."

By THOMAS MANN, Jr.

S-5351 FILED MARCH 6, 1990

ADOPTED (p. 871)

SENATE FILE 2249

S-5359

- 1 Amend Senate File 2249 as follows:
- 2 1. Page 7, by inserting after line 4 the
- 3 following:
- 4 "g. The expedited hearing provided for in this
- 5 subsection cannot be used by an applicant who is
- 6 receiving workers' compensation benefits where such
- 7 benefits are being paid in a timely fashion."

By LINN FUHRMAN

S-5359 FILED MARCH 6, 1990

LOST (p. 871)

SENATE FILE 2249

S-5364

- 1 Amend Senate File 2249 as follows:
- 2 1. Page 7, by inserting after line 4 the
- 3 following:
- 4 "g. No fees may be deducted from relief granted
- 5 under this subsection and fees may only be assessed
- 6 against awards arising out of decisions made following
- 7 the hearing of the full case."

By LINN FUHRMAN

S-5364 FILED MARCH 6, 1990

LOST (p. 876)

SENATE FILE 2249  
BY COMMITTEE ON BUSINESS  
AND LABOR RELATIONS

(SUCCESSOR TO SSB 2091)

(AS AMENDED AND PASSED BY THE SENATE MARCH 6, 1990)

- \_\_\_\_\_ - New Language by the Senate
- \* - Language Stricken by the Senate

Passed Senate, Date 3/26/90 (p. 1299) Passed House, Date 3/21/90 (p. 1302)  
 Vote: Ayes 28 Nays 20 Vote: Ayes 58 Nays 33  
 Approved ~~Disapproved~~ April 3, 1990

A BILL FOR

1 An Act relating to workers' health, safety, and welfare, by  
 2 providing an expedited hearing process for certain contested  
 3 cases, requiring payment of medical expenses of an injured  
 4 employee in certain circumstances, staying debt collection  
 5 proceedings against an employee by a person providing  
 6 treatment pending resolution of a contested case before the  
 7 industrial commissioner, altering certain formulas for the  
 8 calculation of benefits, establishing initial hearing  
 9 deadlines, requiring certain unannounced inspections,  
 10 authorizing certain administrative search warrants, and  
 11 imposing certain benefit payment requirements and penalties  
 12 for unreasonable denial or nonpayment of medical benefits,  
 13 exempting union agents and employees from certain tort  
 14 liability, and providing applicability and effective dates.

S.F. 2249

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

16  
17  
18  
19

\* 1 Section 1. Section 85.21, Code 1989, is amended to read as  
2 follows:

3 85.21 PAYMENTS CONCERNING LIABILITY DISPUTES.

4 1. The industrial commissioner may shall order any number  
5 or combination of alleged workers' compensation insurance  
6 carriers, third-party payors, and alleged employers, which are  
7 parties to a contested case or to a dispute which could  
8 culminate in a contested case, or in the case of a third-party  
9 payor which may have responsibility, if not work related, to  
10 pay all or part of the benefits due to an employee or an  
11 employee's dependent or legal representative if any of the  
12 carriers, third-party payors, or employers agree, or the  
13 commissioner determines after an evidentiary hearing, that one  
14 or more of the carriers, third-party payors, or employers is  
15 liable to the employee or to the employee's dependent or legal  
16 representative for benefits under this chapter or under  
17 chapter 85A or 85B, or pursuant to contract or agreement, but  
18 the carriers, third-party payors, or employers cannot agree,  
19 or the commissioner has not determined which carriers, third-  
20 party payors, or employers are liable.

21 2. Unless waived by the carriers, third-party payors, or  
22 employers ordered to pay benefits, the industrial commissioner  
23 shall order an employer, which is not ordered to pay benefits  
24 and which does not have in force a policy of workers'  
25 compensation insurance issued by any carrier which is a party  
26 to the case or dispute and covering the claim made by the  
27 employee or the employee's dependent or legal representative,  
28 to post a bond or to deposit cash with the commissioner equal  
29 to the benefits paid or to be paid by the carriers or  
30 employers ordered to pay benefits. If any employer is ordered  
31 by the commissioner to post bond or to deposit cash, the  
32 employers, third-party payors, or carriers ordered to pay  
33 benefits are not obligated to pay benefits until the bond is  
34 posted or the cash is deposited. The commissioner may order  
35 the bond or cash deposit to be increased.

1 3. When liability is finally determined by the industrial  
2 commissioner, the commissioner shall order the carriers,  
3 third-party payors, or employers liable to the employee or to  
4 the employee's dependent or legal representative to reimburse  
5 the carriers, third-party payors, or employers which are not  
6 liable but were required to pay benefits. Benefits paid or  
7 reimbursed pursuant to an order authorized by this section do  
8 not require the filing of a memorandum of agreement. However,  
9 a contested case for benefits under this chapter or under  
10 chapter 85A or 85B shall not be maintained against a party to  
11 a case or dispute resulting in an order authorized by this  
12 section unless the contested case is commenced within three  
13 years from the date of the last benefit payment under the  
14 order. The commissioner may determine liability for the  
15 payment of workers' compensation benefits under this section.

5795

5795

16 Sec. 2. Section 85.27, Code 1989, is amended by adding the  
17 following new unnumbered paragraph:

18 NEW UNNUMBERED PARAGRAPH. An action shall not be commenced  
19 or maintained in a court of this state by a person rendering  
20 treatment to an employee against the employee for charges in  
21 connection with the treatment while a contested case  
22 proceeding for determination of liability is pending before  
23 the industrial commissioner relating to an injury alleged to  
24 have given rise to the treatment.

25 Sec. 3. NEW SECTION. 85.29A PAYMENT OF MEDICAL EXPENSES  
26 PENDING DETERMINATION OF COVERAGE OR LIABILITY.

5795\*

27 EMPLOYER LIABILITY FOR MEDICAL BENEFITS OR SERVICES  
28 RECEIVED UNDER EMPLOYER'S CHOICE OF CARE. If an injured  
29 employee is provided with medical services under the  
30 employer's choice of care, pending a determination of  
31 liability by the commissioner, the employee shall receive  
32 workers' compensation benefits. If it is later determined  
33 that the employee's injuries were not work-related, the  
34 employer's insurance carrier has the right of subrogation  
35 against the employer for the cost of medical services

1 delivered pursuant to the employer's choice of care. The  
2 employee who received medical benefits or services pursuant to  
3 the employer's choice of care, is not liable for such medical  
4 benefits or services, and shall not be required to pay for or  
5 reimburse the provider, employer, or insurance carrier for any  
6 such benefits or services received.

7 Sec. 4. Section 85.30, Code 1989, is amended by adding the  
8 following new unnumbered paragraph:

9 NEW UNNUMBERED PARAGRAPH. If the charges for medical  
10 benefits provided in section 85.27 are not paid by the  
11 employer or insurance carrier when due, interest shall be  
12 added to the charges for medical benefits at the rate provided  
5745 13 in section 535.3 for court judgments and decrees. Interest on  
14 medical benefit charges shall accrue from the date the charges  
15 were due. The interest awarded shall be paid to the person  
16 rendering treatment unless the charges for treatment have  
17 previously been paid by the injured employee or by a third  
18 party on the employee's behalf. If the charges for treatment  
19 have previously been paid by the injured employee or a third  
20 party on the employee's behalf, the interest shall be paid to  
21 the injured employee or to the third party which made the  
22 payment.

23 Sec. 5. Section 85.34, subsection 2, unnumbered paragraph  
24 1, Code 1989, is amended to read as follows:

25 Compensation for permanent partial disability shall begin  
26 at the termination of the healing period provided in  
27 subsection 1 of this section. The compensation shall be in  
28 addition to the benefits provided by sections 85.27 and 85.28.  
29 The compensation shall be based upon the extent of the  
30 disability and upon the basis of eighty percent per week of  
31 the employee's average weekly spendable earnings, but not more  
32 than a weekly benefit amount, rounded to the nearest dollar,  
33 equal to sixty-one and one-third percent of the statewide  
34 average weekly wage paid employees as determined by the  
35 department of employment services under section 96.19,

1 subsection 42, and in effect at the time of the injury.  
2 However, as of July 1, 1975; July 1, 1977; July 1, 1979; and  
3 July 1, 1981, the maximum weekly benefit amount rounded to the  
4 nearest dollar shall be increased so that it equals ninety-two  
5 percent, one hundred twenty-two and two-thirds percent, one  
6 hundred fifty-three and one-third percent, and one hundred  
7 eighty-four percent, respectively, of the statewide average  
8 weekly wage as determined above. The minimum weekly benefit  
9 amount shall be equal to the weekly benefit amount of a person  
10 whose gross weekly earnings are thirty-five percent of the  
11 statewide average weekly wage, ~~or to the spendable weekly~~  
12 ~~earnings of the employee, whichever are less.~~ However, ~~if the~~  
13 ~~employee is a minor or a full-time student under the age of~~  
14 ~~twenty-five in an accredited educational institution, the~~  
15 ~~minimum weekly benefit amount shall be equal to the weekly~~  
16 ~~benefit amount of a person whose gross weekly earnings are~~  
17 ~~thirty-five percent of the statewide average weekly wage.~~ For  
18 all cases of permanent partial disability compensation shall  
19 be paid as follows:

20 Sec. 6. Section 85.34, subsection 3, unnumbered paragraph  
21 1, Code 1989, is amended to read as follows:

22 Compensation for an injury causing permanent total  
23 disability shall be upon the basis of eighty percent per week  
24 of the employee's average weekly spendable earnings, but not  
25 more than a weekly benefit amount, rounded to the nearest  
26 dollar, equal to sixty-six and two-thirds percent of the  
27 statewide average weekly wage paid employees as determined by  
28 the department of employment services under section 96.19,  
29 subsection 42, and in effect at the time of the injury.  
30 However, as of July 1, 1975; July 1, 1977; July 1, 1979; and  
31 July 1, 1981, the maximum weekly benefit amount rounded to the  
32 nearest dollar shall be increased so that it equals one  
33 hundred percent, one hundred thirty-three and one-third  
34 percent, one hundred sixty-six and two-thirds percent and two  
35 hundred percent, respectively, of the statewide average weekly

1 wage as determined above. The minimum weekly benefit amount  
2 is equal to the weekly benefit amount of a person whose gross  
3 weekly earnings are thirty-five percent of the statewide  
4 average weekly wage, ~~or to the spendable weekly earnings of~~  
5 ~~the employee, whichever are less.~~ However, ~~if the employee is~~  
6 ~~a minor or a full-time student under the age of twenty-five in~~  
7 ~~an accredited educational institution the minimum weekly~~  
8 ~~benefit amount shall be equal to the weekly benefit amount of~~  
9 ~~a person whose gross weekly earnings are thirty-five percent~~  
10 ~~of the statewide average weekly wage.~~ ~~The weekly compensation~~  
11 ~~is payable during the period of the employee's disability.~~

12 Sec. 7. Section 86.13, unnumbered paragraph 4, Code 1989,  
13 is amended to read as follows:

14 If a delay in commencement or termination of weekly  
15 compensation or medical benefits occurs without reasonable or  
16 probable cause or excuse, the industrial commissioner shall  
17 award weekly compensation or medical benefits in addition to  
18 those weekly compensation or medical benefits payable under  
19 this chapter, or chapter 85, 85A, or 85B, up to fifty percent  
20 of the amount of weekly compensation or medical benefits that  
21 were unreasonably delayed or denied. In addition, interest at  
22 the rate provided in section 535.3 for court judgments and  
23 decrees shall be awarded based upon the amount of weekly  
24 compensation or medical benefits that were unreasonably  
25 delayed or denied. The additional weekly compensation or  
26 medical benefits awarded pursuant to this paragraph shall be  
27 paid to the claimant. Interest on the additional weekly  
28 compensation or medical benefits shall accrue from the date of  
29 the arbitration decision or review reopening decision awarding  
30 the additional weekly compensation or medical benefits and the  
31 interest shall also be paid to the claimant.

32 Sec. 8. Section 86.14, Code 1989, is amended by adding the  
33 following new subsection:

579534 NEW SUBSECTION. 3. a. Once an original proceeding or a  
35 proceeding to reopen an award has been filed, notwithstanding

1 the provisions of chapter 17A, a party may file an application  
2 for an expedited hearing limited to any claim under section  
3 85.27, section 85.33, subsection 1, section 85.34, subsection  
4 1, or section 85.39, after filing an original proceeding or a  
5 proceeding to reopen an award.

6 b. An application for an expedited hearing shall include  
7 at minimum all of the following:

8 (1) An affidavit and any other evidence in support of the  
9 claim.

10 (2) A statement of the relief sought.

11 (3) A statement describing the applicant's efforts to  
12 resolve the claim.

13 c. The respondent shall have forty-five days from receipt  
14 of the application by the respondent or insurance carrier of  
15 the respondent to file a response to the claim. The response  
16 shall include whether or not an agreement has been reached  
17 regarding the relief sought or any portion of the relief  
18 sought. The response shall state any legal defense and may  
19 dispute any facts by affidavit or any other evidence.

20 d. A decision shall be made on the application for  
21 expedited hearing by a hearing officer within five days of the  
22 filing of the response. The ruling shall include at minimum  
23 any or all of the following, as applicable:

24 (1) In those cases, where the deputy industrial  
25 commissioner finds that there is probable cause to believe  
26 that the claimant is likely to succeed on the merits of the  
27 case, the application shall be granted.

28 (2) Whether or not the application states grounds upon  
29 which relief may be granted under this section.

30 (3) If entitled to relief under either section 85.33,  
31 subsection 1, or section 85.34, subsection 1, the relief shall  
32 be limited to ninety days and the ruling shall state when the  
33 relief should commence and when it should end in accordance  
34 with the expedited hearing proceedings.

35 (4) If entitled to any relief under section 85.27, that

1 relief shall be prospective and effective only from the date  
2 of the filing of the application for expedited hearing. Any  
3 relief granted under this subparagraph shall extend to the  
4 date of decision on the contested case proceeding or until  
5 thirty days after the hearing on the contested case  
6 proceeding, whichever shall occur first.

7 (5) If entitled to any relief under section 85.39, the  
8 decision shall state the nature of an appropriate evaluation  
9 under that section.

10 e. The effect of the decision and these proceedings shall  
11 be binding on the parties until a decision at any later  
12 hearing of the full case.

13 f. The decision in the expedited proceedings shall be  
14 subject to de novo challenge by either party at the later  
15 hearing of the full case.

16 Sec. 9. NEW SECTION. 86.17A DEADLINE FOR INITIAL  
17 HEARING.

5798 18 The industrial commissioner or a deputy industrial  
19 commissioner shall conduct the initial hearing for a contested  
20 case within six months of the filing of the contested case  
21 petition, unless the deadline is waived by the claimant  
22 employee.

5795 23 Sec. 10. Section 88.6, Code 1989, is amended by adding the  
24 following new subsection:

25 NEW SUBSECTION. 8. COMPULSORY PROCESS FOR INSPECTION --  
26 ADMINISTRATIVE SEARCH WARRANTS. The commissioner or the  
27 commissioner's agent may apply to the court for compulsory  
28 process for enforcement of the department's inspection  
29 authority, in the form of an administrative search warrant  
30 pursuant to section 808.14, if one or more of the following  
31 conditions is satisfied:

32 a. FOLLOW-UP INSPECTIONS. The person or site to be  
33 inspected was previously cited for a violation, and either a  
34 subsequent inspection revealed that one or more violations had  
35 not yet been corrected, or a subsequent inspection had not yet

1 been conducted. The filing of an abatement statement by the  
2 employer cited for a violation is not grounds for denial of an  
3 administrative search warrant.

4 b. NEUTRAL SELECTION. The person or site to be inspected  
5 was selected through a neutral selection process according to  
6 the state enforcement plan approved by the United States  
7 occupational safety and health administration, and entry has  
8 been denied after request pursuant to subsection 1, or entry  
9 has previously been denied upon prior requests to permit an  
10 inspection.

11 c. COMPLAINT OF AN EXISTING VIOLATION. A complaint has  
12 been submitted to the commissioner alleging the existence of  
13 an existing violation. The application for an administrative  
14 search warrant shall to the extent constitutionally  
15 permissible protect the identity of the complainant.

16 d. PROBABLE CAUSE. Probable cause sufficient to justify  
17 an administrative search warrant is otherwise shown.

18 Sec. 11. NEW SECTION. 88.6A UNANNOUNCED COMPULSORY  
19 INSPECTIONS OF RECENT VIOLATORS.

20 The commissioner of labor shall include as part of future  
21 proposed state enforcement plans, provisions to require  
22 annually reinspection or follow-up inspections of at least  
23 five percent of the employers cited for a violation within the  
24 immediately preceding three years, based upon a neutral system  
25 of random selection. An inspection pursuant to this section  
26 shall be performed unannounced and the commissioner shall seek  
27 to obtain in advance an administrative search warrant pursuant  
28 to section 88.6, subsection 8, to permit a compulsory  
29 inspection in the event that the employer refuses voluntary  
30 access.

57457

31 Sec. 12. NEW SECTION. 613.20 UNION AGENT LIABILITY.

32 An inspection or failure to inspect any place of employment  
33 by an employee or agent of a union, which represents a  
34 bargaining unit with the employer of an injured employee,  
35 shall not be the basis for imposition of civil liability for

1 negligence upon the employee or agent of the union. However,  
2 this section shall not prevent civil liability for gross  
3 negligence amounting to such lack of care as to amount to  
4 wanton neglect for the safety of another.

57457

5 Sec. 13.

6 Section 9 of this Act is effective July 1, 1991, and  
7 applies to all contested cases originally filed on or after  
8 that date.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SENATE FILE 2249

H-5795

1 Amend Senate File 2249, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 2, line 6, by inserting after the word  
4 "benefits." the following: "The order for  
5 reimbursement shall include an award for interest from  
6 the date the commissioner initially ordered the  
7 carrier, third-party payor, or employer to pay  
8 benefits."

9 2. Page 2, by inserting after line 15, the  
10 following:

11 "4. If the commissioner has ordered a third-party  
12 payor to pay benefits, and if the commissioner  
13 subsequently approves a special case settlement  
14 involving the dispute pursuant to section 85.35, the  
15 special case settlement shall be without prejudice to  
16 any provisions of the third-party payor's contract for  
17 benefits.

18 5. The industrial commissioner or deputy  
19 industrial commissioner shall consider the rights and  
20 interests of a third-party payor when entering an  
21 award or order, and shall award or order appropriate  
22 relief or protection, as reasonably necessary to  
23 secure a third-party payor's right to payment,  
24 repayment, or subrogation from any party, if any.

25 6. Whenever the interpretation or application of a  
26 third-party payor's contract for benefits, other than  
27 a policy of workers' compensation liability insurance,  
28 becomes an issue of law in a contested case before the  
29 industrial commissioner or a deputy industrial  
30 commissioner, the question shall be submitted to the  
31 commissioner of insurance for resolution of the  
32 question of law. The commissioner of insurance shall  
33 respond by letter ruling to the industrial  
34 commissioner or deputy industrial commissioner hearing  
35 the case. The industrial commissioner or a deputy  
36 industrial commissioner shall not interpret a third-  
37 party payor contract without submitting any question  
38 of law to the commissioner of insurance and shall  
39 apply a letter ruling received from the commissioner  
40 of insurance to maintain uniformity of interpretation.  
41 The parties to a contested case may submit written  
42 briefs on an issue of law requiring the interpretation  
43 of a third-party payor contract to the industrial  
44 commissioner or the deputy industrial commissioner  
45 hearing the case, and the industrial commissioner or  
46 deputy industrial commissioner shall forward the  
47 briefs to the commissioner of insurance along with the  
48 question submitted for the commissioner of insurance's  
49 letter ruling."

50 3. By striking page 2, line 27, through page 3,

H-5795

Page 2

1 line 1, and inserting the following:

2 "If an injured employee is provided with medical  
3 services by the employer, reasonably believing such  
4 service to be provided by the employer's choice of  
5 care under section 85.27, the employee shall receive  
6 compensation for medical benefits pending a  
7 determination by the commissioner. The employer's  
8 obligation to compensate for medical benefits  
9 delivered pursuant to the employer's choice of care  
10 terminates when the employer ceases to exercise or  
11 designate choice of care. If, after compensation for  
12 medical benefits pursuant to this section it is later  
13 determined that the employee's injuries were not work-  
14 related, the employer or the employer's workers'  
15 compensation insurance carrier has the right of  
16 subrogation against the employee's third-party payor  
17 for the cost of medical services delivered pursuant to  
18 the employer's choice of care. The subrogation right  
19 is subject to the terms and conditions of the third-  
20 party payor policy or contract, including but not  
21 limited to cost containment provisions and required  
22 copayments or deductibles. The".

23 4. Page 3, line 13, by inserting after the word  
24 "decrees" the following: "and interest shall accrue  
25 as provided for money after the charges become due as  
26 provided in section 535.2, subsection 1".

27 5. Page 6, line 5, by inserting after the word  
28 "award." the following: "With regard to an  
29 application for relief under section 85.27, the  
30 expedited hearing process authorized in this  
31 subsection is available only in a case where the  
32 employer is not at the time of the application paying  
33 for medical benefits as provided in section 85.29A."

34 6. Page 6, line 25, by striking the words  
35 "probable cause" and inserting the following: "sub-  
36 stantial evidence".

37 7. Page 6, by striking line 32, and inserting the  
38 following: "be limited to the lesser of the actual  
39 entitlement to relief or ninety days, and the ruling  
40 shall state when the".

41 8. Page 7, by inserting after line 15, the  
42 following:

43 "g. A party may file only one request for an  
44 expedited hearing in connection with each original  
45 proceeding. A party may file only one request for an  
46 expedited hearing in connection with each proceeding  
47 to reopen an award.

48 h. The employer or the employer's workers'  
49 compensation carrier may recover benefits paid if a  
50 decision in an expedited hearing pursuant to this

1 subsection finds on behalf of the claimant, if all of  
2 the following conditions are met:

3 (1) Benefits under this subsection are paid to the  
4 claimant who is successful in an expedited hearing.

5 (2) Subsequent to the expedited hearing, a final  
6 determination in a full contested case finds on behalf  
7 of the employer in relation to the benefit liability  
8 which was at issue in the expedited hearing.

9 Benefits previously paid in these circumstances are  
10 recoverable as provided in paragraph "i".

11 i. The benefits may be recovered as follows:

12 (1) From a third-party payor. The right of  
13 subsequent recovery from a third-party payor is  
14 subject to the terms and conditions of the third-party  
15 payor policy or contract, including but not limited to  
16 cost containment provisions and required copayments  
17 and deductibles.

18 (2) From the claimant. If the claimant is unable  
19 to repay the benefits received, the employer or the  
20 employer's workers' compensation carrier may file a  
21 lien with the county recorder on the individual's  
22 wages earned subsequent to the date of the full  
23 decision in a contested case, for either an original  
24 proceeding or a proceeding to reopen an award. The  
25 lien, once filed, has the force and effect of a  
26 judgment lien and may be enforced as provided in  
27 chapter 626."

28 9. Page 7, by striking lines 18 through 22, and  
29 inserting the following:

30 "1. The industrial commissioner or a deputy  
31 industrial commissioner shall conduct the initial  
32 hearing for a contested case within six months of the  
33 filing of the contested case petition.

34 a. The claimant may unilaterally waive the right  
35 to a prompt hearing within six months of the filing of  
36 the contested case. If the claimant waives the  
37 requirement for a hearing within six months, that  
38 hearing must be held within twelve months of the  
39 filing of the contested case petition, unless the  
40 twelve-month requirement is waived as provided by  
41 paragraph "c".

42 b. Any party to the contested case proceeding  
43 other than the claimant may petition for an extension  
44 of the six-month initial hearing requirement, which  
45 extension shall not exceed four months beyond the six-  
46 month period. The extension shall be granted for good  
47 cause shown.

48 c. Any time requirements of this section may be  
49 waived with the written consent of all parties to the  
50 contested case proceeding.

1 2. This section does not limit the rights provided  
2 to the parties by section 17A.13, subsection 1, with  
3 regard to discovery. An extension of the time periods  
4 provided by this section shall be granted to complete  
5 discovery upon the request of any party who has timely  
6 propounded discovery of any other party and who has  
7 not received a full and complete response to the  
8 discovery request.

9 3. If a prehearing has not been held in the case  
10 which orders the setting of discovery deadlines, the  
11 time period for claimant's discovery is limited to  
12 sixty days after filing of the petition and all other  
13 parties shall have an additional sixty days to  
14 complete discovery. If a party amends a discovery  
15 response within sixty days of the scheduled date of  
16 the initial hearing, an extension shall be granted  
17 upon request of any other party to permit at least  
18 sixty days from the date of the last amended discovery  
19 response and the date of the initial hearing."

20 10. By striking page 7, line 23, through page 8,  
21 line 30.

22 11. Page 8, by inserting before line 31, the  
23 following:

24 "Sec. \_\_\_\_\_. NEW SECTION. 86.18A THIRD-PARTY PAYOR  
25 AS NECESSARY PARTY.

26 A third-party payor which may be liable pursuant to  
27 a contract of accident and sickness insurance, a  
28 nonprofit medical service contract, or health  
29 maintenance organization contract, for an employee's  
30 medical care or expenses if an injury or sickness is  
31 not work-related, may be joined or may join as a  
32 necessary party to a workers' compensation contested  
33 case. Notice shall be served upon a third-party payor  
34 in the same manner as provided for resident and  
35 nonresident employers in section 86.36."

36 12. Page 9, by inserting after line 4, the  
37 following:

38 "Sec. \_\_\_\_\_.  
39

40 The industrial commissioner, in cooperation with  
41 the commissioner of insurance, shall compile  
42 information on the number of workers' compensation  
43 claimants whose receipt of medical benefits are being  
44 or were delayed in the fiscal year beginning July 1,  
45 1989, and report each workers' compensation insurance  
46 carrier and third-party payor, if any, involved in  
47 each case. The report shall include a summary of the  
48 aggregate number of delayed medical benefit cases, and  
49 the number of cases involving each workers'  
50 compensation carrier and each third-party payor,  
including statistical information on the percentage of

1 total cases such delayed cases represent for that  
2 carrier or third-party payor, and the total number of  
3 workers in the state covered by the carrier or third-  
4 party payor. The report shall contain such other  
5 information as reasonably necessary to determine if a  
6 particular carrier or third-party payor is  
7 disproportionately involved in cases in which  
8 claimants' medical benefits are delayed. The report  
9 shall be submitted by the industrial commissioner to  
10 the general assembly on or before January 14, 1991.

11 Sec. \_\_\_\_\_.

12 The legislative council shall consider the  
13 establishment of an interim study committee to further  
14 investigate workers' compensation reform, including  
15 the following: compensation for work-related death,  
16 injury, hearing loss, and other disabilities; and the  
17 procedures for adjudicating claims and delivery of  
18 medical and other services to claimants to further  
19 reduce the backlog of cases, and assure fair and  
20 speedy claim resolution and benefit delivery, at a  
21 reasonable cost for both employers and employees. The  
22 study committee, if established, shall review the  
23 effectiveness of reforms already adopted, and propose  
24 such additional changes as it deems reasonable to  
25 carry out the stated public policy objectives."

26 13. By renumbering as necessary.

By OLLIE of Clinton

H-5795 FILED MARCH 21, 1990

ADOPTED (p. 1301)

## SENATE FILE 2249

H-5798

1 Amend Senate File 2249, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 22, the  
4 following:

5 "Sec. 100. Section 85.31, subsection 1, unnumbered  
6 paragraph 2, Code 1989, is amended to read as follows:

7 The weekly benefit amount shall not exceed a weekly  
8 benefit amount, rounded to the nearest dollar, equal  
9 to ~~sixty-six-and-two-thirds~~ two hundred percent of  
10 ~~sixty-six and two-thirds percent of the statewide~~  
11 ~~average weekly wage paid-employees as determined by~~  
12 ~~the department of employment services under section~~  
13 ~~96.19, subsection 42, and in effect at the time of the~~  
14 ~~injury. However, as of July 1, 1975, July 1, 1977,~~  
15 ~~July 1, 1979, and July 1, 1981, the maximum weekly~~  
16 ~~benefit amount rounded to the nearest dollar shall be~~  
17 ~~increased so that it equals one hundred percent, one~~  
18 ~~hundred-thirty-three-and-one-third percent, one~~  
19 ~~hundred-sixty-six-and-two-thirds percent and two~~  
20 ~~hundred percent, respectively, of the statewide~~  
21 ~~average weekly wage as determined above.~~ The minimum  
22 weekly benefit amount shall be equal to the weekly  
23 benefit amount of a person whose gross weekly earnings  
24 are thirty-five percent of the statewide average  
25 weekly wage, or to the spendable weekly earnings of  
26 the employee, whichever are less. Such compensation  
27 ~~shall be~~ is in addition to the benefits provided by  
28 sections 85.27 and 85.28."

29 2. By striking page 3, line 25, through page 4,  
30 line 19, and inserting the following:

31 "Compensation for permanent partial disability  
32 shall begin at the termination of the healing period  
33 provided in subsection 1 ~~of this section.~~ The  
34 compensation ~~shall be~~ is in addition to the benefits  
35 provided by sections 85.27 and 85.28. The  
36 compensation shall be based upon the extent of the  
37 disability and upon the basis of eighty percent per  
38 week of the employee's average weekly spendable  
39 earnings, but not more than a weekly benefit amount,  
40 rounded to the nearest dollar, equal to ~~sixty-one-and~~  
41 ~~one-third~~ one hundred eighty-four percent of ~~sixty-six~~  
42 ~~and two-thirds percent of the statewide average weekly~~  
43 ~~wage paid-employees as determined by the department of~~  
44 ~~employment services under section 96.19, subsection~~  
45 ~~42, and in effect at the time of the injury. However,~~  
46 ~~as of July 1, 1975, July 1, 1977, July 1, 1979, and~~  
47 ~~July 1, 1981, the maximum weekly benefit amount~~  
48 ~~rounded to the nearest dollar shall be increased so~~  
49 ~~that it equals ninety-two percent, one hundred twenty-~~  
50 ~~two-and-two-thirds percent, one hundred and thirty-three~~

H-5798

Page 2

1 ~~and-one-third-percent,-and-one-hundred-eighty-four~~  
2 ~~percent,-respectively,-of-the-statewide-average-weekly~~  
3 ~~wage-as-determined-above.~~ The minimum weekly benefit  
4 amount shall be equal to the weekly benefit amount of  
5 a person whose gross weekly earnings are thirty-five  
6 percent of the statewide average weekly wage, or to  
7 the spendable weekly earnings of the employee,  
8 whichever are less. However, if the employee is a  
9 minor or a full-time student under the age of twenty-  
10 five in an accredited educational institution, the  
11 minimum weekly benefit amount shall be equal to the  
12 weekly benefit amount of a person whose gross weekly  
13 earnings are thirty-five percent of the statewide  
14 average weekly wage. For all cases of permanent  
15 partial disability compensation shall be paid as  
16 follows:"

17 3. By striking page 4, line 22 through page 5,  
18 line 11, and inserting the following:

19 "Compensation for an injury causing permanent total  
20 disability shall be upon the basis of eighty percent  
21 per week of the employee's average weekly spendable  
22 earnings, but not more than a weekly benefit amount,  
23 rounded to the nearest dollar, equal to ~~sixty-six-and~~  
24 ~~two-thirds~~ two hundred percent of sixty-six and two-  
25 thirds percent of the statewide average weekly wage  
26 ~~paid-employees~~ as determined by the department of  
27 employment services under section 96.19, subsection  
28 42, and in effect at the time of the injury. However,  
29 ~~as-of-July-1,-1975,-July-1,-1977,-July-1,-1979,-and~~  
30 ~~July-1,-1981,-the-maximum-weekly-benefit-amount~~  
31 ~~rounded-to-the-nearest-dollar-shall-be-increased-so~~  
32 ~~that-it-equals-one-hundred-percent,-one-hundred~~  
33 ~~thirty-three-and-one-third-percent,-one-hundred-sixty-~~  
34 ~~six-and-two-thirds-percent-and-two-hundred-percent,~~  
35 ~~respectively,-of-the-statewide-average-weekly-wage-as~~  
36 ~~determined-above.~~ The minimum weekly benefit amount  
37 is equal to the weekly benefit amount of a person  
38 whose gross weekly earnings are thirty-five percent of  
39 the statewide average weekly wage, or to the spendable  
40 weekly earnings of the employee, whichever are less.  
41 However, if the employee is a minor or a full-time  
42 student under the age of twenty-five in an accredited  
43 educational institution the minimum weekly benefit  
44 amount shall be equal to the weekly benefit amount of  
45 a person whose gross weekly earnings are thirty-five  
46 percent of the statewide average weekly wage. The  
47 weekly compensation is payable during the period of  
48 the employee's disability."

49 4. Page 5, by inserting after line 11, the  
50 following:

1 "Sec. 103. Section 85.37, unnumbered paragraph 1,  
2 Code 1989, is amended to read as follows:

3 If an employee receives a personal injury causing  
4 temporary total disability, or causing a permanent  
5 partial disability for which compensation is payable  
6 during a healing period, compensation for the  
7 temporary total disability or for the healing period  
8 shall be upon the basis provided in this section. The  
9 weekly benefit amount payable to any an employee for  
10 any one week shall be upon the basis of eighty percent  
11 of the employee's weekly spendable earnings, but shall  
12 not exceed an amount, rounded to the nearest dollar,  
13 equal to ~~sixty-six-and-two-thirds~~ two hundred percent  
14 of ~~sixty-six and two-thirds percent~~ of the statewide  
15 average weekly wage paid-employees as determined by  
16 the department of employment services under section  
17 96.19, subsection 42, and in effect at the time of the  
18 injury. ~~However, as of July-17-1975, July-17-1977,~~  
19 ~~July-17-1979, and July-17-1981, the maximum weekly~~  
20 ~~benefit amount rounded to the nearest dollar shall be~~  
21 ~~increased so that it equals one hundred percent, one~~  
22 ~~hundred-thirty-three-and-one-third percent, one~~  
23 ~~hundred-sixty-six-and-two-thirds percent, and two~~  
24 ~~hundred percent, respectively, of the statewide~~  
25 ~~average weekly wage as determined above.~~ Total weekly  
26 compensation for any employee shall not exceed eighty  
27 percent per week of the employee's weekly spendable  
28 earnings. The minimum weekly benefit amount shall be  
29 equal to the weekly benefit amount of a person whose  
30 gross weekly earnings are thirty-five percent of the  
31 statewide average weekly wage, or to the spendable  
32 weekly earnings of the employee, whichever are less."

33 5. Page 9, by inserting after line 8, the  
34 following:

35 "Sec. 104. Sections 100, 5, 6, and 103 apply to  
36 workers' compensation injuries occurring on or after  
37 the effective date of this Act."

38 6. By renumbering as necessary.

By LUNDBY of Linn

H-5798 FILED MARCH 21, 1990

LOST (p. 1304)

SENATE FILE 2249

H-5787

1 Amend Senate File 2249, as amended, passed and  
2 reprinted by the Senate, as follows:

3 1. By striking page 3, line 23 through page 5,  
4 line 11.

5 2. By renumbering as necessary.

By HARBOR of Mills

H-5787 FILED MARCH 21, 1990

LOST (p. 1306)

HOUSE AMENDMENT TO  
SENATE FILE 2249

S-5671

1 Amend Senate File 2249, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 2, line 6, by inserting after the word  
4 "benefits." the following: "The order for  
5 reimbursement shall include an award for interest from  
6 the date the commissioner initially ordered the  
7 carrier, third-party payor, or employer to pay  
8 benefits."

9 2. Page 2, by inserting after line 15, the  
10 following:

11 "4. If the commissioner has ordered a third-party  
12 payor to pay benefits, and if the commissioner  
13 subsequently approves a special case settlement  
14 involving the dispute pursuant to section 85.35, the  
15 special case settlement shall be without prejudice to  
16 any provisions of the third-party payor's contract for  
17 benefits.

18 5. The industrial commissioner or deputy  
19 industrial commissioner shall consider the rights and  
20 interests of a third-party payor when entering an  
21 award or order, and shall award or order appropriate  
22 relief or protection, as reasonably necessary to  
23 secure a third-party payor's right to payment,  
24 repayment, or subrogation from any party, if any.

25 6. Whenever the interpretation or application of a  
26 third-party payor's contract for benefits, other than  
27 a policy of workers' compensation liability insurance,  
28 becomes an issue of law in a contested case before the  
29 industrial commissioner or a deputy industrial  
30 commissioner, the question shall be submitted to the  
31 commissioner of insurance for resolution of the  
32 question of law. The commissioner of insurance shall  
33 respond by letter ruling to the industrial  
34 commissioner or deputy industrial commissioner hearing  
35 the case. The industrial commissioner or a deputy  
36 industrial commissioner shall not interpret a third-  
37 party payor contract without submitting any question  
38 of law to the commissioner of insurance and shall  
39 apply a letter ruling received from the commissioner  
40 of insurance to maintain uniformity of interpretation.  
41 The parties to a contested case may submit written  
42 briefs on an issue of law requiring the interpretation  
43 of a third-party payor contract to the industrial  
44 commissioner or the deputy industrial commissioner  
45 hearing the case, and the industrial commissioner or  
46 deputy industrial commissioner shall forward the  
47 briefs to the commissioner of insurance along with the  
48 question submitted for the commissioner of insurance's  
49 letter ruling."

50 3. By striking page 2, line 27, through page 3,

S-5671

Page 2

1 line 1, and inserting the following:

2 "If an injured employee is provided with medical  
3 services by the employer, reasonably believing such  
4 service to be provided by the employer's choice of  
5 care under section 85.27, the employee shall receive  
6 compensation for medical benefits pending a  
7 determination by the commissioner. The employer's  
8 obligation to compensate for medical benefits  
9 delivered pursuant to the employer's choice of care  
10 terminates when the employer ceases to exercise or  
11 designate choice of care. If, after compensation for  
12 medical benefits pursuant to this section it is later  
13 determined that the employee's injuries were not work-  
14 related, the employer or the employer's workers'  
15 compensation insurance carrier has the right of  
16 subrogation against the employee's third-party payor  
17 for the cost of medical services delivered pursuant to  
18 the employer's choice of care. The subrogation right  
19 is subject to the terms and conditions of the third-  
20 party payor policy or contract, including but not  
21 limited to cost containment provisions and required  
22 copayments or deductibles. The".

23 4. Page 3, line 13, by inserting after the word  
24 "decrees" the following: "and interest shall accrue  
25 as provided for money after the charges become due as  
26 provided in section 535.2, subsection 1".

27 5. Page 6, line 5, by inserting after the word  
28 "award." the following: "With regard to an  
29 application for relief under section 85.27, the  
30 expedited hearing process authorized in this  
31 subsection is available only in a case where the  
32 employer is not at the time of the application paying  
33 for medical benefits as provided in section 85.29A."

34 6. Page 6, line 25, by striking the words  
35 "probable cause" and inserting the following: "sub-  
36 stantial evidence".

37 7. Page 6, by striking line 32, and inserting the  
38 following: "be limited to the lesser of the actual  
39 entitlement to relief or ninety days, and the ruling  
40 shall state when the".

41 8. Page 7, by inserting after line 15, the  
42 following:

43 "g. A party may file only one request for an  
44 expedited hearing in connection with each original  
45 proceeding. A party may file only one request for an  
46 expedited hearing in connection with each proceeding  
47 to reopen an award.

48 h. The employer or the employer's workers'  
49 compensation carrier may recover benefits paid if a  
50 decision in an expedited hearing pursuant to this

S-5671

Page 3

1 subsection finds on behalf of the claimant, if all of  
2 the following conditions are met:

3 (1) Benefits under this subsection are paid to the  
4 claimant who is successful in an expedited hearing.

5 (2) Subsequent to the expedited hearing, a final  
6 determination in a full contested case finds on behalf  
7 of the employer in relation to the benefit liability  
8 which was at issue in the expedited hearing.

9 Benefits previously paid in these circumstances are  
10 recoverable as provided in paragraph "i".

11 i. The benefits may be recovered as follows:

12 (1) From a third-party payor. The right of  
13 subsequent recovery from a third-party payor is  
14 subject to the terms and conditions of the third-party  
15 payor policy or contract, including but not limited to  
16 cost containment provisions and required copayments  
17 and deductibles.

18 (2) From the claimant. If the claimant is unable  
19 to repay the benefits received, the employer or the  
20 employer's workers' compensation carrier may file a  
21 lien with the county recorder on the individual's  
22 wages earned subsequent to the date of the full  
23 decision in a contested case, for either an original  
24 proceeding or a proceeding to reopen an award. The  
25 lien, once filed, has the force and effect of a  
26 judgment lien and may be enforced as provided in  
27 chapter 626."

28 9. Page 7, by striking lines 18 through 22, and  
29 inserting the following:

30 "1. The industrial commissioner or a deputy  
31 industrial commissioner shall conduct the initial  
32 hearing for a contested case within six months of the  
33 filing of the contested case petition.

34 a. The claimant may unilaterally waive the right  
35 to a prompt hearing within six months of the filing of  
36 the contested case. If the claimant waives the  
37 requirement for a hearing within six months, that  
38 hearing must be held within twelve months of the  
39 filing of the contested case petition, unless the  
40 twelve-month requirement is waived as provided by  
41 paragraph "c".

42 b. Any party to the contested case proceeding  
43 other than the claimant may petition for an extension  
44 of the six-month initial hearing requirement, which  
45 extension shall not exceed four months beyond the six-  
46 month period. The extension shall be granted for good  
47 cause shown.

48 c. Any time requirements of this section may be  
49 waived with the written consent of all parties to the  
50 contested case proceeding.

S-5671

Page 4

1 2. This section does not limit the rights provided  
2 to the parties by section 17A.13, subsection 1, with  
3 regard to discovery. An extension of the time periods  
4 provided by this section shall be granted to complete  
5 discovery upon the request of any party who has timely  
6 propounded discovery of any other party and who has  
7 not received a full and complete response to the  
8 discovery request.

9 3. If a prehearing has not been held in the case  
10 which orders the setting of discovery deadlines, the  
11 time period for claimant's discovery is limited to  
12 sixty days after filing of the petition and all other  
13 parties shall have an additional sixty days to  
14 complete discovery. If a party amends a discovery  
15 response within sixty days of the scheduled date of  
16 the initial hearing, an extension shall be granted  
17 upon request of any other party to permit at least  
18 sixty days from the date of the last amended discovery  
19 response and the date of the initial hearing."

20 10. By striking page 7, line 23, through page 8,  
21 line 30.

22 11. Page 8, by inserting before line 31, the  
23 following:

24 "Sec. \_\_\_\_\_. NEW SECTION. 86.18A THIRD-PARTY PAYOR  
25 AS NECESSARY PARTY.

26 A third-party payor which may be liable pursuant to  
27 a contract of accident and sickness insurance, a  
28 nonprofit medical service contract, or health  
29 maintenance organization contract, for an employee's  
30 medical care or expenses if an injury or sickness is  
31 not work-related, may be joined or may join as a  
32 necessary party to a workers' compensation contested  
33 case. Notice shall be served upon a third-party payor  
34 in the same manner as provided for resident and  
35 nonresident employers in section 86.36."

36 12. Page 9, by inserting after line 4, the  
37 following:

38 "Sec. \_\_\_\_\_.

39 The industrial commissioner, in cooperation with  
40 the commissioner of insurance, shall compile  
41 information on the number of workers' compensation  
42 claimants whose receipt of medical benefits are being  
43 or were delayed in the fiscal year beginning July 1,  
44 1989, and report each workers' compensation insurance  
45 carrier and third-party payor, if any, involved in  
46 each case. The report shall include a summary of the  
47 aggregate number of delayed medical benefit cases, and  
48 the number of cases involving each workers'  
49 compensation carrier and each third-party payor,  
50 including statistical information on the percentage of

S-5671

Page 5

1 total cases such delayed cases represent for that  
2 carrier or third-party payor, and the total number of  
3 workers in the state covered by the carrier or third-  
4 party payor. The report shall contain such other  
5 information as reasonably necessary to determine if a  
6 particular carrier or third-party payor is  
7 disproportionately involved in cases in which  
8 claimants' medical benefits are delayed. The report  
9 shall be submitted by the industrial commissioner to  
10 the general assembly on or before January 14, 1991.

11 Sec. \_\_\_\_\_.

12 The legislative council shall consider the  
13 establishment of an interim study committee to further  
14 investigate workers' compensation reform, including  
15 the following: compensation for work-related death,  
16 injury, hearing loss, and other disabilities; and the  
17 procedures for adjudicating claims and delivery of  
18 medical and other services to claimants to further  
19 reduce the backlog of cases, and assure fair and  
20 speedy claim resolution and benefit delivery, at a  
21 reasonable cost for both employers and employees. The  
22 study committee, if established, shall review the  
23 effectiveness of reforms already adopted, and propose  
24 such additional changes as it deems reasonable to  
25 carry out the stated public policy objectives."

26 13. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5671 FILED MARCH 23, 1990

*Senate concurred 3/26 (p.1297)*

PETERSON, CH.  
STURBEON  
HULTMAN

SSB 209,  
BUSINESS & LABOR RELATIONS

SENATE FILE 2249  
BY (PROPOSED COMMITTEE ON  
BUSINESS AND LABOR  
RELATIONS BILL BY PETERSON)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to workers' health, safety, and welfare, by  
2 providing funding for the second injury fund, establishing  
3 initial hearing deadlines, requiring certain unannounced  
4 inspections, authorizing certain administrative search  
5 warrants, and imposing certain benefit payment requirements  
6 and penalties for unreasonable denial or nonpayment of medical  
7 benefits, and providing applicability and effective dates.

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

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1 Section 1. NEW SECTION. 85.29A PAYMENT OF MEDICAL  
2 EXPENSES PENDING DETERMINATION OF COVERAGE OR LIABILITY.

3 1. TWO OR MORE INSURANCE CARRIERS POSSIBLY LIABLE FOR  
4 MEDICAL COVERAGE. If an injured employee potentially has  
5 insurance coverage under two or more insurance policies or  
6 other third-party payor contracts, pending a determination of  
7 liability by the commissioner, the employee shall receive  
8 workers' compensation medical benefits. If it is later  
9 determined that the employee's injuries were not work-related,  
10 or that the employer is not liable for workers' compensation  
11 medical benefits, the employer or the employer's insurance  
12 carrier has the right of subrogation to recover medical  
13 expenses paid on the employee's behalf from any other  
14 insurance carrier or third-party payor liable for the medical  
15 benefits received by the employee.

16 2. EMPLOYER LIABILITY FOR MEDICAL BENEFITS OR SERVICES  
17 RECEIVED UNDER EMPLOYER'S CHOICE OF CARE. If an injured  
18 employee is provided with medical services under the  
19 employer's choice of care, pending a determination of  
20 liability by the commissioner, the employee shall receive  
21 workers' compensation benefits. If it is later determined  
22 that the employee's injuries were not work-related, the  
23 employer's insurance carrier has the right of subrogation  
24 against the employer for the cost of medical services  
25 delivered pursuant to the employer's choice of care. The  
26 employee who received medical benefits or services pursuant to  
27 the employer's choice of care, is not liable for such medical  
28 benefits or services, and shall not be required to pay for or  
29 reimburse the provider, employer, or insurance carrier for any  
30 such benefits or services received.

31 Sec. 2. Section 85.65, Code Supplement 1989, is amended by  
32 striking the section and inserting in lieu thereof the  
33 following:

34 85.65 PAYMENTS TO THE SECOND INJURY FUND -- ASSESSMENT  
35 BASED ON PREMIUM DOLLARS PAID OR SELF-INSURANCE COSTS.

1 1. For the purpose of providing for revenue for the second  
2 injury fund, every authorized self-insurer, and every workers'  
3 compensation policyholder insured pursuant to this chapter,  
4 shall be liable for payment of an annual surcharge in  
5 accordance with this section. The annual surcharge shall  
6 apply to all workers' compensation insurance policies and  
7 self-insurance coverages which are written or renewed on or  
8 after July 1, 1991, including the state of Iowa coverages,  
9 including any coverages for its departments, divisions,  
10 agencies, commissions, and boards, or any political  
11 subdivision coverages which are self-insured or held out to be  
12 in any part self-insured. The surcharge shall not apply to  
13 any reinsurance or retrocessional transaction.

14 2. On January 1, 1991, and each year thereafter, the  
15 treasurer of state shall estimate the amount of benefits and  
16 administrative expenses payable from the second injury fund  
17 during the ensuing calendar year, and shall calculate the  
18 total amount of the annual surcharge to be imposed during the  
19 ensuing calendar year upon all workers' compensation  
20 policyholders and authorized self-insurers. The amount of the  
21 annual surcharge to be imposed upon all policyholders and  
22 self-insurers shall equal the moneys estimated by the  
23 treasurer of state to be payable from the second injury fund  
24 during the calendar year for which the annual surcharge is to  
25 be imposed, except that the surcharge shall not exceed three  
26 percent of the policyholder's or authorized self-insurer's  
27 workers' compensation net deposits, net premiums, or net  
28 assessments, and provided that a minimum annual surcharge of  
29 ten dollars per policyholder or authorized self-insurer shall  
30 be paid. The surcharge shall be collected from policyholders  
31 by each insurer at the same time and in the same manner that a  
32 premium is collected, but an insurance carrier or its agent  
33 shall not be entitled to any portion of the surcharge as a fee  
34 or commission for its collection. The surcharge is not  
35 subject to any taxes, licenses, or fees.

1 3. All surcharge amounts imposed by this section shall be  
2 paid to the Iowa department of revenue and finance and shall  
3 be deposited to the credit of the second injury fund.

4 4. Such surcharge amounts shall be paid quarterly by  
5 insurers and self-insurers, and insurers shall pay the amounts  
6 not later than the thirtieth day of the month following the  
7 end of the quarter in which the amount is received from  
8 policyholders.

9 5. If a policyholder or self-insurer fails to make payment  
10 of the surcharge or an insurer fails to make timely transfer  
11 to the department of revenue and finance of surcharges  
12 actually collected from policyholders, as required by this  
13 section, a penalty of fifteen percent of the surcharge unpaid,  
14 or untransferred, shall be assessed against the liable  
15 policyholder, self-insurer, or insurer. Penalties assessed  
16 under this subsection shall be collected in a civil action by  
17 a summary proceeding brought by the department of revenue and  
18 finance on behalf of the fund.

19 Sec. 3. NEW SECTION. 85.65A CARRIERS WITHDRAWING FROM  
20 STATE LIABLE FOR SURCHARGE IMPOSED -- DEPARTMENT OF REVENUE  
21 AND FINANCE EMPOWERED TO COLLECT.

22 If an insurance carrier withdraws from doing business in  
23 this state before the tax becomes due according to section  
24 85.65, or fails or neglects to pay the surcharge imposed, the  
25 department of revenue and finance shall at once proceed to  
26 collect the surcharge, and the department may employ such  
27 legal process as may be necessary for that purpose and when so  
28 collected the department shall pay the surcharge into the  
29 second injury fund. The suit may be brought by the department  
30 of revenue and finance, in any court of this state having  
31 jurisdiction, and reasonable attorney's fees may be taxed as  
32 costs in the suit.

33 Sec. 4. NEW SECTION. 85.65B DELINQUENT SURCHARGE,  
34 INTEREST, RATE -- OVERPAYMENT OF SURCHARGE, CREDIT.

35 1. If the surcharge imposed by section 85.65 is not paid

1 or transferred when due, the policyholder, self-insurer, or  
2 insurer responsible for the failure shall be required to pay,  
3 as part of the surcharge, interest on the surcharge at the  
4 rate of one and one-half percent per month for each month or  
5 fraction of a month delinquent. If the state prevails in any  
6 dispute concerning an assessment of surcharge which has not  
7 been paid or transferred, interest shall be paid upon the  
8 amount found due to the state at the rate of one and one-half  
9 percent per month for each month or fraction of a month  
10 delinquent.

11 2. In any legal contest concerning the amount of the  
12 surcharge imposed under section 85.65 for a calendar year, the  
13 quarterly installments for the following year shall continue  
14 to be made based upon the amount assessed by the director of  
15 revenue and finance. If after the end of any year, the amount  
16 of the actual surcharge due is less than the total amount of  
17 the installments actually paid, the excess amount paid shall  
18 be credited against the tax for the following year and  
19 deducted from the quarterly installment otherwise due on June  
20 first.

21 Sec. 5. Section 85.66, unnumbered paragraph 1, Code 1989,  
22 is amended to read as follows:

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

1 assessments shall be made ~~to~~ for the fund and when they shall  
2 be suspended and the treasurer of state or the department of  
3 revenue and finance may enforce the collection of  
4 contributions the surcharge.

5 Sec. 6. NEW SECTION. 85.68A EXPENSES OF ADMINISTRATION  
6 PAYABLE FROM FUND.

7 The expenses incurred by the treasurer of state, the  
8 attorney general, or the department of revenue and finance, in  
9 connection with the second injury fund, are chargeable to the  
10 second injury fund and may be made paid from the fund. The  
11 treasurer of state may enter into one or more agreements  
12 authorized under chapter 28E with the department of revenue  
13 and finance and the attorney general to provide compensation  
14 for the administrative functions provided by those departments  
15 in connection with the fund.

16 Sec. 7. NEW SECTION. 86.17A DEADLINE FOR INITIAL  
17 HEARING.

18 The industrial commissioner or a deputy industrial  
19 commissioner shall conduct the initial hearing for a contested  
20 case within six months of the filing of the initial report of  
21 injury required by section 86.11, unless the deadline is  
22 waived by the claimant employee.

23 Sec. 8. Section 88.6, Code 1989, is amended by adding the  
24 following new subsection:

25 NEW SUBSECTION. 8. COMPULSORY PROCESS FOR INSPECTION --  
26 ADMINISTRATIVE SEARCH WARRANTS. The commissioner or the  
27 commissioner's agent may apply to the court for compulsory  
28 process for enforcement of the department's inspection  
29 authority, in the form of an administrative search warrant  
30 pursuant to section 808.14, if one or more of the following  
31 conditions is satisfied:

32 a. FOLLOW-UP INSPECTIONS. The person or site to be  
33 inspected was previously cited for a violation, and either a  
34 subsequent inspection revealed that one or more violations had  
35 not yet been corrected, or a subsequent inspection had not yet

1 been conducted. The filing of an abatement statement by the  
2 employer cited for a violation is not grounds for denial of an  
3 administrative search warrant.

4 b. NEUTRAL SELECTION. The person or site to be inspected  
5 was selected through a neutral selection process according to  
6 the state enforcement plan approved by the United States  
7 occupational safety and health administration, and entry has  
8 been denied after request pursuant to subsection 1, or entry  
9 has previously been denied upon prior requests to permit an  
10 inspection.

11 c. COMPLAINT OF AN EXISTING VIOLATION. A complaint has  
12 been submitted to the commissioner alleging the existence of  
13 an existing violation. The application for an administrative  
14 search warrant shall to the extent constitutionally  
15 permissible protect the identity of the complainant.

16 d. PROBABLE CAUSE. Probable cause sufficient to justify  
17 an administrative search warrant is otherwise shown.

18 Sec. 9. NEW SECTION. 88.6A UNANNOUNCED COMPULSORY  
19 INSPECTIONS OF RECENT VIOLATORS.

20 The commissioner of labor shall include as part of future  
21 proposed state enforcement plans, provisions to require  
22 annually reinspection or follow-up inspections of at least  
23 five percent of the employers cited for a violation within the  
24 immediately preceding three years, based upon a neutral system  
25 of random selection. An inspection pursuant to this section  
26 shall be performed unannounced and the commissioner shall seek  
27 to obtain in advance an administrative search warrant pursuant  
28 to section 88.6, subsection 8, to permit a compulsory  
29 inspection in the event that the employer refuses voluntary  
30 access.

31 Sec. 10. Section 86.13, unnumbered paragraph 4, Code 1989,  
32 is amended to read as follows:

33 If a delay in commencement or termination of weekly  
34 compensation or medical benefits occurs without reasonable or  
35 probable cause or excuse, the industrial commissioner shall

1 award weekly compensation or medical benefits in addition to  
2 those weekly compensation or medical benefits payable under  
3 this chapter, or chapter 85, 85A, or 85B, up to fifty percent  
4 of the amount of weekly compensation or medical benefits that  
5 were unreasonably delayed or denied. In addition, interest at  
6 the rate provided in section 535.3 for court judgments and  
7 decrees shall be awarded based upon the amount of weekly  
8 compensation or medical benefits that were unreasonably  
9 delayed or denied.

10 Sec. 11.

11 Section 7 of this Act is effective July 1, 1991, and  
12 applies to all contested cases originally filed on or after  
13 that date.

#### 14 EXPLANATION

15 Section 1 of the bill provides for payment of medical  
16 benefits to an injured employee pending determination of  
17 liability when either of two situations exist, when two or  
18 more possible insurance carriers are obligated to provide  
19 coverage, or when the employer exercises choice of care.

20 Sections 2 through 4 change the funding mechanism for the  
21 workers' compensation second injury fund and provide  
22 procedural and enforcement authority for collecting the newly  
23 imposed surcharge. Currently the second injury fund is  
24 financed by a payment to the fund from each death benefit paid  
25 under the workers' compensation system. The bill replaces the  
26 assessment upon death benefits paid with a surcharge or  
27 assessment based upon premium dollars or self-insurance costs.

28 Section 5 increases the minimum and maximum cap for the  
29 fund's balance and makes conforming changes with sections 2  
30 through 4.

31 Section 6 allows administrative expenses incurred in  
32 connection with the fund to be paid from the second injury  
33 fund rather than the general fund.

34 Section 7 imposes a six-month deadline for initial hearing  
35 unless waived by the claimant employee. This section is given

1 a delayed effective date of July 1, 1991, by section 13 of the  
2 bill.

3 Section 8 details the ground for permitting the labor  
4 commissioner to obtain an administrative search warrant from  
5 the district court in limited circumstances to allow  
6 compulsory inspection for enforcement of occupational health  
7 and safety standards. Section 8 is not intended to alter or  
8 limit the scope of administrative search warrants issued  
9 pursuant to section 808.14.

10 Section 9 requires surprise compulsory searches be  
11 performed of a limited number of employers randomly selected  
12 from a list of violators within the immediately preceding  
13 three years.

14 Section 10 amends Code section 86.13 to permit imposition  
15 of penalties for unreasonable delay in commencement or  
16 termination of medical benefits. Current law only permits a  
17 penalty in connection with weekly compensation benefits. The  
18 amendment does not alter current law which provides that an  
19 employer may voluntarily undertake to provide medical benefits  
20 without an admission of liability, but once undertaken, a  
21 delay or termination without reasonable or probable cause or  
22 excuse could give rise to imposition of a penalty.

23 Section 11 provides that section 7's new six-month deadline  
24 for holding the initial hearing is effective July 1, 1991.

25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35



OFFICE OF THE GOVERNOR

STATE CAPITOL

DES MOINES, IOWA 50319

515 281-5211

TERRY E. BRANSTAD  
GOVERNOR

April 3, 1990

The Honorable Jo Ann Zimmerman  
President of the Senate  
State Capitol Building  
L O C A L

Dear Madam President,

Senate File 2249, an act relating to workers' health, safety, and welfare, by providing an expedited hearing process for certain contested cases, requiring payment of medical expenses of an injured employee in certain circumstances, staying debt collection proceedings against an employee by a person providing treatment pending resolution of a contested case before the industrial commissioner, altering certain formulas for the calculation of benefits, establishing initial hearing deadlines, requiring certain unannounced inspections, authorizing certain administrative search warrants, and imposing certain benefit payment requirements and penalties for unreasonable denial or nonpayment of medical benefits, exempting union agents and employees from certain tort liability, and providing applicability and effective dates, is hereby disapproved and transmitted to you in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

After reviewing the provisions of Senate File 2249, I find that the effect of this Act will make Iowa's economic climate less competitive, slow the process of handling contested cases, and increase costs for Iowa employers.

Senate File 2249 could increase costs to Iowa employers by increasing minimum benefit payments for permanent partial disability and permanent total disability, providing for additional penalties and interest and possibly preventing an employer from recouping the full cost of medical services when the employer chooses the medical care for an injured employee, and it is later determined that an injury is not work related.

The Honorable Jo Ann Zimmerman  
April 3, 1990  
Page 2

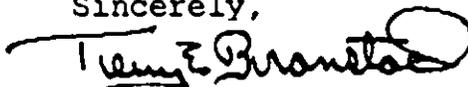
Senate File 2249 could also delay the completion of contested case proceedings by creating a new expedited hearing process and by specifying when certain stages of the hearing process must be completed. While the provisions of this act are intended to speed the completion of certain workers' compensation cases, by creating an additional hearing process, resources that would otherwise be devoted to the regular hearing process and the writing of decisions by the Industrial Commissioner would be diverted to the additional hearings.

The requirement that initial hearings be conducted within six months also seems to be intended to speed the handling of contested cases. But while initial hearings may be completed more quickly, the time required to complete a contested case and to reach a final decision may not improve. In fact, contested cases which are already on file may be further delayed, because the Division of Industrial Services would be required to give priority to the initial hearing.

The Department of Employment Services has recognized concerns about the time required to complete contested workers' compensation cases and has asked for additional staff to handle that case load. I have recommended that additional staff be provided to the Division of the Industrial Commissioner in response to this concern. The Department of Employment Services has also developed an internal plan to expedite the hearing process, and to provide for the mediation of workers' compensation cases prior to hearing.

For the above reasons, I hereby respectfully disapprove Senate File 2249.

Sincerely,



Terry E. Branstad  
Governor

TEB/ps

cc: Secretary of the Senate  
Chief Clerk of the House  
Secretary of State

SENATE FILE 2249

AN ACT

RELATING TO WORKERS' HEALTH, SAFETY, AND WELFARE, BY PROVIDING AN EXPEDITED HEARING PROCESS FOR CERTAIN CONTESTED CASES, REQUIRING PAYMENT OF MEDICAL EXPENSES OF AN INJURED EMPLOYEE IN CERTAIN CIRCUMSTANCES, STAYING DEBT COLLECTION PROCEEDINGS AGAINST AN EMPLOYEE BY A PERSON PROVIDING TREATMENT PENDING RESOLUTION OF A CONTESTED CASE BEFORE THE INDUSTRIAL COMMISSIONER, ALTERING CERTAIN FORMULAS FOR THE CALCULATION OF BENEFITS, ESTABLISHING INITIAL HEARING DEADLINES, REQUIRING CERTAIN UNANNOUNCED INSPECTIONS, AUTHORIZING CERTAIN ADMINISTRATIVE SEARCH WARRANTS, AND IMPOSING CERTAIN BENEFIT PAYMENT REQUIREMENTS AND PENALTIES FOR UNREASONABLE DENIAL OR NONPAYMENT OF MEDICAL BENEFITS, EXEMPTING UNION AGENTS AND EMPLOYEES FROM CERTAIN TORT LIABILITY, AND PROVIDING APPLICABILITY AND EFFECTIVE DATES.

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

Section 1. Section 85.21, Code 1989, is amended to read as follows:

85.21 PAYMENTS CONCERNING LIABILITY DISPUTES.

1. The industrial commissioner ~~may~~ shall order any number or combination of alleged workers' compensation insurance carriers, third-party payors, and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, or in the case of a third-party payor which may have responsibility, if not work related, to pay all or part of the benefits due to an employee or an

employee's dependent or legal representative if any of the carriers, third-party payors, or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers, third-party payors, or employers is liable to the employee or to the employee's dependent or legal representative for benefits under this chapter or under chapter 85A or 85B, or pursuant to contract or agreement, but the carriers, third-party payors, or employers cannot agree, or the commissioner has not determined which carriers, third-party payors, or employers are liable.

2. Unless waived by the carriers, third-party payors, or employers ordered to pay benefits, the industrial commissioner shall order an employer, which is not ordered to pay benefits and which does not have in force a policy of workers' compensation insurance issued by any carrier which is a party to the case or dispute and covering the claim made by the employee or the employee's dependent or legal representative, to post a bond or to deposit cash with the commissioner equal to the benefits paid or to be paid by the carriers or employers ordered to pay benefits. If any employer is ordered by the commissioner to post bond or to deposit cash, the employers, third-party payors, or carriers ordered to pay benefits are not obligated to pay benefits until the bond is posted or the cash is deposited. The commissioner may order the bond or cash deposit to be increased.

3. When liability is finally determined by the industrial commissioner, the commissioner shall order the carriers, third-party payors, or employers liable to the employee or to the employee's dependent or legal representative to reimburse the carriers, third-party payors, or employers which are not liable but were required to pay benefits. The order for reimbursement shall include an award for interest from the date the commissioner initially ordered the carrier, third-party payor, or employer to pay benefits. Benefits paid or reimbursed pursuant to an order authorized by this section do

not require the filing of a memorandum of agreement. However, a contested case for benefits under this chapter or under chapter 85A or 85B shall not be maintained against a party to a case or dispute resulting in an order authorized by this section unless the contested case is commenced within three years from the date of the last benefit payment under the order. The commissioner may determine liability for the payment of workers' compensation benefits under this section.

4. If the commissioner has ordered a third-party payor to pay benefits, and if the commissioner subsequently approves a special case settlement involving the dispute pursuant to section 85.35, the special case settlement shall be without prejudice to any provisions of the third-party payor's contract for benefits.

5. The industrial commissioner or deputy industrial commissioner shall consider the rights and interests of a third-party payor when entering an award or order, and shall award or order appropriate relief or protection, as reasonably necessary to secure a third-party payor's right to payment, repayment, or subrogation from any party, if any.

6. Whenever the interpretation or application of a third-party payor's contract for benefits, other than a policy of workers' compensation liability insurance, becomes an issue of law in a contested case before the industrial commissioner or a deputy industrial commissioner, the question shall be submitted to the commissioner of insurance for resolution of the question of law. The commissioner of insurance shall respond by letter ruling to the industrial commissioner or deputy industrial commissioner hearing the case. The industrial commissioner or a deputy industrial commissioner shall not interpret a third-party payor contract without submitting any question of law to the commissioner of insurance and shall apply a letter ruling received from the commissioner of insurance to maintain uniformity of interpretation. The parties to a contested case may submit

written briefs on an issue of law requiring the interpretation of a third-party payor contract to the industrial commissioner or the deputy industrial commissioner hearing the case, and the industrial commissioner or deputy industrial commissioner shall forward the briefs to the commissioner of insurance along with the question submitted for the commissioner of insurance's letter ruling.

Sec. 2. Section 85.27, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An action shall not be commenced or maintained in a court of this state by a person rendering treatment to an employee against the employee for charges in connection with the treatment while a contested case proceeding for determination of liability is pending before the industrial commissioner relating to an injury alleged to have given rise to the treatment.

Sec. 3. NEW SECTION. 85.29A PAYMENT OF MEDICAL EXPENSES PENDING DETERMINATION OF COVERAGE OR LIABILITY.

If an injured employee is provided with medical services by the employer, reasonably believing such service to be provided by the employer's choice of care under section 85.27, the employee shall receive compensation for medical benefits pending a determination by the commissioner. The employer's obligation to compensate for medical benefits delivered pursuant to the employer's choice of care terminates when the employer ceases to exercise or designate choice of care. If, after compensation for medical benefits pursuant to this section it is later determined that the employee's injuries were not work-related, the employer or the employer's workers' compensation insurance carrier has the right of subrogation against the employee's third-party payor for the cost of medical services delivered pursuant to the employer's choice of care. The subrogation right is subject to the terms and conditions of the third-party payor policy or contract, including but not limited to cost containment provisions and

required copayments or deductibles. The employee who received medical benefits or services pursuant to the employer's choice of care, is not liable for such medical benefits or services, and shall not be required to pay for or reimburse the provider, employer, or insurance carrier for any such benefits or services received.

Sec. 4. Section 85.30, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If the charges for medical benefits provided in section 85.27 are not paid by the employer or insurance carrier when due, interest shall be added to the charges for medical benefits at the rate provided in section 535.3 for court judgments and decrees and interest shall accrue as provided for money after the charges become due as provided in section 535.2, subsection 1. Interest on medical benefit charges shall accrue from the date the charges were due. The interest awarded shall be paid to the person rendering treatment unless the charges for treatment have previously been paid by the injured employee or by a third party on the employee's behalf. If the charges for treatment have previously been paid by the injured employee or a third party on the employee's behalf, the interest shall be paid to the injured employee or to the third party which made the payment.

Sec. 5. Section 85.34, subsection 2, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1 of this section. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average weekly spendable earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to sixty-one and one-third percent of the statewide

average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals ninety-two percent, one hundred twenty-two and two-thirds percent, one hundred fifty-three and one-third percent, and one hundred eighty-four percent, respectively, of the statewide average weekly wage as determined above. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less. However, if the employee is a minor or a full-time student under the age of twenty-five in an accredited educational institution, the minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

Sec. 6. Section 85.34, subsection 3, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average weekly spendable earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the statewide average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals one hundred percent, one hundred thirty-three and one-third

percent, one hundred sixty-six and two-thirds percent and two hundred percent, respectively, of the statewide average weekly wage as determined above. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less. However, if the employee is a minor or a full-time student under the age of twenty-five in an accredited educational institution the minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable during the period of the employee's disability:

Sec. 7. Section 86.13, unnumbered paragraph 4, Code 1989, is amended to read as follows:

If a delay in commencement or termination of weekly compensation or medical benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award weekly compensation or medical benefits in addition to those weekly compensation or medical benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of weekly compensation or medical benefits that were unreasonably delayed or denied. In addition, interest at the rate provided in section 535.3 for court judgments and decrees shall be awarded based upon the amount of weekly compensation or medical benefits that were unreasonably delayed or denied. The additional weekly compensation or medical benefits awarded pursuant to this paragraph shall be paid to the claimant. Interest on the additional weekly compensation or medical benefits shall accrue from the date of the arbitration decision or review reopening decision awarding the additional weekly compensation or medical benefits and the interest shall also be paid to the claimant.

Sec. 8. Section 86.14, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 3. a. Once an original proceeding or a proceeding to reopen an award has been filed, notwithstanding the provisions of chapter 17A, a party may file an application for an expedited hearing limited to any claim under section 85.27, section 85.33, subsection 1, section 85.34, subsection 1, or section 85.39, after filing an original proceeding or a proceeding to reopen an award. With regard to an application for relief under section 85.27, the expedited hearing process authorized in this subsection is available only in a case where the employer is not at the time of the application paying for medical benefits as provided in section 85.29A.

b. An application for an expedited hearing shall include at minimum all of the following:

- (1) An affidavit and any other evidence in support of the claim.
- (2) A statement of the relief sought.
- (3) A statement describing the applicant's efforts to resolve the claim.

c. The respondent shall have forty-five days from receipt of the application by the respondent or insurance carrier of the respondent to file a response to the claim. The response shall include whether or not an agreement has been reached regarding the relief sought or any portion of the relief sought. The response shall state any legal defense and may dispute any facts by affidavit or any other evidence.

d. A decision shall be made on the application for expedited hearing by a hearing officer within five days of the filing of the response. The ruling shall include at minimum any or all of the following, as applicable:

- (1) In those cases, where the deputy industrial commissioner finds that there is substantial evidence to believe that the claimant is likely to succeed on the merits of the case, the application shall be granted.
- (2) Whether or not the application states grounds upon which relief may be granted under this section.

(3) If entitled to relief under either section 85.33, subsection 1, or section 85.34, subsection 1, the relief shall be limited to the lesser of the actual entitlement to relief or ninety days, and the ruling shall state when the relief should commence and when it should end in accordance with the expedited hearing proceedings.

(4) If entitled to any relief under section 85.27, that relief shall be prospective and effective only from the date of the filing of the application for expedited hearing. Any relief granted under this subparagraph shall extend to the date of decision on the contested case proceeding or until thirty days after the hearing on the contested case proceeding, whichever shall occur first.

(5) If entitled to any relief under section 85.39, the decision shall state the nature of an appropriate evaluation under that section.

e. The effect of the decision and these proceedings shall be binding on the parties until a decision at any later hearing of the full case.

f. The decision in the expedited proceedings shall be subject to de novo challenge by either party at the later hearing of the full case.

g. A party may file only one request for an expedited hearing in connection with each original proceeding. A party may file only one request for an expedited hearing in connection with each proceeding to reopen an award.

h. The employer or the employer's workers' compensation carrier may recover benefits paid if a decision in an expedited hearing pursuant to this subsection finds on behalf of the claimant, if all of the following conditions are met:

(1) Benefits under this subsection are paid to the claimant who is successful in an expedited hearing.

(2) Subsequent to the expedited hearing, a final determination in a full contested case finds on behalf of the employer in relation to the benefit liability which was at issue in the expedited hearing.

Benefits previously paid in these circumstances are recoverable as provided in paragraph "i".

i. The benefits may be recovered as follows:

(1) From a third-party payor. The right of subsequent recovery from a third-party payor is subject to the terms and conditions of the third-party payor policy or contract, including but not limited to cost containment provisions and required copayments and deductibles.

(2) From the claimant. If the claimant is unable to repay the benefits received, the employer or the employer's workers' compensation carrier may file a lien with the county recorder on the individual's wages earned subsequent to the date of the full decision in a contested case, for either an original proceeding or a proceeding to reopen an award. The lien, once filed, has the force and effect of a judgment lien and may be enforced as provided in chapter 626.

Sec. 9. NEW SECTION. 86.17A DEADLINE FOR INITIAL HEARING.

1. The industrial commissioner or a deputy industrial commissioner shall conduct the initial hearing for a contested case within six months of the filing of the contested case petition.

a. The claimant may unilaterally waive the right to a prompt hearing within six months of the filing of the contested case. If the claimant waives the requirement for a hearing within six months, that hearing must be held within twelve months of the filing of the contested case petition, unless the twelve-month requirement is waived as provided by paragraph "c".

b. Any party to the contested case proceeding other than the claimant may petition for an extension of the six-month initial hearing requirement, which extension shall not exceed four months beyond the six-month period. The extension shall be granted for good cause shown.

c. Any time requirements of this section may be waived with the written consent of all parties to the contested case proceeding.

2. This section does not limit the rights provided to the parties by section 17A.13, subsection 1, with regard to discovery. An extension of the time periods provided by this section shall be granted to complete discovery upon the request of any party who has timely propounded discovery of any other party and who has not received a full and complete response to the discovery request.

3. If a prehearing has not been held in the case which orders the setting of discovery deadlines, the time period for claimant's discovery is limited to sixty days after filing of the petition and all other parties shall have an additional sixty days to complete discovery. If a party amends a discovery response within sixty days of the scheduled date of the initial hearing, an extension shall be granted upon request of any other party to permit at least sixty days from the date of the last amended discovery response and the date of the initial hearing.

Sec. 10. NEW SECTION. 86.18A THIRD-PARTY PAYOR AS NECESSARY PARTY.

A third-party payor which may be liable pursuant to a contract of accident and sickness insurance, a nonprofit medical service contract, or health maintenance organization contract, for an employee's medical care or expenses if an injury or sickness is not work-related, may be joined or may join as a necessary party to a workers' compensation contested case. Notice shall be served upon a third-party payor in the same manner as provided for resident and nonresident employers in section 86.36.

Sec. 11. NEW SECTION. 613.20 UNION AGENT LIABILITY.

An inspection or failure to inspect any place of employment by an employee or agent of a union, which represents a bargaining unit with the employer of an injured employee,

shall not be the basis for imposition of civil liability for negligence upon the employee or agent of the union. However, this section shall not prevent civil liability for gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another.

Sec. 12.

The industrial commissioner, in cooperation with the commissioner of insurance, shall compile information on the number of workers' compensation claimants whose receipt of medical benefits are being or were delayed in the fiscal year beginning July 1, 1989, and report each workers' compensation insurance carrier and third-party payor, if any, involved in each case. The report shall include a summary of the aggregate number of delayed medical benefit cases, and the number of cases involving each workers' compensation carrier and each third-party payor, including statistical information on the percentage of total cases such delayed cases represent for that carrier or third-party payor, and the total number of workers in the state covered by the carrier or third-party payor. The report shall contain such other information as reasonably necessary to determine if a particular carrier or third-party payor is disproportionately involved in cases in which claimants' medical benefits are delayed. The report shall be submitted by the industrial commissioner to the general assembly on or before January 14, 1991.

Sec. 13.

The legislative council shall consider the establishment of an interim study committee to further investigate workers' compensation reform, including the following: compensation for work-related death, injury, hearing loss, and other disabilities; and the procedures for adjudicating claims and delivery of medical and other services to claimants to further reduce the backlog of cases, and assure fair and speedy claim resolution and benefit delivery, at a reasonable cost for both employers and employees. The study committee, if established,

shall review the effectiveness of reforms already adopted, and propose such additional changes as it deems reasonable to carry out the stated public policy objectives.

Sec. 14.

Section 9 of this Act is effective July 1, 1991, and applies to all contested cases originally filed on or after that date.

---

JO ANN ZIMMERMAN  
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 2249, Seventy-third General Assembly.

---

JOHN F. DWYER  
Secretary of the Senate

*Vetoed*  
Approved 4/3, 1990

---

TERRY E. BRANSTAD  
Governor

SF 2249