

CHAPTER 1161
WORKERS' COMPENSATION
S.F. 539

AN ACT relating to workers' compensation and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 85.1, subsection 3, paragraph b, Code 1981, is amended to read as follows:

b. The following persons or employees or groups of employees ~~shall be~~ are specifically included within the terms of the exemption from coverage of this chapter provided by this subsection:

(1) The spouse of the employer ~~and, parents, brothers, sisters, children and stepchildren of either the employer or the spouse of the employer; and, and the spouses of the brothers, sisters, children, and stepchildren of either the employer or the spouse of the employer.~~

(2) ~~Any person engaged in agriculture as a farm operator or spouse of such farm operator or parents, brothers, sisters, children and stepchildren of either such farm operator or spouse while exchanging labor with another farm operator or spouse of such other farm operator or parents, brothers, sisters, children, and stepchildren of either such other farm operator or spouse for the mutual benefit of any or all such persons; and The spouse of a partner of a partnership, the parents, brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, and the spouses of the brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, who are employed by the partnership and actually engaged in agricultural pursuits or operations immediately connected with the agricultural pursuits either on or off the premises of the partnership. For the purpose of this section, "partnership" includes partnerships, limited partnerships, and joint ventures.~~

(3) ~~The president, vice president, secretary, treasurer, Officers of a family farm corporation and their, spouses and of the officers, the parents, brothers, sisters, children and stepchildren of such either the officers and their or the spouses of the officers, and the spouses of the brothers, sisters, children, and stepchildren of either the officers or the spouses of the officers who are employed by such the corporation, the primary purpose of which, although not necessarily the stated purpose, is farming or ownership of agricultural land, and while such officer or person related to the officer is who are actually engaged in agricultural pursuits or any operation operations immediately connected therewith whether with the agricultural pursuits either on or off the premises of the employer corporation.~~

(4) ~~A person engaged in agriculture as an owner of agricultural land, as a farm operator, or as a person engaged in agriculture who is exempt from coverage under this chapter by subsection 3, paragraph b, subparagraph 1, 2, or 3, while exchanging labor with another owner of agricultural land, farm operator, or person engaged in agriculture who is exempt from coverage under this chapter by subsection 3, paragraph b, subparagraph 1, 2, or 3, for the mutual benefit of all such persons.~~

Sec. 2. Section 85.1, subsection 5, Code 1981, is amended to read as follows:

5. Employers, including employers of employees engaged in any type of service in or about a private dwelling, employers of persons whose employment is of a casual nature and not for the purpose of the employer's trade or business, and employers of persons engaged in

agriculture, may with respect to ~~any such an~~ employee or person or classification of employees exempt by subsections 1, 2 and 4 and subsection 3, paragraph "a" of this section from coverage provided by this chapter, other than ~~any such the~~ employee or classification of employees with respect to whom a rule of liability or a method of compensation ~~has been or may be~~ is established by the congress of the United States, assume a liability for compensation imposed upon employers by this chapter for the benefit of employees within the coverage of this chapter. Employers of employees, persons or classifications of employees exempted by paragraph "b" of subsection 3 of this section may ~~also~~ with respect to ~~any such~~ employee, person or classification of employees assume a liability for compensation imposed upon employers by this chapter by the purchase of valid workers' compensation insurance specifically including separate classifications for (a) such persons who are the spouse ~~and of the employer, parents, brothers, sisters, children and stepchildren of either the employer or his the spouse of the employer, and the spouses of the brothers, sisters, children, and stepchildren of either the employer or the spouse of the employer,~~ (b) persons engaged in exchanging labor and (c) ~~the president, vice president, treasurer and secretary officers of a family farm corporation, their spouses and of the officers, the parents, brothers, sisters, children or, and stepchildren of such either the officers and their or the spouses of the officers, and the spouses of the brothers, sisters, children, and stepchildren of either the officers or the spouses of the officers, and (d) the spouse of a partner of a partnership, the parents, brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, and the spouses of the brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner.~~ The purchase of and acceptance by ~~any such an~~ employer of valid workers' compensation insurance applicable to such employee or person or classification of employees ~~shall constitute as to such employer constitutes~~ an assumption by ~~such the~~ employer of ~~such liability~~ without any further act on the part of ~~such the~~ employer, but only with respect to such employee or person or ~~such classification of employees as are within the coverage of the said workers' compensation insurance contract. Whenever~~ If under the ~~provisions of~~ this subsection an employer voluntarily elects to assume the liability for the payment of compensation to such employees or persons or ~~such classification of employees by the purchase of valid workers' compensation insurance, the liability of such the employer shall take takes effect and continue continues~~ from the effective date of ~~such the~~ workers' compensation insurance contract as long ~~only as such the~~ insurance contract ~~shall be is~~ in force. Upon ~~such an~~ election, such employee or person or classification of employees shall accept compensation in the manner provided by the chapter and the employer shall be relieved from any other liability for recovery of damage, or other compensation for ~~such injury.~~

Sec. 3. Section 85.26, subsection 1, Code 1981, is amended to read as follows:

1. ~~No An~~ original ~~proceedings proceeding~~ for benefits under this chapter or chapter 85A, 85B, or 86, shall ~~not~~ be maintained in any contested case unless ~~such proceedings shall be the proceeding is~~ commenced within two years from the date of the occurrence of the injury for which benefits are claimed ~~except as provided by section 86.20 or, if weekly compensation benefits are paid under section 86.13, within three years from the date of the last payment of weekly compensation benefits.~~

Sec. 4. Section 85.27, unnumbered paragraph 2, Code 1981, is amended to read as follows:

Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which ~~they have~~ the employee, employer, or carrier has access concerning the employee's physical or mental condition relative to the claim and further waives any privilege for the release of ~~such the~~ information. ~~Such The~~ information shall be made available to any party or their attorney the party's representative upon

request. Any institution or person releasing such the information to a party or their attorney the party's representative shall not be liable criminally or for civil damages by reason of the release of such the information. If release of information is refused the party requesting such the information may apply to the industrial commissioner for relief. The information requested shall be submitted to the industrial commissioner who shall determine the relevance and materiality of the information to the claim and enter an order accordingly.

Sec. 5. Section 85.30, Code 1981, is amended to read as follows:

85.30 MATURITY DATE AND INTEREST. Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such the weekly compensation payments, interest at six percent from date of maturity the rate provided in section 535.3 for court judgments and decrees.

Sec. 6. Section 85.31, subsection 1, unnumbered paragraph 2, Code 1981, is amended to read as follows:

The weekly benefit amount shall not exceed a weekly benefit amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the state statewide average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury, provided, that 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 shall equal 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 state statewide average weekly wage as determined above; provided further, that such weekly compensation shall not be less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then the weekly compensation shall be a sum equal to the full amount of his weekly earnings. However, 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. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

Sec. 7. Section 85.33, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

85.33 TEMPORARY TOTAL AND TEMPORARY PARTIAL DISABILITY.

1. Except as provided in subsection 2 of this section, the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

2. "Temporary partial disability" or "temporarily, partially disabled" means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability. "Temporary partial benefits" means benefits payable, in lieu of temporary total disability and healing period benefits, to an employee because of the employee's temporary partial reduction in earning ability as a result of the employee's temporary partial disability. Temporary partial benefits shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of injury.

3. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

4. If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability. If at the time of injury an employee is paid on the basis of the output of the employee, with a minimum guarantee pursuant to a written employment agreement, the minimum guarantee shall be used as the employee's weekly earnings at the time of injury. However, the weekly compensation benefits shall not exceed the payments to which the employee would be entitled under section 85.36 or section 85.37, or under subsection 1 of this section.

5. If an employee sustains an injury arising out of and in the course of employment while receiving temporary partial disability benefits, the rate of weekly compensation benefits shall be based on the employee's weekly earnings at the time of the injury producing temporary partial disability.

Sec. 8. Section 85.34, subsection 1, Code 1981, is amended to read as follows:

1. HEALING PERIOD. If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the date of the injury, and until ~~he the~~ the employee has returned to work or competent medical evidence indicates that recuperation from said injury has been accomplished, whichever comes first it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Sec. 9. Section 85.34, subsection 2, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1 hereof. ~~Such~~ The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. ~~Such~~ The compensation shall be based upon the extent of ~~such~~ 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 ~~state~~ statewide average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury, provided that 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 ~~shall equal~~ 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 ~~state~~ statewide average weekly wage as determined above; ~~provided that no employee shall receive as compensation less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then the weekly compensation shall be a sum equal to the full amount of his weekly earnings; and for.~~ However, 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 such compensation shall be paid as follows:

Sec. 10. Section 85.34, subsection 3, unnumbered paragraph 1, Code 1981, 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 state statewide average weekly wage paid employees as determined by the director of the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury, provided that 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 ~~shall equal~~ 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 state statewide average weekly wage as determined above. ~~No employee shall receive as compensation less than thirty-six dollars per week, except if at the time of the injury the employee's earnings are less than thirty-six dollars per week, then the weekly compensation shall be a sum equal to the full amount of the employee's weekly earnings; said~~ However, 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 shall be payable during the period of the employee's disability.

Sec. 11. Section 85.34, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

Sec. 12. Section 85.36, subsection 10, unnumbered paragraph 1, Code 1981, is amended to read as follows:

~~In the case of~~ If an employee who earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury but shall be not less than an amount equal to thirty-five percent of the state average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3, and in effect at the time of the injury.

Sec. 13. Section 85.36, subsection 10, paragraph a, Code 1981, is amended to read as follows:

a. In computing the compensation to be allowed a volunteer fire fighter, or reserve peace officer, ~~his or her~~ the earnings as a fire fighter or reserve peace officer shall be disregarded and ~~he or she~~ the volunteer fire fighter or reserve peace officer shall be paid the ~~maximum compensation allowable under the workers' compensation law~~ an amount equal to the compensation the volunteer fire fighter or reserve peace officer would be paid if injured in the normal course of the volunteer fire fighter's or reserve peace officer's regular employment or an amount equal to one hundred and forty percent of the statewide average weekly wage, whichever is greater.

Sec. 14. Section 85.37, unnumbered paragraph 1, Code 1981, is amended to read as follows:

~~In all cases where~~ If an employee receives a personal injury causing temporary total disability, or causing a permanent partial disability for which compensation is payable during a healing period, compensation for ~~such the~~ temporary total disability or for ~~such the~~ healing period shall be upon the basis provided herein in this section. The weekly benefit amount payable to any employee for any one week shall be upon the basis of eighty percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the state ~~statewide~~ average weekly wage paid employees as determined by the Iowa department of job service under the provisions of section 96.3 and in effect at the time of the injury provided that 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 ~~shall equal~~ 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 state ~~statewide~~ average weekly wage as determined above. Total weekly compensation for any employee shall not exceed eighty percent per week of the employee's weekly spendable earnings; ~~provided further, that such compensation shall not be less than thirty-six dollars per week, except if at the time of his injury his earnings are less than thirty-six dollars per week, then he shall receive in weekly payments a sum equal to the full amount of his weekly earnings. However, 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 is less.~~

Sec. 15. Section 85.39, Code 1981, is amended to read as follows:

85.39 EXAMINATION OF INJURED EMPLOYEES. After an injury, the employee, if so requested by ~~his the~~ employer, shall submit himself for examination at some reasonable time and place ~~within the state~~ and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, ~~he the~~ employee shall, at ~~his the~~ employee's own cost, be ~~is~~ entitled to have a physician or physicians of ~~his the~~ employee's own selection present to participate in ~~such the~~ examination. ~~Whenever~~ If an employee is required to leave his work for which ~~he the~~ employee is being paid wages to attend upon ~~such the~~ requested examination, ~~he the~~ employee shall be compensated at ~~his the~~ employee's regular rate for the time he ~~shall have lost by reason thereof~~ the employee is required to leave work, and ~~he the~~ employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay ~~him the~~ employee the reasonable cost of ~~such the~~ transportation. The refusal of the employee to submit to ~~such the~~ examination shall ~~deprive him of the~~ suspend the employee's right to any compensation for the period of ~~such the~~ refusal. ~~When a right of compensation is thus suspended, no compensation~~ Compensation shall not be payable for the period of suspension.

~~Whenever~~ If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, ~~he the~~ employee shall, upon application to the commissioner and at the same time upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the

reasonable fee for a subsequent examination by a physician of his the employee's own choice, and reasonably necessary transportation expenses incurred for such the examination. The physician chosen by the employee shall have has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination.

Sec. 16. Section 85.47, Code 1981, is amended to read as follows:

85.47 BASIS OF COMMUTATION. When the commutation is ordered, the industrial commissioner shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at five percent per annum the rate provided in section 535.3 for court judgments and decrees. Upon the payment of such amount the employer shall be discharged from all further liability on account of such the injury or death, and be entitled to a duly executed release, upon filing which the liability of such the employer under any agreement, award, finding, or judgment shall be discharged of record.

Sec. 17. Section 85.48, Code 1981, is amended to read as follows:

85.48 PARTIAL COMMUTATION. When partial commutation is ordered, the industrial commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest calculated at five percent per annum the rate provided in section 535.3 for court judgments and decrees, with provisions for the payment of weekly compensation not included in such the commutation, subject to any provisions of the law applicable to such unpaid weekly payments; all remaining payments, if any, to be paid at the same time as though such the commutation had not been made.

Sec. 18. Section 85.61, subsection 2, unnumbered paragraph 2, Code 1981, is amended to read as follows:

"Workman" "Worker" or "employee" shall include includes an inmate as defined in section 85.59.

Sec. 19. Section 85.61, subsection 10, Code 1981, is amended to read as follows:

10. "Payroll taxes" means an amount, determined by tables adopted by the industrial commissioner pursuant to chapter 17A, equal to the sum of the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code of 1954, and regulations pursuant thereto, as amended ~~to July 1, 1976~~, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which ~~he~~ the employee was injured; and.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which ~~he~~ the employee was injured; and.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended ~~to July 1, 1976~~, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which ~~he~~ the employee was injured.

Sec. 20. Section 85.65, Code 1981, is amended to read as follows:

85.65 PAYMENTS TO SECOND INJURY FUND. The employer, or, if insured, ~~his or her~~ the insurance carrier in each case of compensable injury causing death shall pay to the treasurer of state for the second injury fund the sum of ~~one two thousand dollars; said in a case where there are dependents and five thousand dollars in a case where there are no dependents~~. The payment to shall be made at the time compensation payments are begun, or

at the time the burial expenses are paid in a case where there are no dependents; ~~provided, however.~~ However, that such the payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 1, 1978. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter.

Sec. 21. Section 85.66, unnumbered paragraph 1, Code 1981, is amended to read as follows:

When the total amount of ~~such~~ the payments provided for in the preceding section, together with accumulated interest ~~thereon~~ and earnings, equals or exceeds ~~one~~ five hundred thousand dollars no further contributions to ~~said~~ the fund shall be required; but ~~whenever~~ when, thereafter, the amount of ~~such~~ the sum ~~shall be~~ is reduced below ~~fifty~~ three hundred thousand dollars by reason of payments made to employees pursuant to the provisions of this division, the ~~said~~ contributions shall be resumed ~~forthwith~~ and shall continue until ~~such~~ the sum, together with accumulated interest and earnings, ~~shall~~ again amount amounts to ~~one~~ five hundred thousand dollars. The industrial commissioner shall ~~promulgate~~ adopt rules for the maintenance of the second injury fund and the making of contributions ~~thereto~~ to the fund, and shall determine when the contributions shall be made to ~~said~~ the fund and when they shall be suspended; and he or she is hereby empowered and authorized to the commissioner may enforce ~~said~~ the rules and the collection of ~~said~~ contributions.

Sec. 22. Chapter 85, Code 1981, is amended by adding the following new section:

NEW SECTION. PAYMENTS CONCERNING LIABILITY DISPUTES.

1. The industrial commissioner may order any number or combination of alleged workers' compensation insurance carriers and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, 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 or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers 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, but the carriers or employers cannot agree, or the commissioner has not determined which carriers or employers are liable.

2. Unless waived by the carriers 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 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 or employers liable to the employee or to the employee's dependent or legal representative to reimburse the carriers or employers which are not liable but were required 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.

Sec. 23. Section 86.13, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

86.13 COMPENSATION PAYMENTS. If an employer or insurance carrier pays weekly compensation benefits to an employee, the employer or insurance carrier shall file with the industrial commissioner on forms prescribed by the industrial commissioner a notice of the commencement of the payments. The payments establish conclusively that the employer and insurance carrier have notice of the injury for which benefits are claimed but the payments do not constitute an admission of liability under this chapter or chapter 85, 85A, or 85B.

If an employer or insurance carrier fails to file the notice required by this section, the failure stops the running of the time periods in section 85.26 as of the date of the first payment. If commenced, the payments shall be terminated only when the employee has returned to work, or upon thirty days notice stating the reason for the termination and advising the employee of the right to file a claim with the industrial commissioner.

This section does not prevent the parties from reaching an agreement for settlement regarding compensation. However, the agreement is valid only if signed by all parties and approved by the industrial commissioner.

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Sec. 24. Section 86.24, subsection 4, Code 1981, is amended to read as follows:

4. A transcript of a contested case proceeding shall be provided by ~~the~~ an appealing party at ~~his or her~~ the party's cost and an affidavit shall be filed by the appealing party or the party's attorney with the industrial commissioner within ~~thirty~~ ten days after the filing of the appeal to the industrial commissioner stating that the transcript has been ordered and identifying the name and address of the reporter or reporting firm from which the transcript has been ordered.

Sec. 25. Section 86.42, Code 1981, is amended to read as follows:

86.42 JUDGMENT BY DISTRICT COURT ON AWARD. Any party in interest may present a certified copy of an order or decision of the commissioner, from which ~~no~~ a timely petition for judicial review has ~~not~~ been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or an order or decision of a deputy commissioner from which ~~no~~ a timely appeal has ~~not~~ been taken within the agency and which has become final by the passage of time as provided by rule and section 17A.15, or ~~a memorandum of an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced, whereupon said.~~ The court shall render a decree or judgment in accordance therewith and cause the clerk to notify the parties. Such ~~The~~ decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the industrial commissioner, or in the absence of an act of any party which prevents a decision of a deputy industrial commissioner from becoming final, shall have ~~has~~ the same effect and in all proceedings in relation thereto shall thereafter be ~~is~~ the same as though rendered in a suit duly heard and determined by ~~said~~ the court.

Sec. 26. Section 87.21, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. In an action at law for damages the parties have a right to trial by jury.

Sec. 27. Section 239A.2, subsection 3, paragraph c, Code 1981, is amended to read as follows:

c. The employees must be considered regular employees of the unit of local government involved and must be entitled to participate in benefit programs of that unit of local government, including but not limited to ~~workmen's~~ workers' compensation, but shall not be entitled to qualify for unemployment compensation benefits on the basis of employment under the project.

Sec. 28. Section 86.20 and sections 87.24 through 87.27, Code 1981, are repealed.

Approved May 3, 1982

CHAPTER 1162
VICTIM RESTITUTION
S.F. 2280

AN ACT relating to restitution by public offenders.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Sections 2 through 10 of this Act shall be enacted as a new chapter of the Code.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Victim" means any person who has suffered pecuniary damages as a result of the offender's criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation.

2. "Pecuniary damages" means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death.

3. "Criminal activities" means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982 which is admitted or not contested by the offender, whether or not prosecuted. However, "criminal activities" does not include simple misdemeanors under chapter 321.

4. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution shall also include the payment of court costs, court-appointed attorney's fees or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when no victim has suffered pecuniary damages and the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees or the expense of a public defender.

Sec. 3. NEW SECTION. RESTITUTION ORDERED BY SENTENCING COURT. In all criminal cases except simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of his or her criminal activities and, to the extent that the offender is reasonably able to do so, to the