

McKibben  
Freeman  
Dearden

SSB-3172  
Business & Labor  
Relations

SENATE FILE ~~HF 2373~~  
BY (PROPOSED COMMITTEE ON BUSINESS  
AND LABOR RELATIONS BILL BY  
CHAIRPERSON MCKIBBEN)

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

A BILL FOR

1 An Act relating to workers' compensation concerning service of  
2 notices on nonresident employers, the calculation of weekly  
3 earnings, and the approval of related liens.

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

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1 Section 1. Section 85.3, subsection 2, Code 1999, is  
2 amended to read as follows:

3 2. Any employer who is a nonresident of the this state,  
4 for whom services are performed within the this state by  
5 ~~employees-entitled-to-rights-under-this-chapter, chapter-85A~~  
6 ~~or-chapter-85B~~ any employee, is deemed to be doing business in  
7 this state by virtue of having such services performed and the  
8 employer and employee shall be subject to the jurisdiction of  
9 the workers' compensation commissioner and to all of the  
10 provisions of this chapter, chapters 85A, 85B, 86, and 87, as  
11 to any and all personal injuries sustained by an the employee  
12 arising out of and in the course of such employment within  
13 this state. In addition, every corporation, individual,  
14 personal representative, partnership, or association that has  
15 the necessary minimum contact with this state shall be subject  
16 to the jurisdiction of the workers' compensation commissioner,  
17 and the workers' compensation commissioner shall hold such  
18 corporation, individual, personal representative, partnership,  
19 or association amenable to suit in this state in every case  
20 not contrary to the provisions of the Constitution of the  
21 United States.

22 3. Service of process or original notice upon a  
23 nonresident employer may be performed as provided in section  
24 617.3 or as provided in the Iowa rules of civil procedure. In  
25 addition, service may be made on any corporation, individual,  
26 personal representative, partnership, or association that has  
27 the necessary minimum contact with this state as provided in  
28 rule of civil procedure 56.1 within or without this state or  
29 if such service cannot be made, in any manner consistent with  
30 due process of law prescribed by the workers' compensation  
31 commission.

32 In addition to those persons authorized to receive personal  
33 service as in civil actions as permitted by chapter 17A and  
34 this chapter, such employer shall be deemed to have appointed  
35 the secretary of state of this state as its lawful attorney

1 upon whom may be served or delivered any and all notices  
2 authorized or required by the provisions of this chapter,  
3 chapters 85A, 85B, 86, 87, and 17A, and to agree that any and  
4 all such services or deliveries of notice on the secretary of  
5 state shall be of the same legal force and validity as if  
6 personally served upon or delivered to such nonresident  
7 employer in this state.

8 This section does not limit or affect the right to serve an  
9 original notice upon any corporation, individual, personal  
10 representative, partnership, or association within or without  
11 this state in any manner otherwise permitted by statute or  
12 rule.

13 4. For purposes of this section, a nonresident employer is  
14 any employer that is not a resident of Iowa as defined in  
15 section 617.3.

16 Sec. 2. Section 85.36, subsection 6, Code 1999, is amended  
17 to read as follows:

18 6. In the case of an employee who is paid on a daily, or  
19 hourly basis, or by the output of the employee, the weekly  
20 earnings shall be computed by dividing by thirteen the  
21 earnings, not including overtime or premium pay, of ~~said~~ the  
22 employee earned in the employ of the employer in the last  
23 completed period of thirteen consecutive calendar weeks  
24 immediately preceding the injury. If the employee was absent  
25 from employment for reasons personal to the employee during  
26 part of the thirteen calendar weeks preceding the injury, the  
27 employee's weekly earnings shall be the amount the employee  
28 would have earned had the employee worked when work was  
29 available to other employees of the employer in a similar  
30 occupation. A week which does not fairly reflect the  
31 employee's customary earnings shall be replaced by the closest  
32 previous week with earnings that fairly represent the  
33 employee's customary earnings.

34 Sec. 3. Section 85.36, subsection 7, Code 1999, is amended  
35 to read as follows:

1 7. In the case of an employee who has been in the employ  
2 of the employer less than thirteen calendar weeks immediately  
3 preceding the injury, the employee's weekly earnings shall be  
4 computed under subsection 6, taking the earnings, not  
5 including overtime or premium pay, for such purpose to be the  
6 amount the employee would have earned had the employee been so  
7 employed by the employer the full thirteen calendar weeks  
8 immediately preceding the injury and had worked, when work was  
9 available to other employees in a similar occupation. If the  
10 earnings of other employees cannot be determined, the  
11 employee's weekly earnings shall be the average computed for  
12 the number of weeks the employee has been in the employ of the  
13 employer.

14 Sec. 4. Section 86.11, Code 1999, is amended to read as  
15 follows:

16 86.11 REPORTS OF INJURIES.

17 Every employer shall hereafter keep a record of all  
18 injuries, fatal or otherwise, alleged by an employee to have  
19 been sustained in the course of the employee's employment and  
20 resulting in incapacity for a longer period than one day. If  
21 the injury results only in temporary disability, causing  
22 incapacity for a longer period than three days ~~except-as~~  
23 ~~provided-in-section-86-36~~, then within four days thereafter,  
24 not counting Sundays and legal holidays, the employer or  
25 insurance carrier having had notice or knowledge of the  
26 occurrence of such injury and resulting disability, shall file  
27 a report with the workers' compensation commissioner in the  
28 form and manner required by the commissioner. If such injury  
29 to the employee results in permanent total disability,  
30 permanent partial disability or death, then the employer or  
31 insurance carrier upon notice or knowledge of the occurrence  
32 of the employment injury, shall file a report with the  
33 workers' compensation commissioner, within four days after  
34 having notice or knowledge of the permanent injury to the  
35 employee or the employee's death. The report to the workers'

1 compensation commissioner of injury shall be without prejudice  
2 to the employer or insurance carrier and shall not be admitted  
3 in evidence or used in any trial or hearing before any court,  
4 the workers' compensation commissioner or a deputy workers'  
5 compensation commissioner except as to the notice under  
6 section 85.23.

7 Sec. 5. Section 86.39, Code 1999, is amended to read as  
8 follows:

9 86.39 FEES -- APPROVAL ---LIEN.

10 All fees or claims for legal, medical, hospital, and burial  
11 services rendered under this chapter and chapters 85, 85A,  
12 85B, and 87 are subject to the approval of the workers'  
13 compensation commissioner, ~~and no lien for such service is~~  
14 ~~enforceable without the approval of the amount of the lien by~~  
15 ~~the workers' compensation commissioner.~~ For services rendered  
16 in the district court and appellate courts, the attorney's fee  
17 is subject to the approval of a judge of the district court.

18 Sec. 6. Section 86.36, Code 1999, is repealed.

19 EXPLANATION

20 This bill makes several changes to the workers'  
21 compensation system.

22 Code section 85.3, governing notice to nonresident  
23 employers, is amended. The changes provide that a nonresident  
24 employer who has services performed by any employee in this  
25 state is deemed to be doing business in this state and is  
26 therefore subject to the jurisdiction of the workers'  
27 compensation commissioner and the laws pertaining to workers'  
28 compensation. The changes further provide that the workers'  
29 compensation commissioner has jurisdiction over an entity if  
30 that entity has sufficient minimum contacts with the state.  
31 The bill also provides for the service of process on a  
32 nonresident employer as provided in Code section 617.3 and on  
33 any person based on the rules of civil procedure. The current  
34 provision on service and notice, Code section 86.36, is  
35 repealed.

1 Code section 85.36, relating to the basis for computing  
2 workers' compensation benefits, is amended. The bill adds  
3 provisions detailing how to determine an employee's weekly  
4 earnings for purposes of determining benefits if the employee  
5 is not employed for the entire 13-week period immediately  
6 preceding the injury or if earnings of other employees in a  
7 similar position cannot be determined.

8 Code section 86.39 is amended to eliminate the requirement  
9 that a lien for the costs of legal, medical, hospital, and  
10 burial services be approved by the workers' compensation  
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Substitutes for HF 2441  
3-7-00

D. B. Hilde

FILED FEB 28 '00

SENATE FILE **2373**  
BY COMMITTEE ON BUSINESS  
AND LABOR RELATIONS

(SUCCESSOR TO SSB 3172)  
(COMPANION TO HF 2441 BY COMMITTEE  
ON LABOR AND INDUSTRIAL RELATIONS)

Passed Senate, Date <sup>(p. 516)</sup> 3/2/00 Passed House, Date <sup>(p. 578)</sup> 3-7-00  
Vote: Ayes 47 Nays 0 Vote: Ayes 97 Nays 0  
Approved March 16, 2000

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9 the workers' compensation commissioner and to all of the  
10 provisions of this chapter, chapters 85A, 85B, 86, and 87, as  
11 to any and all personal injuries sustained by ~~an~~ the employee  
12 arising out of and in the course of such employment within  
13 this state. In addition, every corporation, individual,  
14 personal representative, partnership, or association that has  
15 the necessary minimum contact with this state shall be subject  
16 to the jurisdiction of the workers' compensation commissioner,  
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4 all such services or deliveries of notice on the secretary of  
5 state shall be of the same legal force and validity as if  
6 personally served upon or delivered to such nonresident  
7 employer in this state.

8 This section does not limit or affect the right to serve an  
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SENATE FILE 2373

AN ACT

RELATING TO WORKERS' COMPENSATION CONCERNING SERVICE OF  
NOTICES ON NONRESIDENT EMPLOYERS, THE CALCULATION OF  
WEEKLY EARNINGS, AND THE APPROVAL OF RELATED LIENS.

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

Section 1. Section 85.3, subsection 2, Code 1999, is amended to read as follows:

2. Any employer who is a nonresident of the this state, for whom services are performed within the this state by ~~employees entitled to rights under this chapter, chapter 85A or chapter 85B~~ any employee, is deemed to be doing business in this state by virtue of having such services performed and the employer and employee shall be subject to the jurisdiction of the workers' compensation commissioner and to all of the provisions of this chapter, chapters 85A, 85B, 86, and 87, as to any and all personal injuries sustained by an the employee arising out of and in the course of such employment within this state. In addition, every corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with this state shall be subject to the jurisdiction of the workers' compensation commissioner, and the workers' compensation commissioner shall hold such corporation, individual, personal representative, partnership, or association amenable to suit in this state in every case not contrary to the provisions of the Constitution of the United States.

3. Service of process or original notice upon a nonresident employer may be performed as provided in section

617.3 or as provided in the Iowa rules of civil procedure. In addition, service may be made on any corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with this state as provided in rule of civil procedure 56.1 within or without this state or if such service cannot be made, in any manner consistent with due process of law prescribed by the workers' compensation commission.

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

This section does not limit or affect the right to serve an original notice upon any corporation, individual, personal representative, partnership, or association within or without this state in any manner otherwise permitted by statute or rule.

4. For purposes of this section, a nonresident employer is any employer that is not a resident of Iowa as defined in section 617.3.

Sec. 2. Section 85.36, subsection 6, Code 1999, is amended to read as follows:

6. In the case of an employee who is paid on a daily, or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the

earnings, not including overtime or premium pay, of said the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

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Every employer shall hereafter keep a record of all injuries, fatal or otherwise, alleged by an employee to have been sustained in the course of the employee's employment and resulting in incapacity for a longer period than one day. If the injury results only in temporary disability, causing incapacity for a longer period than three days ~~except as provided in section 86.36~~, then within four days thereafter, not counting Sundays and legal holidays, the employer or insurance carrier having had notice or knowledge of the occurrence of such injury and resulting disability, shall file a report with the workers' compensation commissioner in the form and manner required by the commissioner. If such injury to the employee results in permanent total disability, permanent partial disability or death, then the employer or insurance carrier upon notice or knowledge of the occurrence of the employment injury, shall file a report with the workers' compensation commissioner, within four days after having notice or knowledge of the permanent injury to the employee or the employee's death. The report to the workers' compensation commissioner of injury shall be without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the workers' compensation commissioner or a deputy workers' compensation commissioner except as to the notice under section 85.23.

Sec. 5. Section 86.39, Code 1999, is amended to read as follows:

86.39 FEES -- APPROVAL ---BIEN.

All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85, 85A, 85B, and 87 are subject to the approval of the workers' compensation commissioner; ~~and no lien for such service is~~

Senate File 2373, p. 5

~~enforceable without the approval of the amount of the lien by the workers' compensation commissioner.~~ For services rendered in the district court and appellate courts, the attorney's fee is subject to the approval of a judge of the district court.

Sec. 6. Section 86.36, Code 1999, is repealed.

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MARY E. KRAMER  
President of the Senate

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BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2373, Seventy-eighth General Assembly.

Approved March 16, 2000

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MICHAEL E. MARSHALL  
Secretary of the Senate

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THOMAS J. VILSACK  
Governor