

WORKERS' COMPENSATION

85.1 Inapplicability of chapter.

Except as provided in subsection 6 of this section, this chapter does not apply to:

1. Any employee engaged in any type of service in or about a private dwelling except that after July 1, 1997, this chapter shall apply to such persons who earn one thousand five hundred dollars or more from such employer for whom employed at the time of the injury during the twelve consecutive months prior to the injury, provided the employee is not a regular member of the household. For purposes of this subsection, "*member of the household*" is defined to be the spouse of the employer or relatives of either the employer or spouse residing on the premises of the employer.
2. Persons whose employment is purely casual and not for the purpose of the employer's trade or business, except that after July 1, 1997, this chapter shall apply to such employees who earn one thousand five hundred dollars or more from such employer for whom employed at the time of the injury during the twelve consecutive months prior to the injury.
3. Persons engaged in agriculture, insofar as injuries incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith whether on or off the premises of the employer, except:
 - a. This chapter applies to persons not specifically exempted by paragraph "*b*" of this subsection if at the time of injury the person is employed by an employer whose total cash payroll to one or more persons other than those exempted by paragraph "*b*" of this subsection amounted to two thousand five hundred dollars or more during the preceding calendar year.
 - b. The following persons or employees or groups of employees are specifically included within the exemption from coverage of this chapter provided by this subsection:
 - (1) The spouse of the employer, parents, brothers, sisters, children, and stepchildren of either the employer or 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.
 - (2) 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) Officers of a family farm corporation or members of a limited liability company, spouses of the officers or members, the parents, brothers, sisters, children, and stepchildren of either the officers or members, or the spouses of the officers or members, and the spouses of the brothers, sisters, children, and stepchildren of either the officers or members, or the spouses of the officers or members who are employed by the corporation or limited liability company, the primary purpose of which, although not necessarily the stated purpose, is farming or ownership of agricultural land, and who are actually engaged in agricultural pursuits or operations immediately connected with the agricultural pursuits either on or off the premises of the corporation or limited liability company.
 - (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.

4. Persons entitled to benefits pursuant to chapters 410 and 411.

5. The president, vice president, secretary, and treasurer of a corporation other than a family farm corporation, not to exceed four officers per corporation, if such an officer knowingly and voluntarily rejects workers' compensation coverage pursuant to section 87.22.

6. Employers may with respect to an employee or a classification of employees exempt from coverage provided by this chapter pursuant to subsection 1, 2, 3, 4, or 5, other than the employee or classification of employees with respect to whom a rule of liability or a method of compensation 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, by the purchase of valid workers' compensation insurance specifically including the employee or classification of employees. The purchase of and acceptance by an employer of valid workers' compensation insurance applicable to the employee or classification of employees constitutes an assumption by the employer of liability without any further act on the part of the employer, but only with respect to the employee or classification of employees as are within the coverage of the workers' compensation insurance contract and only for the time period in which the insurance contract is in force. Upon an election of such coverage, the employee or classification of employees shall accept compensation in the manner provided by this chapter and the employer shall be relieved from any other liability for recovery of damage, or other compensation for injury.

[S13, § 2477-m; C24, 27, 31, 35, 39, § **1361**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.1; 82 Acts, ch 1161, § 1, 2, ch 1221, § 1]

83 Acts, ch 36, § 1, 2, 8; 84 Acts, ch 1067, § 14; 96 Acts, ch 1059, §1; 97 Acts, ch 43, § 1, 2

85.1A Proprietors, limited liability company members, limited liability partners, and partners.

A proprietor, limited liability company member, limited liability partner, or partner who is actively engaged in the proprietor's, limited liability company member's, limited liability partner's, or partner's business on a substantially full-time basis may elect to be covered by the workers' compensation law of this state by purchasing valid workers' compensation insurance specifically including the proprietor, limited liability company member, limited liability partner, or partner. The election constitutes an assumption by the employer of workers' compensation liability for the proprietor, limited liability company member, limited liability partner, or partner for the time period in which the insurance contract is in force. The proprietor, limited liability company member, limited liability partner, or partner shall accept compensation in the manner provided by the workers' compensation law and the employer is relieved from any other liability for recovery of damages, or other compensation for injury.

86 Acts, ch 1074, §1; 96 Acts, ch 1059, §2; 2001 Acts, ch 87, §1

85.2 Compulsory when.

Where the state, county, municipal corporation, school corporation, area education agency, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in section 85.1. For the purposes of this chapter elected and appointed officials shall be employees.

[S13, § 2477-m; C24, 27, 31, 35, 39, § **1362**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.2]

85.3 Acceptance presumed notice to nonresident employers.

1. Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.
2. Any employer who is a nonresident of this state, for whom services are performed within this state by 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 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 1.305 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 commissioner.

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.

[S13, § 2477-m; C24, 27, 31, 35, 39, § **1363**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.3]

98 Acts, ch 1061, § 11; 2000 Acts, ch 1007, §1; 2000 Acts, ch 1232, §46

85.4 to 85.15 Repealed by 70 Acts, ch 1051, § 3.

85.16 Willful injury intoxication.

No compensation under this chapter shall be allowed for an injury caused:

1. By the employee's willful intent to injure the employee's self or to willfully injure another.
2. By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not

prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.

3. By the willful act of a third party directed against the employee for reasons personal to such employee.

[S13, § 2477-m, -m1; C24, 27, 31, 35, 39, § **1376**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.16]

83 Acts, ch 105, § 1

85.17 Repealed by 70 Acts, ch 1051, § 5.

85.18 Contract to relieve not operative.

No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided.

[S13, § 2477-m7; C24, 27, 31, 35, 39, § **1378**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.18]

85.19 Repealed by 70 Acts, ch 1051, § 5.

85.20 Rights of employee exclusive.

The rights and remedies provided in this chapter, chapter 85A or chapter 85B for an employee, or a student participating in a school-to-work program as provided in section 85.61, on account of injury, occupational disease or occupational hearing loss for which benefits under this chapter, chapter 85A or chapter 85B are recoverable, shall be the exclusive and only rights and remedies of the employee or student, the employee's or student's personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury, occupational disease, or occupational hearing loss against any of the following:

1. Against the employee's employer.
2. Against any other employee of such employer, provided that such injury, occupational disease, or occupational hearing loss arises out of and in the course of such employment and is not caused by the other employee's gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another.
3. For a student participating in a school-to-work program, against the student's school district of residence, receiving school district if the student is participating in open enrollment under section 282.18, accredited nonpublic school, community college, and directors, officers, authorities, and employees of the applicable school corporation.

[S13, § 2477-m2; C24, 27, 31, 35, 39, § **1380**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.20]

97 Acts, ch 37, § 1

85.21 Payments concerning liability disputes.

1. The workers' compensation 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 workers' compensation 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 workers' compensation 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.

[C77, 79, 81, § 86.20; 82 Acts, ch 1161, § 22]

98 Acts, ch 1061, § 11

85.22 Liability of others subrogation.

When an employee receives an injury or incurs an occupational disease or an occupational hearing loss for which compensation is payable under this chapter, chapter 85A or chapter 85B, and which injury or occupational disease or occupational hearing loss is caused under circumstances creating a legal liability against some person, other than the employee's employer or any employee of such employer as provided in section 85.20 to pay damages, the employee, or the employee's dependent, or the trustee of such dependent, may take proceedings against the employer for compensation, and the employee or, in case of death, the employee's legal representative may also maintain an action against such third party for damages. When an injured employee or the employee's legal representative brings an action against such third party, a copy of the original notice shall be served upon the employer by the plaintiff, not less than ten days before the trial of the case, but a failure to give such notice shall not prejudice the rights of the employer, and the following rights and duties shall ensue:

1. If compensation is paid the employee or dependent or the trustee of such dependent under this chapter, the employer by whom the same was paid, or the employer's insurer which paid it, shall be indemnified out of the recovery of damages to the extent of the payment so made, with legal interest, except for such attorney fees as may be allowed, by the district court, to the injured employee's attorney or the attorney of the employee's personal representative, and shall have a lien on the claim for such recovery and the judgment thereon for the compensation for which the employer or insurer is liable. In order to continue and preserve the lien, the employer or insurer shall, within thirty days after receiving notice of such suit from the employee, file, in the office of the clerk of the court where the action is brought, notice of the lien.

2. In case the employee fails to bring such action within ninety days, or where a city or a city under special charter is such third party, within thirty days after written notice so to do given by the employer or the employer's insurer, as the case may be, then the employer or the insurer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the

same extent that the employee might. In case of recovery, the court shall enter judgment for distribution of the proceeds thereof as follows:

a. A sum sufficient to repay the employer for the amount of compensation actually paid by the employer to that time.

b. A sum sufficient to pay the employer the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not a final adjudication of the future payments which the employee is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the employee.

c. The balance, if any, shall be paid over to the employee.

3. Before a settlement shall become effective between an employee or an employer and such third party who is liable for the injury, it must be with the written consent of the employee, in case the settlement is between the employer or insurer and such third person; and the consent of the employer or insurer, in case the settlement is between the employee and such third party; or on refusal of consent, in either case, then upon the written approval of the workers' compensation commissioner.

4. A written memorandum of any settlement, if made, shall be filed by the employer or insurance carrier in the office of the workers' compensation commissioner.

5. For subrogation purposes hereunder, any payment made unto an injured employee, the employee's guardian, parent, next friend, or legal representative, by or on behalf of any third party, or the third party's principal or agent liable for, connected with, or involved in causing an injury to such employee shall be considered as having been so paid as damages resulting from and because said injury was caused under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability or otherwise.

6. When the state of Iowa has paid any compensation or benefits under the provisions of this chapter, the word "*employer*" as used in this section shall mean and include the state of Iowa.

[S13, § 2477-m6; C24, 27, 31, 35, 39, § **1382**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.22]

83 Acts, ch 105, § 2; 98 Acts, ch 1061, § 11

85.23 Notice of injury failure to give.

Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed.

[S13, § 2477-m8; C24, 27, 31, 35, 39, § **1383**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.23]

85.24 Form of notice.

No particular form of notice shall be required, but may be substantially as follows: To

You are hereby notified that on or about the day of (month), (year), personal injury was sustained by, while in your employ at (Give name and place employed and point where

located when injury occurred.) and that compensation will be claimed therefor. igned

No variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of employment on or about a specified time, at or near a certain place.

[S13, § 2477-m8; C24, 27, 31, 35, 39, § **1384**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.24]

2000 Acts, ch 1058, §56

85.25 Service of notice.

The notice may be served on anyone upon whom an original notice may be served in civil cases. Service may be made by any person, who shall make return verified by affidavit upon a copy of the notice, showing the date and place of service and upon whom served; but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time.

[S13, § 2477-m8; C24, 27, 31, 35, 39, § **1385**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.25]

Footnotes

Service of notice, R.C.P. 1.305, 1.306

85.26 Limitation of actions who may maintain action.

1. An original proceeding for benefits under this chapter or chapter 85A, 85B, or 86, shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed 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.

2. An award for payments or an agreement for settlement provided by section 86.13 for benefits under this chapter or chapter 85A or 85B, where the amount has not been commuted, may be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made under the award or agreement. If an award for payments or agreement for settlement as provided by section 86.13 for benefits under this chapter or chapter 85A or 85B has been made and the amount has not been commuted, or if a denial of liability is not filed with the workers' compensation commissioner and notice of the denial is not mailed to the employee, in the form and manner required by the commissioner, within six months of the commencement of weekly compensation benefits, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section 85.27. The failure to file a denial of liability does not constitute an admission of liability under this chapter or chapter 85A, 85B, or 86.

3. Notwithstanding chapter 17A, the filing with the workers' compensation commissioner of the original notice or petition for an original proceeding or an original notice or petition to reopen an award or agreement of settlement provided by section 86.13, for benefits under this chapter or chapter 85A or 85B is the only act constituting "commencement" for purposes of this section.

4. No claim or proceedings for benefits shall be maintained by any person other than the injured employee, or the employee's dependent or legal representative if entitled to benefits.

[S13, § 2477-m34; C24, 27, 31, 35, 39, § **1386, 1457**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 85.26, 86.34; C79, 81, § 85.26; 82 Acts, ch 1161, § 3]

85.27 Services release of information charges payment debt collection prohibited.

1. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.
2. Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which 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 the information. The information shall be made available to any party or the party's representative upon request. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information. If release of information is refused the party requesting the information may apply to the workers' compensation commissioner for relief. The information requested shall be submitted to the workers' compensation commissioner who shall determine the relevance and materiality of the information to the claim and enter an order accordingly.
3. Notwithstanding section 85.26, subsection 4, charges believed to be excessive or unnecessary may be referred by the employer, insurance carrier, or health service provider to the workers' compensation commissioner for determination, and the commissioner may utilize the procedures provided in sections 86.38 and 86.39, or set by rule, and conduct such inquiry as the commissioner deems necessary. Any health service provider charges not in dispute shall be paid directly to the health service provider prior to utilization of procedures provided in sections 86.38 and 86.39 or set by rule. A health service provider rendering treatment to an employee whose injury is compensable under this section agrees to be bound by such charges as allowed by the workers' compensation commissioner and shall not recover in law or equity any amount in excess of charges set by the commissioner. When a dispute under chapter 85, 85A, or 85B regarding reasonableness of a fee for medical services arises between a health service provider and an employer or insurance carrier, the health service provider, employer, or insurance carrier shall not seek payment from the injured employee.
4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization. An employer is not liable for the cost of care that the employer arranges in response to a sudden emergency if the employee's condition, for which care was arranged, is not related to the employment. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose the employee's care at the employer's expense, provided the employer or the employer's agent cannot be reached immediately. An application made under this subsection shall be considered an original proceeding for purposes of commencement and contested case proceedings under section 85.26. The hearing shall be conducted pursuant to chapter 17A. Before a hearing is scheduled, the parties may choose a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The workers' compensation commissioner shall issue a decision within ten working days of receipt of an application for alternate care made pursuant to a telephone hearing or within fourteen working days of receipt of an

application for alternate care made pursuant to an in-person hearing. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

5. When an artificial member or orthopedic appliance, whether or not previously furnished by the employer, is damaged or made unusable by circumstances arising out of and in the course of employment other than through ordinary wear and tear, the employer shall repair or replace it. When any crutch, artificial member or appliance, whether or not previously furnished by the employer, either is damaged or made unusable in conjunction with a personal injury entitling the employee to disability benefits, or services as provided by this section or is damaged in connection with employee actions taken which avoid such personal injury, the employer shall repair or replace it.

6. While a contested case proceeding for determination of liability for workers' compensation benefits is pending before the workers' compensation commissioner relating to an injury alleged to have given rise to treatment, no debt collection, as defined by section 537.7102, shall be undertaken against an employee or the employee's dependents for the collection of charges for that treatment rendered an employee by any health service provider. However, the health service provider may send one itemized written bill to the employee setting forth the amount of the charges in connection with the treatment after notification of the contested case proceeding.

7. If, after the third day of incapacity to work following the date of sustaining a compensable injury which does not result in permanent partial disability, or if, at any time after sustaining a compensable injury which results in permanent partial disability, an employee, who is not receiving weekly benefits under section 85.33 or section 85.34, subsection 1, returns to work and is required to leave work for one full day or less to receive services pursuant to this section, the employee shall be paid an amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work. For the purposes of this subsection, "*day of incapacity to work*" means eight hours of accumulated absence from work due to incapacity to work or due to the receipt of services pursuant to this section. The employer shall make the payments under this subsection as wages to the employee after making such deductions from the amount as legally required or customarily made by the employer from wages. Payments made under this subsection shall be required to be reimbursed pursuant to any insurance policy covering workers' compensation. Payments under this subsection shall not be construed to be payment of weekly benefits.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § 1387; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.27; 82 Acts, ch 1161, § 4]

92 Acts, ch 1120, § 1; 92 Acts, ch 1181, § 1; 94 Acts, ch 1065, §1, 2; 98 Acts, ch 1061, § 11; 2001 Acts, ch 87, §2; 2004 Acts, 1st Ex, ch 1001, §9, 18; 2005 Acts, ch 168, §9, 23

2004 amendments to subsection 4 take effect September 7, 2004, and apply to injuries occurring on or after that date; 2004 Acts, 1st Ex, ch 1001, § 18

85.28 Burial expense.

When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed seven thousand five hundred dollars, which shall be in addition to other compensation or any other benefit provided for in this chapter.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § 1388; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.28]

92 Acts, ch 1031, § 1; 2003 Acts, ch 140, §1

85.29 Liability in case of no dependents.

When the injury causes death of an employee who leaves no dependents, then the employer shall pay the reasonable expense of the employee's sickness, if any, and the expense of burial, as provided in sections 85.27 and 85.28, and this shall be the only compensation; provided that if, from the date of the injury until the date of the death, any weekly compensation shall have become due and unpaid up to the time of the death, the same shall be payable to the estate of the deceased employee.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § 1389; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.29]

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 the weekly compensation payments, interest at the rate provided in section 535.3 for court judgments and decrees.

[C24, 27, 31, 35, 39, § 1391; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.30; 82 Acts, ch 1161, § 5]

85.31 Death cases dependents.

1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury, during their lifetime, compensation upon the basis of eighty percent per week of the employee's average weekly spendable earnings, commencing from the date of death as follows:

a. To the surviving spouse for life or until remarriage, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum, if there are no children entitled to benefits.

b. To any child of the deceased until the child shall reach the age of eighteen, provided that a child beyond eighteen years of age shall receive benefits to the age of twenty-five if actually dependent, and the fact that a child is under twenty-five years of age and is enrolled as a full-time student in any accredited educational institution shall be a prima facie showing of actual dependency.

c. To any child who was physically or mentally incapacitated from earning at the time of the injury causing death for the duration of the incapacity from earning.

d. To all other dependents as defined in section 85.44 for the duration of the incapacity from earning.

The weekly benefit amount shall not exceed a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. 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. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

2. When the injury causes the death of a minor employee whose earnings were received by the parent and such parent was wholly dependent upon the earnings of the minor employee for support at the time of the injury, the compensation to be paid such parent shall be the weekly compensation for an adult with like earnings. For the purposes of this section a stepparent shall be regarded as a parent only when the stepparent has actually received the stepparent's principal support from the stepchild who died as a result of compensable injuries.

3. If the employee leaves dependents only partially dependent upon the employee's earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of

the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

4. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from the injury for which the employee was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

5. Except as otherwise provided by treaty, whenever, under the provisions of this and chapters 86 and 87, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the second injury fund in the custody of the treasurer of state.

[S13, § 2477-m9, -m10; C24, 27, 31, 35, 39, § **1392**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.31; 82 Acts, ch 1161, § 6]

87 Acts, ch 111, § 1; 94 Acts, ch 1065, §3; 96 Acts, ch 1186, §23

85.32 When compensation begins.

Except as to injuries resulting in permanent partial disability, compensation shall begin on the fourth day of disability after the injury.

If the period of incapacity extends beyond the fourteenth day following the date of injury, then the compensation due during the third week shall be increased by adding thereto an amount equal to three days of compensation.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § **1393**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.32]

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 with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

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.

6. For purposes of this section and section 85.34, subsection 1, "*employment substantially similar to the employment in which the employee was engaged at the time of injury*" includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § 1394; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.33; 82 Acts, ch 1161, § 7]

94 Acts, ch 1065, §4; 97 Acts, ch 48, § 1

85.34 Permanent disabilities.

Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section. In the event weekly compensation under section 85.33 had been paid to any person for the same injury producing a permanent partial disability, any such amounts so paid shall be deducted from the amount of compensation payable for the healing period.

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 first day of disability after the injury, and until the employee has returned to work or 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.

2. *Permanent partial disabilities.* Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to one hundred eighty-four percent of the statewide average weekly wage paid employees as determined by the department of workforce development

under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

- a. For the loss of a thumb, weekly compensation during sixty weeks.
- b. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty-five weeks.
- c. For the loss of a second finger, weekly compensation during thirty weeks.
- d. For the loss of a third finger, weekly compensation during twenty-five weeks.
- e. For the loss of a fourth finger, commonly called the little finger, weekly compensation during twenty weeks.
- f. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount for the loss of such thumb or finger.
- g. The loss of more than one phalange shall equal the loss of the entire finger or thumb.
- h. For the loss of a great toe, weekly compensation during forty weeks.
- i. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.
- j. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount provided for the loss of such toe.
- k. The loss of more than one phalange shall equal the loss of the entire toe.
- l. For the loss of a hand, weekly compensation during one hundred ninety weeks.
- m. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred fifty weeks.
- n. For the loss of a foot, weekly compensation during one hundred fifty weeks.
- o. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred twenty weeks.
- p. For the loss of an eye, weekly compensation during one hundred forty weeks.
- q. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.
- r. (1) For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, 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 chapter 85B.

s. The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such; however, if said employee is permanently and totally disabled the employee may be entitled to benefits under subsection 3.

t. For permanent disfigurement of the face or head which shall impair the future usefulness and earnings of the employee in the employee's occupation at the time of receiving the injury, weekly compensation, for such period as may be determined by the workers' compensation commissioner according to the severity of the disfigurement, but not to exceed one hundred fifty weeks.

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

v. If it is determined that an injury has produced a disability less than that specifically described in the schedule described in paragraphs "a" through "t", compensation shall be paid during the lesser number of weeks of disability determined, as will not exceed a total amount equal to the same percentage proportion of said scheduled maximum compensation.

3. *Permanent total disability.* Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. 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. The weekly compensation is payable during the period of the employee's disability.

Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter, chapter 85A or chapter 85B for the same injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability.

4. *Credits for excess payments.* 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.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee. An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under section 86.13, pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action in a contested case for a prior injury to the same employee. The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to this subsection, the employee and employer may enter into a

written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement.

6. *Professional athlete.* For purposes of subsection 2, paragraph "u", a determination of the degree of permanent disability of an individual who was injured in the course of performing as a professional athlete shall not be determined based upon employment as a professional athlete but shall be determined based upon other occupations the individual has previously performed or was reasonably suited to perform at the time of the injury.

7. *Successive disabilities.*

a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

b. If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.

If, however, an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

c. A successor employer shall be considered to be the same employer if the employee became part of the successor employer's workforce through a merger, purchase, or other transaction that assumes the employee into the successor employer's workforce without substantially changing the nature of the employee's employment.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § **13941396**; C46, 50, 54, 58, § 85.3385.35; C62, 66, 71, 73, 75, 77, 79, 81, § 85.34; 82 Acts, ch 1161, § 811]

87 Acts, ch 111, § 2, 3; 94 Acts, ch 1065, §57; 96 Acts, ch 1186, §23; 97 Acts, ch 48, § 2; 98 Acts, ch 1061, § 4, 11; 98 Acts, ch 1160, §1; 2004 Acts, 1st Ex, ch 1001, §10, 11, 18; 2005 Acts, ch 19, §26; 2006 Acts, ch 1010, §45

Legislative intent regarding successive disabilities; 2004 Acts, 1st Ex, ch 1001, § 20, 21

2004 amendments to subsection 2, paragraph u, and adding subsection 7 take effect September 7, 2004, and apply to injuries occurring on or after that date; 2004 Acts, 1st Ex, ch 1001, § 18

85.35 Settlements.

1. The parties to a contested case or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, 85B, or 86,

providing for disposition of the claim. The settlement shall be in writing on forms prescribed by the workers' compensation commissioner and submitted to the workers' compensation commissioner for approval.

2. The parties may enter into an agreement for settlement that establishes the employer's liability, fixes the nature and extent of the employee's current right to accrued benefits, and establishes the employee's right to statutory benefits that accrue in the future.

3. The parties may enter into a compromise settlement of the employee's claim to benefits as a full and final disposition of the claim.

4. The parties may enter into a settlement that is a combination of an agreement for settlement and a compromise settlement that establishes the employer's liability for part of a claim but makes a full and final disposition of other parts of a claim.

5. A contingent settlement may be made and approved, conditioned upon subsequent approval by a court or governmental agency, or upon any other subsequent event that is expected to occur within one year from the date of the settlement. If the subsequent approval or event does not occur, the contingent settlement and its approval may be vacated by order of the workers' compensation commissioner upon a petition for vacation filed by one of the parties or upon agreement by all parties. If a contingent settlement is vacated, the running of any period of limitation provided for in section 85.26 is tolled from the date the settlement was initially approved until the date that the settlement is vacated, and the claim is restored to the status that the claim held when the contingent settlement was initially approved. The contingency on a settlement lapses and the settlement becomes final and fully enforceable if an action to vacate the contingent settlement or to extend the period of time allowed for the subsequent approval or event to occur is not initiated within one year from the date that the contingent settlement was initially approved.

6. The parties may agree that settlement proceeds, which are paid in a lump sum, are intended to compensate the injured worker at a given monthly or weekly rate over the life expectancy of the injured worker. If such an agreement is reached, neither the weekly compensation rate which either has been paid, or should have been paid, throughout the case, nor the maximum statutory weekly rate applicable to the injury shall apply. Instead, the rate set forth in the settlement agreement shall be the rate for the case.

7. A settlement shall be approved by the workers' compensation commissioner if the parties show all of the following:

a. Substantial evidence exists to support the terms of the settlement.

b. Waiver of the employee's right to a hearing, decision, and statutory benefits is made knowingly by the employee.

c. The settlement is a reasonable and informed compromise of the competing interests of the parties.

If an employee is represented by legal counsel, it is presumed that the required showing for approval of the settlement has been made.

8. Approval of a settlement by the workers' compensation commissioner is binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86 and 87, an approved compromise settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86, and 87 regarding the subject matter of the compromise and a payment made pursuant to a compromise settlement agreement shall not be construed as the payment of weekly compensation.

85.36 Basis of computation.

The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:

1. In the case of an employee who is paid on a weekly pay period basis, the weekly gross earnings.
2. In the case of an employee who is paid on a biweekly pay period basis, one-half of the biweekly gross earnings.
3. In the case of an employee who is paid on a semimonthly pay period basis, the semimonthly gross earnings multiplied by twenty-four and subsequently divided by fifty-two.
4. In the case of an employee who is paid on a monthly pay period basis, the monthly gross earnings multiplied by twelve and subsequently divided by fifty-two.
5. In the case of an employee who is paid on a yearly pay period basis, the weekly earnings shall be the yearly earnings divided by fifty-two.
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 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.
7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer.
8. If at the time of the injury the hourly earnings have not been fixed or cannot be ascertained, the earnings for the purpose of calculating compensation shall be taken to be the usual earnings for similar services where such services are rendered by paid employees.
9. If an employee 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.
 - a. In computing the compensation to be allowed a volunteer fire fighter, emergency medical care provider,

reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician as defined in section 147A.1, or emergency medical technician trainee, the earnings as a fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee shall be disregarded and the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee shall be paid an amount equal to the compensation the volunteer fire fighter, emergency medical care provider, reserve peace officer, volunteer ambulance driver, volunteer emergency rescue technician, or emergency medical technician trainee would be paid if injured in the normal course of the volunteer fire fighter's, emergency medical care provider's, reserve peace officer's, volunteer ambulance driver's, volunteer emergency rescue technician's, or emergency medical technician trainee's regular employment or an amount equal to one hundred and forty percent of the statewide average weekly wage, whichever is greater.

b. If the employee was an apprentice or trainee when injured, and it is established under normal conditions the employee's earnings should be expected to increase during the period of disability, that fact may be considered in computing the employee's weekly earnings.

c. If the employee was an inmate as defined in section 85.59, the inmate's actual earnings shall be disregarded, and the weekly compensation rate shall be as set forth in section 85.59.

10. If a wage, or method of calculating a wage, is used for the basis of the payment of a workers' compensation insurance premium for a proprietor, partner, limited liability company member, limited liability partner, or officer of a corporation, the wage or the method of calculating the wage is determinative for purposes of computing the proprietor's, partner's, limited liability company member's, limited liability partner's, or officer's weekly workers' compensation benefit rate.

11. In computing the compensation to be allowed an elected or appointed official, the official may choose either of the following payment options:

a. The official shall be paid an amount of compensation based on the official's weekly earnings as an elected or appointed official.

b. The earnings of the official as an elected or appointed official shall be disregarded and the official shall be paid an amount equal to one hundred forty percent of the statewide average weekly wage.

12. In the case of an employee injured in the course of performing as a professional athlete, the basis of compensation for weekly earnings shall be one-fiftieth of total earnings which the employee has earned from all employment for the previous twelve months prior to the injury.

[S13, § 2477-m15; C24, 27, 31, 35, 39, § **1397**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.36; 82 Acts, ch 1161, § 12, 13]

86 Acts, ch 1074, § 2; 87 Acts, ch 91, § 1; 90 Acts, ch 1046, § 1; 95 Acts, ch 41, § 2; 95 Acts, ch 140, § 1, 2; 96 Acts, ch 1059, § 3; 96 Acts, ch 1079, § 3; 97 Acts, ch 48, § 3; 2000 Acts, ch 1007, §2, 3; 2001 Acts, ch 87, §4; 2004 Acts, 1st Ex, ch 1001, § 12, 18

2004 amendment striking paragraph c of subsection 9 is effective September 7, 2004, and applies to injuries occurring on or after that date; 2004 Acts, 1st Ex, ch 1001, § 18

85.37 Compensation schedule.

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 the temporary total

disability or for the healing period shall be upon the basis provided 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 statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent, and two hundred percent, respectively, of the statewide average weekly wage as determined above. Total weekly compensation for any employee shall not exceed eighty percent per week of the employee's weekly spendable earnings. 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.

[S13, § 2477-m9; C24, 27, 31, 35, 39, § **1390**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.37; 82 Acts, ch 1161, § 14]

87 Acts, ch 111, § 4; 96 Acts, ch 1186, §23

85.38 Reduction of obligations of employer.

1. *Contributions or donations.* The compensation herein provided shall be the measure of liability which the employer has assumed for injuries or death that may occur to employees in the employer's employment subject to the provisions of this chapter, and it shall not be in anywise reduced by contribution from employees or donations from any source.

2. *Credit for benefits paid under group plans.* In the event the employee with a disability shall receive any benefits, including medical, surgical, or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under this chapter, chapter 85A, or chapter 85B, then the amounts so paid to the employee from the group plan shall be credited to or against any compensation payments, including medical, surgical, or hospital, made or to be made under this chapter, chapter 85A, or chapter 85B. The amounts so credited shall be deducted from the payments made under these chapters. Any nonoccupational plan shall be reimbursed in the amount deducted. This section shall not apply to payments made under any group plan which would have been payable even though there was an injury under this chapter or an occupational disease under chapter 85A or an occupational hearing loss under chapter 85B. Any employer receiving such credit shall keep the employee safe and harmless from any and all claims or liabilities that may be made against them by reason of having received the payments only to the extent of the credit.

If an employer denies liability under this chapter, chapter 85A, or chapter 85B, for payment for any medical services received or weekly compensation requested by an employee, and the employee is a beneficiary under either an individual or group plan for nonoccupational illness, injury, or disability, the nonoccupational plan shall not deny payment for the medical services received or for benefits under the plan on the basis that the employer's liability under this chapter, chapter 85A, or chapter 85B is unresolved.

3. *Supplementation of workers' compensation benefits.* A public employer shall not supplement an employee's workers' compensation benefits by reducing the employee's sick leave, vacation leave, or earned compensatory time entitlements, unless the employer first notifies the employee of the employee's option to supplement and the employee elects to so supplement.

4. *Lien for hospital and medical services under chapter 249A.* In the event any hospital or medical services as provided in section 85.27 are paid by the state department of human services on behalf of an employee who is entitled to such benefits under the provisions of this chapter or chapter 85A or 85B, a lien shall exist as respects the right of such employee to benefits as described in section 85.27.

[S13, § 2477-m12; C24, 27, 31, 35, 39, § **1398**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.38]

83 Acts, ch 96, § 160; 83 Acts, ch 153, § 1; 84 Acts, ch 1086, § 1; 96 Acts, ch 1129, § 18; 97 Acts, ch 36, § 1; 2002 Acts, ch 1050, §14; 2005 Acts, ch 168, §11, 23

85.39 Examination of injured employees.

After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as 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, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall suspend the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of suspension.

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

[S13, § 2477-m11; C24, 27, 31, 35, 39, § **1399**; C46, 50, 54, 58, 62, § 85.39; C66, 71, 73, 75, § 85.34(2), 85.39; C77, 79, 81, § 85.39; 82 Acts, ch 1161, § 15]

85.40 Statement of earnings.

The employer shall furnish, upon request of an injured employee or dependent or any legal representative acting for such person, a statement of the earnings, wages, or salary and other matters relating thereto during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury; but not more than one report shall be required on account of any one injury.

[C24, 27, 31, 35, 39, § **1400**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.40]

85.41 Refusal to furnish statement.

On failure of the employer to furnish such statement of earnings for thirty days after receiving written request therefor from an injured employee, the employee's agent, attorney, dependent, or legal representative, such employer shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, § **1401**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.41]

85.42 Conclusively presumed dependent.

The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury.

2. A child or children under eighteen years of age, and over said age if physically or mentally incapacitated from earning, whether actually dependent for support or not upon the parent at the time of the parent's death. An adopted child or children shall be regarded the same as issue of the body. A child or children, as used herein, shall also include any child or children conceived but not born at the time of the employee's injury, and any compensation payable on account of any such child or children shall be paid from the date of their birth. A stepchild or stepchildren shall be regarded the same as issue of the body only when the stepparent has actually provided the principal support for such child or children.

[S13, § 2477-m16; C24, 27, 31, 35, 39, § **1402**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.42]

85.43 Payment to spouse.

If the deceased employee leaves a surviving spouse qualified under the provisions of section 85.42, the full compensation shall be paid to the surviving spouse, as provided in section 85.31; provided that where a deceased employee leave a surviving spouse and a dependent child or children the workers' compensation commissioner may make an order of record for an equitable apportionment of the compensation payments.

If the spouse dies, the benefits shall be paid to the person or persons wholly dependent on deceased, if any, share and share alike. If there are none wholly dependent, then such benefits shall be paid to partial dependents, if any, in proportion to their dependency for the periods provided in section 85.31.

If the deceased leaves dependent child or children who was or were such at the time of the injury, and the surviving spouse remarries, then and in such case, the payments shall be paid to the proper compensation trustee for the use and benefit of such dependent child or children for the period provided in section 85.31.

[S13, § 2477-m16; C24, 27, 31, 35, 39, § **1403**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.43]

98 Acts, ch 1061, §11

85.44 Payment to actual dependents.

In all other cases, a dependent shall be one actually dependent or mentally or physically incapacitated from earning. Such status shall be determined in accordance with the facts as of the date of the injury. In such cases if there is more than one person, the compensation benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the compensation benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency.

[S13, § 2477-m16; C24, 27, 31, 35, 39, § **1404**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.44]

85.45 Commutation.

Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

1. When the period during which compensation is payable can be definitely determined.
2. When it shall be shown to the satisfaction of the workers' compensation commissioner that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.
3. When the recipient of commuted benefits is a minor employee, the workers' compensation commissioner may order that such benefits be paid to a trustee as provided in section 85.49.
4. When a person seeking a commutation is a surviving spouse, an employee with a permanent and total disability, or a dependent who is entitled to benefits as provided in section 85.31, subsection 1, paragraphs "c" and "d", the future payments which may be commuted shall not exceed the number of weeks which shall be indicated by probability tables designated by the workers' compensation commissioner for death and remarriage, subject to the provisions of chapter 17A.

Future payments of compensation shall not be commuted to a present worth lump sum payment when the employee is an inmate as set forth in section 85.59.

[S13, § 2477-m14; C24, 27, 31, 35, 39, § 1405; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.45]

96 Acts, ch 1129, § 19; 98 Acts, ch 1061, § 11

Footnotes

Intent; commutation of future payments to a present lump-sum payment; 86 Acts, ch 1246, § 604

See also § 87.11

85.46 Repealed by 77 Acts, ch 51, § 21.

85.47 Basis of commutation.

When the commutation is ordered, the workers' compensation 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 at 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 the injury or death, and be entitled to a duly executed release, upon filing which the liability of the employer under any agreement, award, finding, or judgment shall be discharged of record.

[S13, § 2477-m14; C24, 27, 31, 35, 39, § 1407; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.47; 82 Acts, ch 1161, § 16]

98 Acts, ch 1061, § 11

Footnotes

Intent; commutation of future payments to a present lump-sum payment; 86 Acts, ch 1246, § 604

85.48 Partial commutation.

When partial commutation is ordered, the workers' compensation 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 at the rate provided in section 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments from the first or last part of the payment period or by a pro rata reduction in the weekly benefit amount over the entire payment period.

[S13, § 2477-m15; C24, 27, 31, 35, 39, § **1408**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.48; 82 Acts, ch 1161, § 17]

98 Acts, ch 1061, § 11; 2003 Acts, ch 140, § 2

85.49 Trustees for minors and dependents.

When a minor or a dependent who is mentally incompetent is entitled to weekly benefits under this chapter, or chapter 85A or 85B, payment shall be made to the parent, guardian, or conservator, who shall act as trustee, and the money coming into the trustee's hands shall be expended for the use and benefit of the person entitled to it under the direction and orders of a district judge. The trustee shall qualify and give bond in an amount as the district judge directs, which may be increased or diminished from time to time.

If the domicile or residence of the minor or dependent who is mentally incompetent is outside the state of Iowa, the workers' compensation commissioner may order and direct that benefits to the minors or dependents be paid to a guardian, conservator, or legal representative duly qualified under the laws of the jurisdiction wherein the minors or dependents shall be domiciled or reside. Proof of the identity and qualification of the guardian, conservator, or other legal representative shall be furnished to the workers' compensation commissioner.

[S13, § 2477-m13; C24, 27, 31, 35, 39, § **1409**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.49]

83 Acts, ch 186, § 10039, 10201; 93 Acts, ch 70, § 5; 96 Acts, ch 1129, § 20; 98 Acts, ch 1061, § 11

85.50 Report of trustee.

The trustee shall, on or before September 30 of each year, make reports, at such times as designated by the court, to the court of all money or property received or expended for the person for whom the parent, guardian, or conservator is acting as trustee.

[S13, § 2477-m13; C24, 27, 31, 35, 39, § **1410**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.50]

83 Acts, ch 186, § 10040, 10201; 93 Acts, ch 70, § 6

85.51 Alien dependents in foreign country.

In case a deceased employee for whose injury or death compensation is payable leaves surviving an alien dependent or dependents residing outside the United States, the consul general, consul, vice consul, or consular agent of the nation of which the said dependent or dependents are citizens, or the duly appointed representative of such consular official resident in the state of Iowa, shall be regarded as the exclusive representative of such dependent or dependents, and said consular officials or their representatives shall have the same rights and powers in all matters of compensation which said nonresident aliens would have if resident in the state of Iowa.

[C24, 27, 31, 35, 39, § **1411**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.51]

85.52 Consular officer as trustee.

Such consular officer or the officer's duly appointed representative resident in the state of Iowa shall file in the district court of the county in which the accident occurred resulting in the death of said employee evidence of the officer's or representative's authority, and thereupon the court shall appoint the officer or representative a trustee for such nonresident alien dependents, and thereafter the officer or representative shall be subject to the jurisdiction of said court until the final report of distribution and payment has been filed and approved. Such consular official or said representative shall qualify as such trustee by giving bond with approved sureties in a sum to be fixed by said court, and the amount of said bond may be increased or decreased from time to time as said court may direct.

[C24, 27, 31, 35, 39, § 1412; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.52]

85.53 Notice to consular officer.

If such consular officer, or the officer's duly appointed representative, shall file with the workers' compensation commissioner evidence of the officer's or representative's authority, the workers' compensation commissioner shall notify such consular officer or representative of the death of all employees leaving alien dependent, or dependents, residing in the country of said consular officer so far as same shall come to the commissioner's knowledge.

[C24, 27, 31, 35, 39, § 1413; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.53]

98 Acts, ch 1061, § 11

85.54 Contracts to avoid compensation.

Any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this chapter, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a simple misdemeanor.

[S13, § 2477-m17; C24, 27, 31, 35, 39, § 1414; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.54]

85.55 Waivers prohibited physical defects. Repealed by 2004 Acts, 1st Ex, ch 1001, § 17, 18.

2004 repeal of this section is effective September 7, 2004, and applies to injuries occurring on or after that date; 2004 Acts, 1st Ex, ch 1001, § 18

85.56 Employees in interstate commerce.

So far as permitted, or not forbidden, by any Act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees.

[S13, § 2477-m21; C24, 27, 31, 35, 39, § 1417; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 85.57; C79, 81, § 85.56]

85.57 Employees of state. Repealed by 92 Acts, ch 1243, § 29.

85.58 Payment of state employees. Repealed by 92 Acts, ch 1243, § 29.

85.59 Benefits for inmates and offenders.

For the purposes of this section, the term "*inmate*" includes a person confined in a reformatory, state penitentiary, release center, or other state penal or correctional institution while that person works in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, or while on detail to perform services on a public works project.

For purposes of this section, "*inmate*" includes a person who is performing unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or an inmate providing services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232. For purposes of this section, "*unpaid community service under the direction of the district court*" includes but is not limited to community service ordered and performed pursuant to section 598.23A.

For purposes of this section, an inmate on a work assignment under section 904.703 working in construction or maintenance at a public or charitable facility, or under assignment to another agency of state, county, or local government, shall be considered an employee of the state.

If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution, in an industry maintained in the institution, or in an industry referred to in section 904.809, while on detail to perform services on a public works project, or while performing services authorized pursuant to section 904.809, or is permanently or temporarily incapacitated in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury.

Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under the direction of the district court, board of parole, or judicial district department of correctional services, or in connection with the provision of services pursuant to a chapter 28E agreement entered into pursuant to section 904.703, or who is performing a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases.

If an inmate is receiving benefits under the provisions of this section and is recommitted to an institution covered by this section, the benefits shall immediately cease. If benefits cease because of the inmate's recommitment, the benefits shall resume upon subsequent release from the institution.

If death results from the injury, death benefits shall be awarded and paid to the dependents of the inmate as in other workers' compensation cases except that the weekly rate shall be equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury.

Payment under this section shall be made promptly out of appropriations which have been made for that purpose, if any. An amount or part thereof which cannot be paid promptly from the appropriation shall be paid promptly out of money in the state treasury not otherwise appropriated.

The time limit for commencing an original proceeding to determine entitlement to benefits under this section is the same as set forth in section 85.26. If an injury occurs to an inmate so as to qualify the inmate for benefits under this section, notwithstanding the fact that payments of weekly benefits are not commenced, an acknowledgment of compensability shall be filed with the workers' compensation commissioner within thirty days of the time the responsible authority receives notice or knowledge of the injury as required by section 85.23.

If a dispute arises as to the extent of disability when an acknowledgment of compensability is on file or when an award determining liability has been made, an action to determine the extent of disability must be commenced within one year of the time of the release of the inmate from the institution. This does not bar the right to reopen the claim as provided by section 85.26, subsection 2.

Responsibility for the filings required by chapter 86 for injuries resulting in permanent disability or death and as modified by this section shall be made in the same manner as for other employees of the institution.

[C79, 81, § 85.59]

83 Acts, ch 101, § 4; 84 Acts, ch 1280, § 1; 85 Acts, ch 67, §11; 85 Acts, ch 177, §1; 87 Acts, ch 111, § 5, 6; 88 Acts, ch 1165, §1; 90 Acts, ch 1251, § 3; 93 Acts, ch 46, §1; 94 Acts, ch 1171, §1; 96 Acts, ch 1186, §23; 98 Acts, ch 1061, § 11

Footnotes

See also § 232.13

85.60 Injuries while in employment training or evaluation.

A person participating in a school-to-work program referred to in section 85.61, or receiving earnings while engaged in employment training or while undergoing an employment evaluation under the direction of a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education, who sustains an injury arising out of and in the course of the school-to-work program participation, employment training, or employment evaluation is entitled to benefits as provided in this chapter, chapter 85A, chapter 85B, and chapter 86. Notwithstanding the minimum benefit provisions of this chapter, a person referred to in this section and entitled to benefits under this chapter is entitled to receive a minimum weekly benefit amount for a permanent partial disability under section 85.34, subsection 2, or for a permanent total disability under section 85.34, subsection 3, equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage computed pursuant to section 96.3 and in effect at the time of the injury.

86 Acts, ch 1104, §1; 97 Acts, ch 37, § 2

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. The word "*court*" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.
2. "*Employer*" includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters, volunteer emergency rescue technicians, and emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. "*Employer*" includes and applies to a rehabilitation

facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

"Employer" also includes and applies to an eligible postsecondary institution as defined in section 261C.3, subsection 1, a school corporation, or an accredited nonpublic school if a student enrolled in the eligible postsecondary institution, school corporation, or accredited nonpublic school is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f". However, if a student participating in a school-to-work program is participating in open enrollment under section 282.18, *"employer"* means the receiving district. *"Employer"* also includes and applies to a community college as defined in section 260C.2, if a student enrolled in the community college is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program. If a student participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", is paid for services provided under the program, *"employer"* means any entity otherwise defined as an employer under this subsection which pays the student for providing services under the program.

3. *"Gross earnings"* means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

4. The words *"injury"* or *"personal injury"* shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

5. *"Pay period"* means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

6. *"Payroll taxes"* means an amount, determined by tables adopted by the workers' compensation 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, and regulations pursuant thereto, as amended, 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 the employee was injured.

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 the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, 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 the employee was injured.

7. The words *"personal injury arising out of and in the course of the employment"* shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or

controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

Personal injuries sustained by volunteer emergency rescue technicians or emergency medical care providers as defined in section 147A.1 arise in the course of employment if the injuries are sustained at any time from the time the volunteer emergency rescue technicians or emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

8. The words "*reserve peace officer*" shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

9. "*Spendable weekly earnings*" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. "*Volunteer fire fighter*" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

11. "*Worker*" or "*employee*" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the state patrol; a conservation officer; and a proprietor, limited liability company member, limited liability partner, or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

"*Worker*" or "*employee*" includes an inmate as defined in section 85.59 and a person described in section 85.60.

"*Worker*" or "*employee*" includes an emergency medical care provider as defined in section 147A.1, a volunteer emergency rescue technician as defined in section 147A.1, a volunteer ambulance driver, or an emergency medical technician trainee, only if an agreement is reached between such worker or employee and the employer for whom the volunteer services are provided that workers' compensation coverage under chapters 85, 85A, and 85B is to be provided by the employer. An emergency medical care provider or volunteer emergency rescue technician who is a worker or employee under this paragraph is not a casual employee. "*Volunteer ambulance driver*" means a person performing services as a volunteer ambulance driver at the request of the person in charge of a fire department or ambulance service of a municipality. "*Emergency medical technician trainee*" means a person enrolled in and training for emergency medical technician certification.

"*Worker*" or "*employee*" includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

a. Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

b. The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.

"Worker" or "employee" includes a student enrolled in a public school corporation or accredited nonpublic school who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f". *"Worker" or "employee"* also includes a student enrolled in a community college as defined in section 260C.2, who is participating in a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program.

12. The term *"worker" or "employee"* shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker's or employee's dependents as herein defined or the worker's or employee's legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor's or incompetent's guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

13. The following persons shall not be deemed *"workers" or "employees"*:

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business except as otherwise provided in section 85.1.

b. An independent contractor.

c. An owner-operator who, as an individual or partner, or shareholder of a corporate owner-operator, owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator's vehicle if all of the following conditions are substantially present:

(1) The owner-operator is responsible for the maintenance of the vehicle.

(2) The owner-operator bears the principal burden of the vehicle's operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(3) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator's employees.

(4) The owner-operator's compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(5) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(6) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee.

d. Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

e. Proprietors, limited liability company members, limited liability partners, and partners who have not elected to be covered by the workers' compensation law of this state pursuant to section 85.1A.

[S13, § 2477-m16; C24, 27, 31, 35, 39, § 1421; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.61; 82 Acts, ch 1161, § 18, 19, ch 1221, § 2]

83 Acts, ch 36, § 3, 7, 8; 85 Acts, ch 46, §1; 85 Acts, ch 195, §9; 86 Acts, ch 1074, § 3, 4; 86 Acts, ch 1104, § 2, 3; 87 Acts, ch 91, §25; 89 Acts, ch 89, §13; 89 Acts, ch 218, §1; 91 Acts, ch 209, §1; 93 Acts, ch 88, §1; 95 Acts, ch 41, § 35; 96 Acts, ch 1059, § 4, 5; 96 Acts, ch 1079, § 46; 97 Acts, ch 37, § 3, 4; 98 Acts, ch 1060, § 1, 2; 98 Acts, ch 1061, § 11; 98 Acts, ch 1074, § 9; 2001 Acts, ch 87, §5, 6; 2005 Acts, ch 35, §31

85.62 Inmates of county jail.

The county board of supervisors of any county may elect to include as an employee for purposes of this chapter any person confined as an inmate in a county jail or confined in any other facility in lieu of confinement in a county jail. If such election is made, the provisions of section 85.1, subsection 6, shall apply to such county. If an inmate in the performance of the inmate's work in connection with the maintenance of a county jail or other local facility, or in connection with any industry maintained therein, or with any highway or public works activity outside a county jail or other local facility sustains an injury arising out of and in the course thereof, the inmate shall be awarded and paid compensation at the minimum rate as provided in this chapter. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. If any such person is awarded weekly compensation under the provisions of this section and is still committed to the county jail or other facility, the inmate's compensation benefits under section 85.33 or section 85.34, subsection 1, shall be paid to the county for so long as the inmate shall remain so committed. Weekly compensation benefits awarded pursuant to section 85.34, subsection 2, shall be held in trust and paid to such person as provided in this chapter upon final discharge or parole, whichever occurs first. In the event such person is recommitted to the county jail or other facility prior to receiving in full, the inmate's weekly benefits pursuant to section 85.33 or section 85.34, subsection 1, such benefits shall again be paid to the county for so long as the inmate shall remain so recommitted. Also, weekly benefits under section 85.34, subsection 2, shall be suspended and again held in trust until such person is again released by final discharge or parole, whichever first occurs. However, the workers' compensation commissioner may, if the commissioner finds that dependents of the person awarded weekly compensation pursuant to section 85.33 or section 85.34, subsections 1 and 2, would require welfare aid as a result of terminating the compensation, order such weekly compensation to be paid to a responsible person for the use of the inmate's dependents.

[C73, 75, 77, 79, 81, § 85.62]

98 Acts, ch 1061, § 11

85.63 Title of Act.

This division shall be known and referred to as the "*Second Injury Compensation Act*".

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.63]

85.64 Limitation of benefits.

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of

another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "*Second Injury Fund*" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Any benefits received by any such employee, or to which the employee may be entitled, by reason of such increased disability from any state or federal fund or agency, to which said employee has not directly contributed, shall be regarded as a credit to any award made against said second injury fund as aforesaid.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.64]

85.65 Payments to second injury fund.

The employer, or, if insured, 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 twelve thousand dollars in a case where there are dependents and forty-five thousand dollars in a case where there are no dependents. The payment 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. However, 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.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.65; 82 Acts, ch 1161, § 20]

89 Acts, ch 33, §1; 98 Acts, ch 1113, § 1, 7

85.65A Payments to second injury fund surcharge on employers.

1. For purposes of this section, unless the context otherwise requires:

a. "Insured employers" means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. "Self-insured employers" means employers who have been self-insured for purposes of workers' compensation coverage for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to each fiscal year commencing on or after July 1, 1999, the commissioner of insurance shall conduct an examination of the outstanding liabilities of the second injury fund and shall make a determination as to whether sufficient funds will be available in the second injury fund to pay the liabilities of the fund for each of the next two fiscal years. If the commissioner of insurance determines sufficient funds will be available, the commissioner shall not impose a surcharge on employers during the next succeeding fiscal year. If the commissioner determines sufficient funds will not be available, the commissioner shall impose by rule, pursuant to chapter 17A, a surcharge on employers during the next succeeding fiscal year for payment to the treasurer of state for the second injury fund pursuant to the requirements of this section.

3. If the commissioner of insurance determines that a surcharge on employers shall be imposed during any applicable fiscal year, the surcharge imposed shall comply with and be subject to all of the following requirements:

a. The surcharge shall apply to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9.

b. In determining the surcharge for any applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed, in total, an amount the commissioner determines is sufficient, together with the moneys in the second injury fund, to meet the outstanding liabilities of the second injury fund.

c. The total assessment amount used in calculating the surcharge shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that is not to be collected from self-insured employers shall be collected from insured employers.

d. The method of assessing self-insured employers a surcharge shall be based on paid losses. The method of assessing insured employers a surcharge shall be by insurers collecting assessments from insured employers through a surcharge based on premium.

e. Assessments collected through imposition of a surcharge pursuant to this section shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under this division.

4. The commissioner of insurance shall adopt rules, pursuant to chapter 17A, concerning the requirements of this section.

5. This section is repealed July 1, 2008.

98 Acts, ch 1113, §2, 7; 2003 Acts, ch 140, §3, 6

85.66 Second injury fund creation custodian.

The "*Second Injury Fund*" is hereby established under the custody of the treasurer of state and shall consist of payments to the fund as provided by this division and any accumulated interest and earnings on moneys in the second injury fund. The treasurer of state is charged with the conservation of the assets of the second injury fund. Moneys collected in the "*Second Injury Fund*" shall be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys of the fund in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which the fund is invested, if necessary, for the proper administration or in the best interests of the fund. Disbursements from the fund shall be paid by the treasurer of state only upon the written order of the workers' compensation commissioner. The attorney general shall be reimbursed up to fifty thousand dollars annually from the fund for services provided related to the fund. The treasurer of state shall quarterly prepare a statement of the fund, setting forth the

balance of moneys in the fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of payments, and setting forth the balance of the fund remaining to its credit. The statement shall be open to public inspection in the office of the treasurer of state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.66; 82 Acts, ch 1161, § 21]

83 Acts, ch 105, § 5; 90 Acts, ch 1071, § 1; 98 Acts, ch 1061, § 11; 98 Acts, ch 1113, § 3, 7; 2004 Acts, ch 1175, §196, 202

85.67 Administration of fund special counsel payment of award.

The attorney general shall appoint a staff member to represent the treasurer of state and the fund in all proceedings and matters arising under this division. The attorney general shall be reimbursed up to fifty thousand dollars annually from the fund for services provided related to the fund. The commissioner of insurance shall consider the reimbursement to the attorney general as an outstanding liability when making a determination of funding availability under section 85.65A, subsection 2. In making an award under this division, the workers' compensation commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks of compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time the payments shall continue.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.67]

83 Acts, ch 105, § 6; 98 Acts, ch 1061, § 11; 98 Acts, ch 1113, § 4, 7; 2004 Acts, ch 1175, §197, 209

85.68 Actions collection of payments subrogation.

The labor commissioner shall be charged with the collection of contributions and payments to the second injury fund required to be made pursuant to section 85.65. In addition, the labor commissioner, on behalf of the second injury fund created under this division, shall have a cause of action under section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of the person with the previous disability was caused. The action shall be brought by the labor commissioner on behalf of the fund, and any recovery, less the necessary and reasonable expenses incurred by the labor commissioner, shall be paid to the treasurer of state and credited to the second injury fund.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.68]

83 Acts, ch 105, § 7; 96 Acts, ch 1129, § 21; 98 Acts, ch 1113, § 5, 7

85.69 Federal contributions.

The treasurer of state is hereby authorized to receive and credit to the second injury fund any sum or sums that may at any time be contributed to the state by the United States or any agency thereof, under any Act of Congress or otherwise, to which the state may be or become entitled by reason of any payments made to any person with a previous disability out of the fund.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 85.69]

96 Acts, ch 1129, § 22

85.70 Additional payment for attendance.

An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter, and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a one hundred dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative. Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

[C71, 73, 75, 77, 79, 81, § 85.70]

96 Acts, ch 1127, §1; 98 Acts, ch 1061, § 11; 2003 Acts, ch 44, §114; 2004 Acts, 1st Ex, ch 1001, §13, 18

2004 amendment to this section is effective September 7, 2004, and applies to injuries occurring on or after that date; 2004 Acts, 1st Ex, ch 1001, § 18

85.71 Injury outside of state.

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:

1. The employment is principally localized in this state, that is, the employee's employer has a place of business in this or some other state and the employee regularly works in this state, or if the employee's employer has a place of business in this state and the employee is domiciled in this state.
2. The employee is working under a contract of hire made in this state in employment not principally localized in any state and the employee spends a substantial part of the employee's working time working for the employer in this state.
3. The employee is working under a contract of hire made in this state in employment principally localized in another state, whose workers' compensation law is not applicable to the employee's employer.
4. The employee is working under a contract of hire made in this state for employment outside the United States.
5. The employer has a place of business in Iowa, and the employee is working under a contract of hire which provides that the employee's workers' compensation claims be governed by Iowa law.

[C75, 77, 79, 81, § 85.71]

97 Acts, ch 106, § 1; 2005 Acts, ch 168, §12, 23

85.72 Claims for benefits made outside of state restrictions credit.

1. An employee, or an employee's dependents, shall not be entitled to benefits under this chapter if the employee or the employee's dependents have initiated a judicial proceeding or a contested case or other similar proceeding for the same injury, disability, or death pursuant to the laws of another state or country concerning workers' compensation, and the employee or the employee's dependents receive benefits following resolution of the proceeding pursuant to a settlement, judgment, or award.

2. If an employee, or an employee's dependents, initiate a judicial proceeding or a contested case or other similar proceeding for benefits pursuant to the laws of another state or country concerning workers' compensation, any proceeding initiated by an employee, or an employee's dependents, for workers' compensation benefits under this chapter for the same injury, disability, or death shall be stayed, without prejudice, pending resolution of the out-of-state claim for benefits.

3. If benefits are paid under this chapter and were payable, at any time, for the same injury, disability, or death pursuant to the laws of another state or country concerning workers' compensation, the employer shall have a credit toward the benefits payable under this chapter for any benefits paid in another state or country.

97 Acts, ch 106, §2