

3/17/98 Referred to Business & Labor

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3/17/98 Do Pass

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SENATE FILE 2333

BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 2149)

Passed Senate, Date ^(P.749) 3-17-98

Passed House, Date ^(P.1615) 4/14/98

Vote: Ayes 27 Nays 21

Vote: Ayes 53 Nays 46

Approved May 5, 1998

A BILL FOR

1 An Act relating to occupational hearing loss recovery, providing
2 definitions, and providing for the apportionment and
3 measurement of hearing loss.

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

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S.F. 2333

1 Section 1. Section 85.34, subsection 2, paragraph r, Code
2 Supplement 1997, is amended to read as follows:

3 r. (1) For the loss of hearing, other than occupational
4 hearing loss as defined in section 85B.4, ~~subsection-1,~~ weekly
5 compensation during fifty weeks, and for the loss of hearing
6 in both ears, weekly compensation during one hundred seventy-
7 five weeks.

8 (2) For occupational hearing loss, weekly compensation as
9 provided in ~~the-Iowa-occupational-hearing-loss-Act-(chapter~~
10 ~~85B).~~

11 Sec. 2. Section 85B.4, Code 1997, is amended by striking
12 the section and inserting in lieu thereof the following:

13 85B.4 DEFINITIONS.

14 As used in this chapter, unless the context otherwise
15 provides:

16 1. "Excessive noise exposure" means exposure to sound
17 capable of producing occupational hearing loss.

18 2. "Hearing level" means the measured threshold of hearing
19 sensitivity using audiometric instruments properly calibrated
20 to the American national standards institute audiometric zero
21 reference level.

22 3. "Occupational hearing loss" means that portion of a
23 permanent sensorineural loss of hearing in one or both ears
24 that exceeds an average hearing level of twenty-five decibels
25 for the frequencies five hundred, one thousand, two thousand,
26 and three thousand Hertz, arising out of and in the course of
27 employment caused by excessive noise exposure. "Occupational
28 hearing loss" does not include loss of hearing attributable to
29 age or any other condition or exposure not arising out of and
30 in the course of employment.

31 Sec. 3. Section 85B.5, unnumbered paragraph 1, Code 1997,
32 is amended to read as follows:

33 An excessive noise ~~level~~ exposure is sound which exceeds
34 the times and intensities listed in the following table:

35 Sec. 4. Section 85B.8, unnumbered paragraph 1, Code 1997,

1 is amended to read as follows:

2 A claim for occupational hearing loss due to excessive
3 noise levels exposure may be filed six-months beginning one
4 month after separation from the employment in which the
5 employee was exposed subjected to excessive noise levels
6 exposure. The date of the injury shall be the date of
7 occurrence of any one of the following events:

8 Sec. 5. Section 85B.8, subsection 1, Code 1997, is amended
9 to read as follows:

10 1. Transfer from excessive noise level exposure employment
11 by an employer.

12 Sec. 6. Section 85B.9, Code 1997, is amended by striking
13 the section and inserting in lieu thereof the following:

14 85B.9 MEASURING HEARING LOSS.

15 1. Audiometric instruments, properly calibrated to the
16 American national standards institute specifications, shall be
17 used for measuring hearing levels and in such tests necessary
18 to establish total hearing loss, if any. The hearing tests
19 and examinations shall be conducted in environments which
20 comply with accepted national standards.

21 2. Audiometric examinations shall be administered by
22 persons who are certified by the council for accreditation in
23 occupational hearing conservation or by persons licensed as
24 audiologists under chapter 147, as physicians under chapter
25 148, as osteopathic physicians under chapter 150, or as
26 osteopathic physicians and surgeons under chapter 150A,
27 provided the licensed persons are trained in audiometry.

28 3. In calculating the total amount of hearing loss, the
29 hearing levels at each of the four frequencies, five hundred,
30 one thousand, two thousand, and three thousand Hertz shall be
31 added together and divided by four to determine the average
32 decibel hearing level for each ear. If the resulting average
33 decibel hearing level in either ear is twenty-five decibels or
34 less, the percentage hearing loss for that ear shall be zero.
35 For each resulting average decibel hearing level exceeding

1 twenty-five decibels, an allowance of one and one-half percent
2 shall be made up to the maximum of one hundred percent which
3 is reached at an average decibel hearing level of ninety-two
4 decibels. In determining the total binaural percentage
5 hearing loss, the percentage hearing loss for the ear with
6 better hearing shall be multiplied by five and added to the
7 percentage hearing loss for the ear with worse hearing and the
8 sum of the two divided by six.

9 4. The assessment of the proportion of the total binaural
10 percentage hearing loss that is due to occupational noise
11 exposure shall be made by the employer's regular or consulting
12 physician or licensed audiologist who is trained and has had
13 experience with such assessment. If several audiometric
14 examinations are available for assessment, the physician or
15 audiologist shall determine which examinations shall be used
16 in the final assessment of occupational hearing loss.

17 If the employee disputes the assessment, the employee may
18 select a physician or licensed audiologist similarly trained
19 and experienced to give an assessment of the audiometric
20 examinations.

21 5. This section is applicable in the event of partial
22 permanent or total permanent occupational hearing loss in one
23 or both ears.

24 Sec. 7. NEW SECTION. 85B.9A APPORTIONMENT OF
25 OCCUPATIONAL HEARING LOSS.

26 Apportionment of the total hearing loss between
27 occupational and nonoccupational loss, for purposes of
28 determining occupational hearing loss, may be made by an
29 audiologist or physician with qualifications set forth in
30 section 85B.9. In determining occupational hearing loss,
31 consideration shall be given to all probable employment and
32 nonemployment sources of loss and of the existence of any
33 prevention measures and programs.

34 Sec. 8. Section 85B.10, Code 1997, is amended to read as
35 follows:

1 85B.10 EMPLOYERS EMPLOYER'S NOTICE OF RESULTS OF TEST.

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

18 Sec. 9. Section 85B.11, Code 1997, is amended to read as
19 follows:

20 85B.11 PREVIOUS HEARING LOSS EXCLUDED.

21 An employer is liable, as provided in this chapter and
22 subject to the provisions of chapter 85, for an occupational
23 hearing loss to which the employment has contributed, but if
24 previous hearing loss, whether occupational or not, is
25 established by an audiometric examination or other competent
26 evidence, whether or not the employee was exposed to excessive
27 noise ~~level~~ exposure within six months preceding the test, the
28 employer is not liable for the previous loss, nor is the
29 employer liable for a loss for which compensation has
30 previously been paid or awarded. The employer is liable only
31 for the difference between the percent of occupational hearing
32 loss determined as of the date of the audiometric examination
33 used to determine occupational hearing loss and the percentage
34 of loss established by the pre-employment audiometric
35 examination. An amount paid to an employee for occupational

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

10 Sec. 10. Section 85B.12, Code 1997, is amended to read as
11 follows:

12 85B.12 HEARING AID PROVIDED.

13 A reduction of the compensation payable to an employee for
14 occupational hearing loss shall not be made because the
15 employee's ability to communicate may be improved by the use
16 of a hearing aid. An employer who is liable for occupational
17 hearing loss of an employee is required to provide the
18 employee with a hearing aid for each affected ear unless it
19 will not materially improve the employee's ability to
20 communicate.

21 Sec. 11. INTENT. It is the intent of the general assembly
22 that the changes in this Act to Code sections 85B.4 and 85B.9
23 merely confirm, and do not modify, the intent of chapter 85B
24 as codified prior to July 1, 1998.

25 EXPLANATION

26 This bill amends Code chapter 85B concerning occupational
27 hearing loss. The bill provides, however, that the changes to
28 Code sections 85B.4 and 85B.9 reflected in the bill are
29 intended by the general assembly to confirm the intent of the
30 chapter prior to the changes.

31 The bill replaces the current definitions section in Code
32 chapter 85B and provides for the definitions of excessive
33 noise exposure, hearing level, and occupational hearing loss.
34 Current law defines excessive noise level and occupational
35 hearing loss.

1 Code section 85B.8 is changed to provide that a claim for
2 occupational hearing loss may be filed beginning one month
3 after separation from the excessive noise.

4 The bill also replaces the current section providing for
5 the measurement of hearing loss. New Code section 85B.9A
6 provides that any apportionment of occupational and
7 nonoccupational loss be made by an audiologist or qualified
8 physician and that consideration of all probable sources of
9 loss shall be given in determining occupational hearing loss.
10 The bill also changes section 85B.12 to provide for a hearing
11 aid for each affected ear if certain conditions are met.

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SENATE FILE 2333

S-5175

- 1 Amend Senate File 2333 as follows:
- 2 1. Page 1, by inserting after line 15 the
- 3 following:
- 4 "1. "Age correction decibel level" means the
- 5 decibel level determined for an employee based on
- 6 standards adopted by the industrial commissioner which
- 7 shall be consistent with tables adopted by the United
- 8 States occupational safety and health administration
- 9 that establish, for purposes of measuring hearing
- 10 loss, age correction values in decibels for persons."
- 11 2. Page 1, line 24, by striking the words "an
- 12 average hearing level of twenty-five decibels" and
- 13 inserting the following: "the age correction decibel
- 14 level for an employee".
- 15 3. Page 1, line 25, by striking the words "five
- 16 hundred,".
- 17 4. Page 1, line 26, by striking the words "and
- 18 three" and inserting the following: "three".
- 19 5. Page 1, line 26, by inserting after the word
- 20 "thousand" the following: ", four thousand, and six
- 21 thousand".
- 22 6. Page 2, line 29, by striking the words "four
- 23 frequencies, five hundred," and inserting the
- 24 following: "five frequencies,".
- 25 7. Page 2, line 30, by striking the words "and
- 26 three" and inserting the following: "three".
- 27 8. Page 2, line 30, by inserting after the words
- 28 "three thousand" the following: ", four thousand, and
- 29 six thousand".
- 30 9. Page 2, line 31, by striking the word "four"
- 31 and inserting the following: "five".
- 32 10. Page 2, lines 33 and 34, by striking the
- 33 words "twenty-five decibels or less" and inserting the
- 34 following: "equal to or less than the age correction
- 35 decibel level for the employee".
- 36 11. Page 3, line 1, by striking the words
- 37 "twenty-five decibels" and inserting the following:
- 38 "the age correction decibel level for the employee".
- 39 12. Page 3, by striking lines 32 and 33 and
- 40 inserting the following: "nonemployment sources of
- 41 loss."
- 42 13. Page 4, line 6, by striking the words
- 43 "twenty-five decibels ANSI-or-ISO" and inserting the
- 44 following: "twenty-five-decibels-ANSI-or-ISO the age
- 45 correction decibel level for the employee".
- 46 14. Page 4, line 7, by striking the words "five
- 47 hundred," and inserting the following: "five
- 48 hundred,".
- 49 15. Page 4, line 7, by striking the words "and
- 50 three" and inserting the following: "and three".

S-5175

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S-5175

Page 2

1 16. Page 4, line 7, by inserting after the words
2 "three thousand" the following: ", four thousand, and
3 six thousand".

4 17. Page 4, line 14, by striking the word "four"
5 and inserting the following: "four five".

6 18. By renumbering and correcting internal
7 references as necessary.

By TOM FLYNN
MIKE CONNOLLY
DICK L. DEARDEN

ROBERT E. DVORSKY
PATRICIA HARPER
JOHNIE HAMMOND

S-5175 FILED MARCH 10, 1998

w/D 3-17-98

SENATE FILE 2333

S-5153

1 Amend Senate File 2333 as follows:

2 1. Page 5, by inserting after line 20 the
3 following:

4 "Sec. 101. APPLICABILITY. This Act applies only
5 to an employee of an employer who is newly hired by
6 the employer on or after July 1, 1998."

7 2. By renumbering as necessary.

By STEVEN D. HANSEN

S-5153 FILED MARCH 5, 1998

WITHDRAWN

3.17-98

(P. 749)

SENATE FILE 2333

S-5256

- 1 Amend Senate File 2333 as follows:
2 1. Page 3, by striking lines 32 and 33 and
3 inserting the following: "nonemployment sources of
4 loss. The apportionment of age-related loss shall be
5 made by reducing the total binaural percentage hearing
6 loss as calculated pursuant to section 85B.9,
7 subsection 3, by the same percentage as the decibels
8 of age-related loss occurring during the period of
9 employment bears to the total decibel hearing level in
10 each ear. The decibels of age-related loss shall be
11 calculated according to tables adopted by the
12 industrial commissioner consistent with tables of the
13 national institute for occupational safety and health
14 existing on July 1, 1998, and consistent with section
15 85B.9, subsection 3."
16 2. Page 5, by striking lines 21 through 24.
17 3. By renumbering as necessary.

By ELAINE SZYMONIAK
JOHN REDWINE
DERRYL McLAREN

S-5256 FILED MARCH 16, 1998

Adopted 3/17/98 (p. 748)

SENATE FILE 2333

S-5262

1 Amend Senate File 2333 as follows:

2 1. Page 1, by inserting after line 15 the
3 following:

4 "1. "Age correction decibel level" means the
5 decibel level determined for an employee based on
6 standards adopted by the industrial commissioner which
7 shall be consistent with tables adopted by the United
8 States occupational safety and health administration
9 that establish, for purposes of measuring hearing
10 loss, age correction values in decibels for persons."

11 2. Page 1, line 24, by striking the words "an
12 average hearing level of twenty-five decibels" and
13 inserting the following: "the age correction decibel
14 level for an employee".

15 3. Page 1, line 25, by striking the words "five
16 hundred,".

17 4. Page 1, line 26, by striking the words "and
18 three" and inserting the following: "three".

19 5. Page 1, line 26, by inserting after the word
20 "thousand" the following: ", four thousand, and six
21 thousand".

22 6. Page 2, line 29, by striking the words "four
23 frequencies, five hundred," and inserting the
24 following: "five frequencies,".

25 7. Page 2, line 30, by striking the words "and
26 three" and inserting the following: "three".

27 8. Page 2, line 30, by inserting after the words
28 "three thousand" the following: ", four thousand, and
29 six thousand".

30 9. Page 2, line 31, by striking the word "four"
31 and inserting the following: "five".

32 10. Page 2, lines 33 and 34, by striking the
33 words "twenty-five decibels or less" and inserting the
34 following: "equal to or less than the age correction
35 decibel level for the employee".

36 11. Page 3, line 1, by striking the words
37 "twenty-five decibels" and inserting the following:
38 "the age correction decibel level for the employee".

39 12. Page 3, by striking lines 32 and 33 and
40 inserting the following: "nonemployment sources of
41 loss."

42 13. Page 4, line 6, by striking the words
43 "twenty-five decibels ANSI-or-ISO" and inserting the
44 following: "twenty-five-decibels-ANSI-or-ISO the age
45 correction decibel level for the employee".

46 14. Page 4, line 7, by striking the words "five
47 hundred," and inserting the following: "five
48 hundred,".

49 15. Page 4, line 7, by striking the words "and
50 three" and inserting the following: "and three".

S-5262

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S-5262

Page 2

- 1 16. Page 4, line 7, by inserting after the words
 2 "three thousand" the following: ", four thousand, and
 3 six thousand".
 4 17. Page 4, line 14, by striking the word "four"
 5 and inserting the following: "four five".
 6 18. By renumbering and correcting internal
 7 references as necessary.

By TOM FLYNN

MICHAEL E. GRONSTAL
 PATTY JUDGE
 TOM VILSACK
 STEVEN D. HANSEN
 EUGENE S. FRAISE
 DON GETTINGS
 PATRICIA HARPER
 JACK RIFE

MIKE CONNOLLY

WALLY E. HORN
 DENNIS H. BLACK
 JOHNIE HAMMOND
 DICK L. DEARDEN
 MATT McCOY
 JOHN P. KIBBIE
 PATRICK J. DELUHERY
 BILL FINK

S-5262 FILED MARCH 17, 1998

LOST

(p.742)

SENATE FILE 2333

S-5269

- 1 Amend Senate File 2333 as follows:
 2 1. Page 3, by striking lines 26 through 33 and
 3 inserting the following:
 4 "Apportionment of the total hearing loss between
 5 occupational and nonoccupational loss, for purposes of
 6 determining occupational hearing loss, may be made by
 7 an audiologist or physician with qualifications set
 8 forth in section 85B.9. In determining occupational
 9 hearing loss, consideration shall be given to all
 10 probable employment and nonemployment sources of loss,
 11 excluding loss due to age."

By TOM FLYNN

S-5269 FILED MARCH 17, 1998

LOST

(p.744)

H-3/18/98 Labor + Ind. Rel.
H-3/23/98 No Pass
H-3/28/98 ~~UNFINISHED BUSINESS~~

SENATE FILE 2333

BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 2149)

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 1998)

- ~~_____~~ - New Language by the Senate
- * - Language Stricken by the Senate

Passed Senate, Date Passed House, Date 4-14-98
 Vote: Ayes Nays Vote: Ayes 52 Nays 46
 Approved May 5, 1998

A BILL FOR

1 An Act relating to occupational hearing loss recovery, providing
 2 definitions, and providing for the apportionment and
 3 measurement of hearing loss.

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

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S.F. 2333

1 Section 1. Section 85.34, subsection 2, paragraph r, Code
2 Supplement 1997, is amended to read as follows:

3 r. (1) For the loss of hearing, other than occupational
4 hearing loss as defined in section 85B.4, ~~subsection 1,~~ weekly
5 compensation during fifty weeks, and for the loss of hearing
6 in both ears, weekly compensation during one hundred seventy-
7 five weeks.

8 (2) For occupational hearing loss, weekly compensation as
9 provided in ~~the Iowa occupational hearing loss Act (chapter~~
10 85B).

11 Sec. 2. Section 85B.4, Code 1997, is amended by striking
12 the section and inserting in lieu thereof the following:

13 85B.4 DEFINITIONS.

14 As used in this chapter, unless the context otherwise
15 provides:

16 1. "Excessive noise exposure" means exposure to sound
17 capable of producing occupational hearing loss.

18 2. "Hearing level" means the measured threshold of hearing
19 sensitivity using audiometric instruments properly calibrated
20 to the American national standards institute audiometric zero
21 reference level.

22 3. "Occupational hearing loss" means that portion of a
23 permanent sensorineural loss of hearing in one or both ears
24 that exceeds an average hearing level of twenty-five decibels
25 for the frequencies five hundred, one thousand, two thousand,
26 and three thousand Hertz, arising out of and in the course of
27 employment caused by excessive noise exposure. "Occupational
28 hearing loss" does not include loss of hearing attributable to
29 age or any other condition or exposure not arising out of and
30 in the course of employment.

31 Sec. 3. Section 85B.5, unnumbered paragraph 1, Code 1997,
32 is amended to read as follows:

33 An excessive noise level exposure is sound which exceeds
34 the times and intensities listed in the following table:

35 Sec. 4. Section 85B.8, unnumbered paragraph 1, Code 1997,

1 is amended to read as follows:

2 A claim for occupational hearing loss due to excessive
3 noise levels exposure may be filed six-months beginning one
4 month after separation from the employment in which the
5 employee was exposed subjected to excessive noise levels
6 exposure. The date of the injury shall be the date of
7 occurrence of any one of the following events:

8 Sec. 5. Section 85B.8, subsection 1, Code 1997, is amended
9 to read as follows:

10 1. Transfer from excessive noise level exposure employment
11 by an employer.

12 Sec. 6. Section 85B.9, Code 1997, is amended by striking
13 the section and inserting in lieu thereof the following:

14 85B.9 MEASURING HEARING LOSS.

15 1. Audiometric instruments, properly calibrated to the
16 American national standards institute specifications, shall be
17 used for measuring hearing levels and in such tests necessary
18 to establish total hearing loss, if any. The hearing tests
19 and examinations shall be conducted in environments which
20 comply with accepted national standards.

21 2. Audiometric examinations shall be administered by
22 persons who are certified by the council for accreditation in
23 occupational hearing conservation or by persons licensed as
24 audiologists under chapter 147, as physicians under chapter
25 148, as osteopathic physicians under chapter 150, or as
26 osteopathic physicians and surgeons under chapter 150A,
27 provided the licensed persons are trained in audiometry.

28 3. In calculating the total amount of hearing loss, the
29 hearing levels at each of the four frequencies, five hundred,
30 one thousand, two thousand, and three thousand Hertz shall be
31 added together and divided by four to determine the average
32 decibel hearing level for each ear. If the resulting average
33 decibel hearing level in either ear is twenty-five decibels or
34 less, the percentage hearing loss for that ear shall be zero.
35 For each resulting average decibel hearing level exceeding

1 twenty-five decibels, an allowance of one and one-half percent
2 shall be made up to the maximum of one hundred percent which
3 is reached at an average decibel hearing level of ninety-two
4 decibels. In determining the total binaural percentage
5 hearing loss, the percentage hearing loss for the ear with
6 better hearing shall be multiplied by five and added to the
7 percentage hearing loss for the ear with worse hearing and the
8 sum of the two divided by six.

9 4. The assessment of the proportion of the total binaural
10 percentage hearing loss that is due to occupational noise
11 exposure shall be made by the employer's regular or consulting
12 physician or licensed audiologist who is trained and has had
13 experience with such assessment. If several audiometric
14 examinations are available for assessment, the physician or
15 audiologist shall determine which examinations shall be used
16 in the final assessment of occupational hearing loss.

17 If the employee disputes the assessment, the employee may
18 select a physician or licensed audiologist similarly trained
19 and experienced to give an assessment of the audiometric
20 examinations.

21 5. This section is applicable in the event of partial
22 permanent or total permanent occupational hearing loss in one
23 or both ears.

24 Sec. 7. NEW SECTION. 85B.9A APPORTIONMENT OF
25 OCCUPATIONAL HEARING LOSS.

26 Apportionment of the total hearing loss between
27 occupational and nonoccupational loss, for purposes of
28 determining occupational hearing loss, may be made by an
29 audiologist or physician with qualifications set forth in
30 section 85B.9. In determining occupational hearing loss,
31 consideration shall be given to all probable employment and
32 nonemployment sources of loss. The apportionment of age-
33 related loss shall be made by reducing the total binaural
34 percentage hearing loss as calculated pursuant to section
35 85B.9, subsection 3, by the same percentage as the decibels of

1 age-related loss occurring during the period of employment
2 bears to the total decibel hearing level in each ear. The
3 decibels of age-related loss shall be calculated according to
4 tables adopted by the industrial commissioner consistent with
5 tables of the national institute for occupational safety and
6 health existing on July 1, 1998, and consistent with section
7 85B.9, subsection 3.

8 Sec. 8. Section 85B.10, Code 1997, is amended to read as
9 follows:

10 85B.10 EMPLOYERS EMPLOYER'S NOTICE OF RESULTS OF TEST.

11 The employer shall communicate to the employee, in writing,
12 the results of an audiometric examination or physical
13 examination of an employee which reflects an average hearing
14 ~~loss-of-the-employee~~ level in one or both ears in excess of
15 twenty-five decibels ~~ANSI-or-ISO~~ for the test frequencies of
16 five hundred, one thousand, two thousand, and three thousand
17 Hertz, as soon as practicable after the examination. The
18 communication shall include the name and ~~address~~
19 qualifications of the person conducting the audiometric
20 examination or physical examination, the site of the
21 examination, the kind or type of test or examinations given,
22 the results of each, and the average decibel ~~loss~~ hearing
23 level, in for the four frequencies, in each ear, ~~if-any~~, and,
24 if known to the employer, whether the hearing loss is
25 sensorineural ~~hearing-loss~~ and, if the hearing loss resulted
26 from another cause, the ~~name-of-the~~ cause.

27 Sec. 9. Section 85B.11, Code 1997, is amended to read as
28 follows:

29 85B.11 PREVIOUS HEARING LOSS EXCLUDED.

30 An employer is liable, as provided in this chapter and
31 subject to the provisions of chapter 85, for an occupational
32 hearing loss to which the employment has contributed, but if
33 previous hearing loss, whether occupational or not, is
34 established by an audiometric examination or other competent
35 evidence, whether or not the employee was exposed to excessive

1 noise level exposure within six months preceding the test, the
2 employer is not liable for the previous loss, nor is the
3 employer liable for a loss for which compensation has
4 previously been paid or awarded. The employer is liable only
5 for the difference between the percent of occupational hearing
6 loss determined as of the date of the audiometric examination
7 used to determine occupational hearing loss and the percentage
8 of loss established by the pre-employment audiometric
9 examination. An amount paid to an employee for occupational
10 hearing loss by any other employer shall be credited against
11 compensation payable by an employer for the hearing loss. An
12 employee shall not receive in the aggregate greater
13 compensation from all employers for occupational hearing loss
14 than that provided in this section for total occupational
15 hearing loss. A payment shall not be made to an employee
16 unless the employee has worked in excessive noise level
17 exposure employment for a total period of at least ninety days
18 for the employer from whom compensation is claimed.

19 Sec. 10. Section 85B.12, Code 1997, is amended to read as
20 follows:

21 85B.12 HEARING AID PROVIDED.

22 A reduction of the compensation payable to an employee for
23 occupational hearing loss shall not be made because the
24 employee's ability to communicate may be improved by the use
25 of a hearing aid. An employer who is liable for occupational
26 hearing loss of an employee is required to provide the
27 employee with a hearing aid for each affected ear unless it
28 will not materially improve the employee's ability to
29 communicate.

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SENATE FILE 2333

H-8615

- 1 Amend Senate File 2333, as amended, passed, and
 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 26, by striking the words "and
 4 three" and inserting the following: "three".
- 5 2. Page 1, line 26, by inserting after the word
 6 "thousand" the following: ", four thousand, and six
 7 thousand".
- 8 3. Page 2, line 29, by striking the word "four"
 9 and inserting the following: "six".
- 10 4. Page 2, line 30, by striking the words "and
 11 three" and inserting the following: "three".
- 12 5. Page 2, line 30, by inserting before the word
 13 "Hertz" the following: ", four thousand, and six
 14 thousand".
- 15 6. Page 2, line 31, by striking the word "four"
 16 and inserting the following: "six".
- 17 7. Page 4, line 16, by striking the words "and
 18 three" and inserting the following: "and three".
- 19 8. Page 4, line 17, by inserting before the word
 20 "Hertz" the following: "four thousand, and six
 21 thousand".
- 22 9. Page 4, line 23, by striking the word "four"
 23 and inserting the following: "four six".
- 24 10. By renumbering and correcting internal
 25 references as necessary.

By DOTZLER of Black Hawk

H-8615 FILED MARCH 24, 1998

L O S T

4-14-98 (P. 1612)

SENATE FILE 2333

H-8635

- 1 Amend Senate File 2333, as amended, passed, and
 2 reprinted by the Senate, as follows:
- 3 1. Page 5, by inserting after line 29 the
 4 following:
- 5 "Sec. ____ . INTENT. It is the intent of the
 6 general assembly that the changes in this Act are to
 7 provide that an employer shall not have to pay
 8 workers' compensation benefits for occupational
 9 hearing loss to an employee for hearing loss that is
 10 nonoccupational."
- 11 2. By renumbering as necessary.

By TAYLOR of Linn

H-8635 FILED MARCH 24, 1998

Lost 4-14-98
 (P. 1614)

SENATE FILE 2333

H-8596

- 1 Amend Senate File 2333, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. By striking page 3, line 32, through page 4,
- 4 line 7, and inserting the following: "nonemployment
- 5 sources of loss, excluding loss due to age."

By TAYLOR of Linn

H-8596 FILED MARCH 23, 1998

*Lost
4-14-98
(P. 1612)*

SENATE FILE 2333

H-8595

- 1 Amend Senate File 2333, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 5, by inserting after line 29 the
- 4 following:
- 5 "Sec. ____ . APPLICABILITY. This Act applies only
- 6 to an employee of an employer who is newly hired by
- 7 the employer on or after July 1, 1998."
- 8 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-8595 FILED MARCH 23, 1998

*Lost
4-14-98
(P. 1613)*

SENATE FILE 2333

H-9145

- 1 Amend Senate File 2333, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 1, line 25, by striking the words "five
 4 hundred,".
 5 2. Page 2, line 29, by striking the words "four
 6 frequencies, five hundred," and inserting the
 7 following: "three frequencies."
 8 3. Page 2, line 31, by striking the word "four"
 9 and inserting the following: "three".
 10 4. Page 4, line 16, by striking the words "five
 11 hundred," and inserting the following: "five
 12 hundred;".
 13 5. Page 4, line 23, by striking the word "four"
 14 and inserting the following: "~~four~~ three".

Lost 4-14-98 (P.1615) By MURPHY of Dubuque
 DOTZLER of Black Hawk
 H-9145 FILED APRIL 14, 1998

SENATE FILE 2333

H-9146

- 1 Amend Senate File 2333, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 1, line 26, by striking the words "and
 4 three" and inserting the following: "three".
 5 2. Page 1, line 26, by inserting after the word
 6 "thousand" the following: ", and four thousand".
 7 3. Page 2, line 29, by striking the word "four"
 8 and inserting the following: "five".
 9 4. Page 2, line 30, by striking the words "and
 10 three" and inserting the following: "three".
 11 5. Page 2, line 30, by inserting before the word
 12 "Hertz" the following: ", and four thousand".
 13 6. Page 2, line 31, by striking the word "four"
 14 and inserting the following: "five".
 15 7. Page 4, line 16, by striking the words "and
 16 three" and inserting the following: "~~and~~ three".
 17 8. Page 4, line 16, by inserting after the words
 18 "three thousand" the following: "and four
 19 thousand".
 20 9. Page 4, line 23, by striking the word "four"
 21 and inserting the following: "~~four~~ five".
 22 10. By renumbering and correcting internal
 23 references as necessary.

By MYERS of Johnson
 H-9146 FILED APRIL 14, 1998

Lost 4/14/98 (p.1611)

SENATE FILE 2333

H-8636

1 Amend Senate File 2333, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 4, line 17, by inserting after the word
4 "Hertz," the following: "and the rights of the
5 employee pursuant to this chapter,".

6 2. Page 5, by inserting after line 29 the
7 following:

8 "Sec. ____ . NEW SECTION. 85B.16 EMPLOYEE NOTICE

9 -- APPLICABILITY.

10 An employer subject to liability under this chapter
11 shall inform, in writing, each employee of the
12 employer who is an employee as of July 1, 1998, each
13 employee hired by the employer on or after July 1,
14 1998, and each employee who is separated from the
15 employment with the employer in which the employee was
16 subjected to excessive noise exposure on or after July
17 1, 1998, within one month of the date of separation,
18 of the effect of this Act and of the employee's rights
19 under this chapter. This Act shall not apply to an
20 employee of an employer until the employer has
21 received a signed acknowledgment from the employee
22 that the employee has been informed of the effect of
23 this Act and of the employee's rights under this
24 chapter."

25 3. By renumbering as necessary.

By CONNORS of Polk

H-8636 FILED MARCH 24, 1998

*Lost 4/14/98
(P. 1613)
motion to R/c by Connors*

SENATE FILE 2333

H-9165

- 1 Amend Senate File 2333, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 5, by inserting after line 29 the
- 4 following:
- 5 "Sec. ____ . APPLICABILITY. This Act does not apply
- 6 to an employee who retired from the employment in
- 7 which the employee was subjected to excessive noise
- 8 exposure prior to July 1, 1998."
- 9 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-9165 FILED APRIL 14, 1998

W/D 4/14/98 (P. 1614)

SENATE FILE 2333

H-9154

- 1 Amend Senate File 2333, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 5, by inserting after line 29 the
- 4 following:
- 5 "Sec. ____ . NEW SECTION. 85B.16 ADEQUATE HEARING
- 6 PROTECTION -- APPLICABILITY.
- 7 An employer subject to liability under this chapter
- 8 shall provide each employee of the employer who is an
- 9 employee as of July 1, 1998, and each employee hired
- 10 by the employer on or after July 1, 1998, with safe
- 11 and adequate hearing protection based on the
- 12 employee's job position. This Act shall not apply to
- 13 an employee of an employer if the employer has not
- 14 provided the employee with safe and adequate hearing
- 15 protection as required by this section."
- 16 2. By renumbering as necessary.

By TAYLOR of Linn

H-9154 FILED APRIL 14, 1998

Root 4-14-98

(P. 1614)

SENATE FILE 2333

H-9163

1 Amend Senate File 2333, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 85.34, subsection 2, paragraph
6 r, Code Supplement 1997, is amended to read as
7 follows:

8 r. (1) For the loss of hearing, other than
9 occupational hearing loss as defined in section 85B.4,
10 ~~subsection i~~, weekly compensation during fifty weeks,
11 and for the loss of hearing in both ears, weekly
12 compensation during one hundred seventy-five weeks.

13 (2) For occupational hearing loss, weekly
14 compensation as provided in the ~~Iowa Occupational~~
15 ~~Hearing Loss Act~~ {chapter 85B}.

16 Sec. 2. Section 85B.4, Code 1997, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 85B.4 DEFINITIONS.

20 As used in this chapter, unless the context
21 otherwise provides:

22 1. "Excessive noise exposure" means exposure to
23 sound capable of producing occupational hearing loss.

24 2. "Hearing level" means the measured threshold of
25 hearing sensitivity using audiometric instruments
26 properly calibrated to the American national standards
27 institute audiometric zero reference level.

28 3. "Occupational hearing loss" means that portion
29 of a permanent sensorineural loss of hearing in one or
30 both ears that exceeds an average hearing level of
31 twenty-five decibels for the frequencies five hundred,
32 one thousand, two thousand, and three thousand Hertz,
33 arising out of and in the course of employment caused
34 by excessive noise exposure. "Occupational hearing
35 loss" does not include loss of hearing attributable to
36 any other condition or exposure not arising out of and
37 in the course of employment.

38 Sec. 3. Section 85B.5, unnumbered paragraph 1,
39 Code 1997, is amended to read as follows:

40 An excessive noise ~~level~~ exposure is sound which
41 exceeds the times and intensities listed in the
42 following table:

43 Sec. 4. Section 85B.8, unnumbered paragraph 1,
44 Code 1997, is amended to read as follows:

45 A claim for occupational hearing loss due to
46 excessive noise ~~levels~~ exposure may be filed six
47 months after separation from the employment in which
48 the employee was exposed subjected to excessive noise
49 levels exposure. The date of the injury shall be the
50 date of occurrence of any one of the following events:

H-9163

H-9163

Page 2

1 Sec. 5. Section 85B.8, subsection 1, Code 1997, is
2 amended to read as follows:

3 1. Transfer from excessive noise ~~level~~ exposure
4 employment by an employer.

5 Sec. 6. Section 85B.11, Code 1997, is amended to
6 read as follows:

7 85B.11 PREVIOUS HEARING LOSS EXCLUDED.

8 An employer is liable, as provided in this chapter
9 and subject to the provisions of chapter 85, for an
10 occupational hearing loss to which the employment has
11 contributed, but if previous hearing loss, whether
12 occupational or not, is established by an audiometric
13 examination or other competent evidence, whether or
14 not the employee was exposed to excessive noise ~~level~~
15 exposure within six months preceding the test, the
16 employer is not liable for the previous loss, nor is
17 the employer liable for a loss for which compensation
18 has previously been paid or awarded. The employer is
19 liable only for the difference between the percent of
20 occupational hearing loss determined as of the date of
21 the audiometric examination used to determine
22 occupational hearing loss and the percentage of loss
23 established by the pre-employment audiometric
24 examination. An amount paid to an employee for
25 occupational hearing loss by any other employer shall
26 be credited against compensation payable by an
27 employer for the hearing loss. An employee shall not
28 receive in the aggregate greater compensation from all
29 employers for occupational hearing loss than that
30 provided in this section for total occupational
31 hearing loss. A payment shall not be made to an
32 employee unless the employee has worked in excessive
33 noise ~~level~~ exposure employment for a total period of
34 at least ninety days for the employer from whom
35 compensation is claimed.

36 Sec. 7. INTENT. It is the intent of the general
37 assembly that this Act affirms that nonoccupational
38 hearing loss shall not be compensated by an employer
39 and that the changes in this Act merely confirm, and
40 do not modify, the intent of chapter 85B as codified
41 prior to July 1, 1998."

42 2. By renumbering as necessary.

By DOTZLER of Black Hawk

H-9163 FILED APRIL 14, 1998

W/D
4/14/98
(p. 1614)

Redwine
Szymoniak
Boettger

SSB 2149
Human Resources

Succeeded By
(SF) HF 2333

SENATE FILE
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL
BY CHAIRPERSON BOETTGER)

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

A BILL FOR

1 An Act relating to occupational hearing loss recovery, providing
2 definitions, and providing for the apportionment and
3 measurement of hearing loss.

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

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1 Section 1. Section 85.34, subsection 2, paragraph r, Code
2 Supplement 1997, is amended to read as follows:

3 r. (1) For the loss of hearing, other than occupational
4 hearing loss as defined in section 85B.4, ~~subsection-1,~~ weekly
5 compensation during fifty weeks, and for the loss of hearing
6 in both ears, weekly compensation during one hundred seventy-
7 five weeks.

8 (2) For occupational hearing loss, weekly compensation as
9 provided in ~~the-Iowa-occupational-hearing-loss-Act-[chapter~~
10 85B].

11 Sec. 2. Section 85B.4, Code 1997, is amended by striking
12 the section and inserting in lieu thereof the following:

13 85B.4 DEFINITIONS.

14 As used in this chapter, unless the context otherwise
15 provides:

16 1. "Excessive noise exposure" means exposure to sound
17 capable of producing occupational hearing loss.

18 2. "Hearing level" means the measured threshold of hearing
19 sensitivity using audiometric instruments properly calibrated
20 to the American national standards institute audiometric zero
21 reference level.

22 3. "Occupational hearing loss" means that portion of a
23 permanent sensorineural loss of hearing in one or both ears
24 that exceeds an average hearing level of twenty-five decibels
25 for the frequencies five hundred, one thousand, two thousand,
26 and three thousand Hertz, arising out of and in the course of
27 employment caused by excessive noise exposure. "Occupational
28 hearing loss" does not include loss of hearing attributable to
29 age or any other condition or exposure not arising out of and
30 in the course of employment.

31 Sec. 3. Section 85B.5, unnumbered paragraph 1, Code 1997,
32 is amended to read as follows:

33 An excessive noise ~~level~~ exposure is sound which exceeds
34 the times and intensities listed in the following table:

35 Sec. 4. Section 85B.8, unnumbered paragraph 1, Code 1997,

1 is amended to read as follows:

2 A claim for occupational hearing loss due to excessive
3 noise ~~levels~~ exposure may be filed ~~six-months~~ beginning one
4 month after separation from the employment in which the
5 employee was ~~exposed~~ subjected to excessive noise ~~levels~~
6 exposure. The date of the injury shall be the date of
7 occurrence of any one of the following events:

8 Sec. 5. Section 85B.8, subsection 1, Code 1997, is amended
9 to read as follows:

10 1. Transfer from excessive noise ~~level~~ exposure employment
11 by an employer.

12 Sec. 6. Section 85B.9, Code 1997, is amended by striking
13 the section and inserting in lieu thereof the following:

14 85B.9 MEASURING HEARING LOSS.

15 1. Audiometric instruments, properly calibrated to the
16 American national standards institute specifications, shall be
17 used for measuring hearing levels and in such tests necessary
18 to establish total hearing loss, if any. The hearing tests
19 and examinations shall be conducted in environments which
20 comply with accepted national standards.

21 2. Audiometric examinations shall be administered by
22 persons who are certified by the council for accreditation in
23 occupational hearing conservation or by persons licensed as
24 audiologists under chapter 147, as physicians under chapter
25 148, as osteopathic physicians under chapter 150, or as
26 osteopathic physicians and surgeons under chapter 150A,
27 provided the licensed persons are trained in audiometry.

28 3. In calculating the total amount of hearing loss, the
29 hearing levels at each of the four frequencies, five hundred,
30 one thousand, two thousand, and three thousand Hertz shall be
31 added together and divided by four to determine the average
32 decibel hearing level for each ear. If the resulting average
33 decibel hearing level in either ear is twenty-five decibels or
34 less, the percentage hearing loss for that ear shall be zero.
35 For each resulting average decibel hearing level exceeding

1 twenty-five decibels, an allowance of one and one-half percent
2 shall be made up to the maximum of one hundred percent which
3 is reached at an average decibel hearing level of ninety-two
4 decibels. In determining the total binaural percentage
5 hearing loss, the percentage hearing loss for the ear with
6 better hearing shall be multiplied by five and added to the
7 percentage hearing loss for the ear with worse hearing and the
8 sum of the two divided by six.

9 4. The assessment of the proportion of the total binaural
10 percentage hearing loss that is due to occupational noise
11 exposure shall be made by the employer's regular or consulting
12 physician or licensed audiologist who is trained and has had
13 experience with such assessment. If several audiometric
14 examinations are available for assessment, the physician or
15 audiologist shall determine which examinations shall be used
16 in the final assessment of occupational hearing loss.

17 If the employee disputes the assessment, the employee may
18 select a physician or licensed audiologist similarly trained
19 and experienced to give an assessment of the audiometric
20 examinations.

21 5. This section is applicable in the event of partial
22 permanent or total permanent occupational hearing loss in one
23 or both ears.

24 Sec. 7. NEW SECTION. 85B.9A APPORTIONMENT OF
25 OCCUPATIONAL HEARING LOSS.

26 Apportionment of the total hearing loss between
27 occupational and nonoccupational loss, for purposes of
28 determining occupational hearing loss, may be made by an
29 audiologist or physician with qualifications set forth in
30 section 85B.9. In determining occupational hearing loss,
31 consideration shall be given to all probable employment and
32 nonemployment sources of loss and of the existence of any
33 prevention measures and programs.

34 Sec. 8. Section 85B.10, Code 1997, is amended to read as
35 follows:

1 85B.10 EMPLOYERS EMPLOYER'S NOTICE OF RESULTS OF TEST.

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

18 Sec. 9. Section 85B.11, Code 1997, is amended to read as
19 follows:

20 85B.11 PREVIOUS HEARING LOSS EXCLUDED.

21 An employer is liable, as provided in this chapter and
22 subject to the provisions of chapter 85, for an occupational
23 hearing loss to which the employment has contributed, but if
24 previous hearing loss, whether occupational or not, is
25 established by an audiometric examination or other competent
26 evidence, whether or not the employee was exposed to excessive
27 noise ~~level~~ exposure within six months preceding the test, the
28 employer is not liable for the previous loss, nor is the
29 employer liable for a loss for which compensation has
30 previously been paid or awarded. The employer is liable only
31 for the difference between the percent of occupational hearing
32 loss determined as of the date of the audiometric examination
33 used to determine occupational hearing loss and the percentage
34 of loss established by the pre-employment audiometric
35 examination. An amount paid to an employee for occupational

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

10 Sec. 10. Section 85B.12, Code 1997, is amended to read as
11 follows:

12 85B.12 HEARING AID PROVIDED.

13 A reduction of the compensation payable to an employee for
14 occupational hearing loss shall not be made because the
15 employee's ability to communicate may be improved by the use
16 of a hearing aid. An employer who is liable for occupational
17 hearing loss of an employee is required to provide the
18 employee with a hearing aid for each affected ear unless it
19 will not materially improve the employee's ability to
20 communicate.

21 Sec. 11. INTENT. It is the intent of the general assembly
22 that the changes in this Act to Code sections 85B.4 and 85B.9
23 merely confirm, and do not modify, the intent of chapter 85B
24 as codified prior to July 1, 1998.

25 EXPLANATION

26 This bill amends Code chapter 85B concerning occupational
27 hearing loss. The bill provides, however, that the changes to
28 Code sections 85B.4 and 85B.9 reflected in the bill are
29 intended by the general assembly to confirm the intent of the
30 chapter prior to the changes.

31 The bill replaces the current definitions section in Code
32 chapter 85B and provides for the definitions of excessive
33 noise exposure, hearing level, and occupational hearing loss.
34 Current law defines excessive noise level and occupational
35 hearing loss.

2149

1 Code section 85B.8 is changed to provide that a claim for
2 occupational hearing loss may be filed beginning one month
3 after separation from the excessive noise.

4 The bill also replaces the current section providing for
5 the measurement of hearing loss. New Code section 85B.9A
6 provides that any apportionment of occupational and
7 nonoccupational loss be made by an audiologist or qualified
8 physician and that consideration of all probable sources of
9 loss shall be given in determining occupational hearing loss.
10 The bill also changes section 85B.12 to provide for a hearing
11 aid for each affected ear if certain conditions are met.

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SENATE FILE 2333

AN ACT

RELATING TO OCCUPATIONAL HEARING LOSS RECOVERY, PROVIDING DEFINITIONS, AND PROVIDING FOR THE APPORTIONMENT AND MEASUREMENT OF HEARING LOSS.

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

Section 1. Section 85.34, subsection 2, paragraph r, Code Supplement 1997, is amended to read as follows:

r. (1) For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, ~~subsection 1~~ weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks.

(2) For occupational hearing loss, weekly compensation as provided in ~~the Iowa occupational hearing loss Act (chapter 85B)~~.

Sec. 2. Section 85B.4, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

85B.4 DEFINITIONS.

As used in this chapter, unless the context otherwise provides:

1. "Excessive noise exposure" means exposure to sound capable of producing occupational hearing loss.
2. "Hearing level" means the measured threshold of hearing sensitivity using audiometric instruments properly calibrated to the American national standards institute audiometric zero reference level.
3. "Occupational hearing loss" means that portion of a permanent sensorineural loss of hearing in one or both ears that exceeds an average hearing level of twenty-five decibels for the frequencies five hundred, one thousand, two thousand, and three thousand Hertz, arising out of and in the course of

employment caused by excessive noise exposure. "Occupational hearing loss" does not include loss of hearing attributable to age or any other condition or exposure not arising out of and in the course of employment.

Sec. 3. Section 85B.5, unnumbered paragraph 1, Code 1997, is amended to read as follows:

An excessive noise level exposure is sound which exceeds the times and intensities listed in the following table:

Sec. 4. Section 85B.8, unnumbered paragraph 1, Code 1997, is amended to read as follows:

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

Sec. 5. Section 85B.8, subsection 1, Code 1997, is amended to read as follows:

1. Transfer from excessive noise level exposure employment by an employer.

Sec. 6. Section 85B.9, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

85B.9 MEASURING HEARING LOSS.

1. Audiometric instruments, properly calibrated to the American national standards institute specifications, shall be used for measuring hearing levels and in such tests necessary to establish total hearing loss, if any. The hearing tests and examinations shall be conducted in environments which comply with accepted national standards.

2. Audiometric examinations shall be administered by persons who are certified by the council for accreditation in occupational hearing conservation or by persons licensed as audiologists under chapter 147, as physicians under chapter 148, as osteopathic physicians under chapter 150, or as osteopathic physicians and surgeons under chapter 150A, provided the licensed persons are trained in audiometry.

3. In calculating the total amount of hearing loss, the hearing levels at each of the four frequencies, five hundred, one thousand, two thousand, and three thousand Hertz shall be added together and divided by four to determine the average decibel hearing level for each ear. If the resulting average decibel hearing level in either ear is twenty-five decibels or less, the percentage hearing loss for that ear shall be zero. For each resulting average decibel hearing level exceeding twenty-five decibels, an allowance of one and one-half percent shall be made up to the maximum of one hundred percent which is reached at an average decibel hearing level of ninety-two decibels. In determining the total binaural percentage hearing loss, the percentage hearing loss for the ear with better hearing shall be multiplied by five and added to the percentage hearing loss for the ear with worse hearing and the sum of the two divided by six.

4. The assessment of the proportion of the total binaural percentage hearing loss that is due to occupational noise exposure shall be made by the employer's regular or consulting physician or licensed audiologist who is trained and has had experience with such assessment. If several audiometric examinations are available for assessment, the physician or audiologist shall determine which examinations shall be used in the final assessment of occupational hearing loss.

If the employee disputes the assessment, the employee may select a physician or licensed audiologist similarly trained and experienced to give an assessment of the audiometric examinations.

5. This section is applicable in the event of partial permanent or total permanent occupational hearing loss in one or both ears.

Sec. 7. NEW SECTION. 85B.9A APPORTIONMENT OF OCCUPATIONAL HEARING LOSS.

Apportionment of the total hearing loss between occupational and nonoccupational loss, for purposes of

determining occupational hearing loss, may be made by an audiologist or physician with qualifications set forth in section 85B.9. In determining occupational hearing loss, consideration shall be given to all probable employment and nonemployment sources of loss. The apportionment of age-related loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to section 85B.9, subsection 3, by the same percentage as the decibels of age-related loss occurring during the period of employment bears to the total decibel hearing level in each ear. The decibels of age-related loss shall be calculated according to tables adopted by the industrial commissioner consistent with tables of the national institute for occupational safety and health existing on July 1, 1998, and consistent with section 85B.9, subsection 3.

Sec. 8. Section 85B.10, Code 1997, is amended to read as follows:

85B.10 EMPLOYERS EMPLOYER'S NOTICE OF RESULTS OF TEST.

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

Sec. 9. Section 85B.11, Code 1997, is amended to read as follows:

85B.11 PREVIOUS HEARING LOSS EXCLUDED.

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

Sec. 10. Section 85B.12, Code 1997, is amended to read as follows:

85B.12 HEARING AID PROVIDED.

A reduction of the compensation payable to an employee for occupational hearing loss shall not be made because the employee's ability to communicate may be improved by the use of a hearing aid. An employer who is liable for occupational hearing loss of an employee is required to provide the

employee with a hearing aid for each affected ear unless it will not materially improve the employee's ability to communicate.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2333, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved May 5, 1998

TERRY E. BRANSTAD
Governor