

FILED APR 5 1977

SENATE FILE 228

By COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS  
*approved 44 (p 942)*

Passed Senate, Date 4-14-77 (p 1021) Passed House, Date 4-18-77 (p 1424)

Vote: Ayes 45 Nays 0 Vote: Ayes 21 Nays 0

Approved April 29, 1977

### A BILL FOR

1 An Act to resolve differences in procedures involving  
2 provisions of the workers' compensation law and the  
3 Iowa administrative procedure act.

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

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

11  
5  
3  
2  
8

1 Section 1. Section eighty-five point three (85.3), subsec-  
2 tion two (2), unnumbered paragraph two (2), Code 1977, is  
3 amended to read as follows:

4 Such In addition to those persons authorized to receive  
5 personal service as in civil actions as permitted by chapter  
6 seventeen A (17A) of the Code, such employer shall be deemed  
7 to have appointed the secretary of state of this state as  
8 its lawful attorney upon whom may be served or delivered any  
9 and all notices authorized or required by the provisions of  
10 this chapter, chapters 85A, 86, and 87, and seventeen A (17A)  
11 of the Code, and to agree that any and all such services or  
12 deliveries of notice on the secretary of state shall be of  
13 the same legal force and validity as if personally served  
14 upon or delivered to such nonresident employer in this state.

15 Sec. 2. Section eighty-five point twenty-six (85.26),  
16 Code 1977, is amended by striking the section and inserting  
17 in lieu thereof the following:

18 85.26 LIMITATIONS OF ACTIONS.

19 1. No original proceedings for benefits under this chapter,  
20 chapter eighty-five A (85A) or eighty-six (86) of the Code,  
21 shall be maintained in any contested case unless such  
22 proceedings shall be commenced within two years from the date  
23 of the occurrence of the injury for which benefits are claimed  
24 except as provided by section eighty-six point twenty (86.20)  
25 of the Code.

26 2. Any award for payments or agreement for settlement  
27 provided by section eighty-six point thirteen (86.13) of the  
28 Code for benefits under the workers' compensation or  
29 occupational disease law may, where the amount has not been  
30 commuted, be reviewed upon commencement of reopening  
31 proceedings by the employer or the employee within three years  
32 from the date of the last payment of weekly benefits made  
33 under such award or agreement. Once an award for payments  
34 or agreement for settlement as provided by section eighty-  
35 six point thirteen (86.13) of the Code for benefits under

1 the workers' compensation or occupational disease law has  
2 been made where the amount has not been commuted, the commis-  
3 sioner may at any time upon proper application make a  
4 determination and appropriate order concerning the entitlement  
5 of an employee to benefits provided for in section eighty-  
6 five point twenty-seven (85.27) of the Code.

7 3. Notwithstanding the terms of chapter seventeen A (17A)  
8 of the Code, the filing with the industrial commissioner of  
9 the original notice or petition for an original proceeding  
10 or an original notice or petition to reopen an award or  
11 agreement of settlement provided by section eighty-six point  
12 thirteen (86.13) of the Code, for benefits under the workers'  
13 compensation or occupational disease law shall be the only  
14 act constituting "commencement" for purposes of this statutory  
15 section.

16 4. No claim or proceedings for benefits shall be main-  
17 tained by any person other than the injured employee, his  
18 or her dependent or his or her legal representative if entitled  
19 to benefits.

20 Sec. 3. Section eighty-five point thirty-five (85.35),  
21 unnumbered paragraph one (1), Code 1977, is amended to read  
22 as follows:

23 ~~When no memorandum of agreement has been filed and ap-~~  
24 ~~proved by the industrial commissioner, the~~ The parties to  
25 a contested case, or persons who are involved in a dispute  
26 which could culminate in a contested case may enter into a  
27 settlement of any claim arising under this chapter, or chapter  
28 85A or chapter eighty-six (86) of the Code, providing for  
29 final disposition of the claim, provided that no final  
30 disposition affecting rights to future benefits may be had  
31 when the only dispute is the degree of disability resulting  
32 from an injury for which an award for payments or agreement  
33 for settlement under section eighty-six point thirteen (86.13)  
34 of the Code has been made. The settlement shall be in writing  
35 and submitted to the industrial commissioner for approval.

1 The settlement shall not be approved unless evidence of a  
2 bona fide dispute exists concerning any of the following:

3 Sec. 4. Section eighty-five point thirty-five (85.35),  
4 subsection three (3), Code 1977, is amended by striking the  
5 subsection and inserting in lieu thereof the following:

6 3. Whether or not the statutes of limitations as provided  
7 in section eighty-five point twenty-six (85.26) of the Code  
8 have run. When the issue involved is whether or not the  
9 statute of limitations of section eighty-five point twenty-  
10 six (85.26), subsection two (2) of the Code, has run, the  
11 final disposition shall pertain to the right to weekly  
12 compensation unless otherwise provided for in subsection seven  
13 (7) of section eighty-five point thirty-five (85.35) of the  
14 Code.

15 Sec. 5. Section eighty-five point thirty-five (85.35),  
16 subsection seven (7), unnumbered paragraph one (1), Code 1977,  
17 is amended to read as follows:

18 This chapter or chapter 85A, eighty-six (86) or eighty-  
19 seven (87) of the Code applies to the party making the claim.

20 Sec. 6. Section eighty-six point two (86.2), Code 1977,  
21 is amended to read as follows:

22 86.2 APPOINTMENT OF DEPUTIES. The commissioner may ap-  
23 point ~~four~~ deputy industrial commissioners for whose acts  
24 ~~he~~ the commissioner shall be responsible and who shall serve  
25 during the pleasure of the commissioner, and all such deputies  
26 must be lawyers admitted to practice in this state.

27 Sec. 7. Section eighty-six point three (86.3), Code 1977,  
28 is amended to read as follows:

29 86.3 DUTIES OF DEPUTIES. ~~In~~ Notwithstanding the provi-  
30 sions of chapter seventeen A (17A) of the Code, in the absence  
31 or disability of the industrial commissioner, or when acting  
32 under-the-directions-of written delegation of authority to  
33 perform specified functions is made by the commissioner, the  
34 deputies shall have all-of-the any necessary specified powers  
35 and to perform all-of-the any necessary or specified duties

1 of the industrial commissioner pertaining to his or her office.  
2 Notwithstanding the definitions and terms of chapter seventeen  
3 A (17A) of the Code, pertaining to the issuance of final de-  
4 cisions, when the above circumstances exist a deputy commis-  
5 sioner shall have the power to issue a final decision as if  
6 issued by the agency.

7 Sec. 8. Section eighty-six point eight (86.8), subsection  
8 four (4), Code 1977, is amended to read as follows:

9 4. ~~To keep records of all proceedings and decisions of~~  
10 ~~such boards, issue subpoenas for witnesses, issue subpoenas~~  
11 ~~duces tecum, administer oaths, examine books and records of~~  
12 parties subject to such provisions.

13 Sec. 9. Section eighty-six point fourteen (86.14), Code  
14 1977, is amended by striking the section and inserting in  
15 lieu thereof the following:

16 86.14 CONTESTED CASES.

17 1. In an original proceeding, all matters relevant to  
18 a dispute are subject to inquiry.

19 2. In a proceeding to reopen an award for payments or  
20 agreement for settlement as provided by section eighty-six  
21 point thirteen (86.13) of the Code, inquiry shall be into  
22 whether or not the condition of the employee warrants an end  
23 to, diminishment of, or increase of compensation so awarded  
24 or agreed upon.

25 Sec. 10. Section eighty-six point seventeen (86.17), Code  
26 1977, is amended by striking the section and inserting in  
27 lieu thereof the following:

28 86.17 HEARINGS--PRESIDING OFFICER--VENUE.

29 1. A deputy industrial commissioner may preside over any  
30 contested case proceeding brought under this chapter, chap-  
31 ter eighty-five (85) or eighty-five A (85A) of the Code in  
32 the manner provided by chapter seventeen A (17A) of the Code.  
33 The deputy commissioner or the commissioner may make such  
34 inquiries and investigation in contested case proceedings  
35 as shall be deemed necessary, consistent with the provisions

1 of section seventeen A point seventeen (17A.17) of the Code.

2 2. Hearings in contested case proceedings under chapters  
3 eighty-five (85), eighty-five A (85A) and eighty-six (86)  
4 of the Code shall be held in the judicial district where the  
5 injury occurred. By written stipulation of the parties or  
6 by the order of a deputy industrial commissioner or the commis-  
7 sioner, a hearing may be held elsewhere. If the injury oc-  
8 curred outside this state, or if the proceeding is not one  
9 for benefits resulting from an injury, hearings shall be held  
10 in Polk county or as otherwise stipulated by the parties or  
11 by order of a deputy industrial commissioner or the industrial  
12 commissioner.

13 Sec. 11. Section eighty-six point eighteen (86.18), Code  
14 1977, is amended by striking the section and inserting in  
15 lieu thereof the following:

16 86.18 HEARINGS--EVIDENCE.

17 1. Evidence, process and procedure in contested case pro-  
18 ceedings or appeal proceedings within the agency under this  
19 chapter, chapters eighty-five (85) and eighty-five A (85A)  
20 of the Code shall be as summary as practicable consistent  
21 with the requirements of chapter seventeen A (17A) of the  
22 Code.

23 2. The deposition of any witness may be taken and used  
24 as evidence in any pending proceeding or appeal within the  
25 agency.

26 Sec. 12. Section eighty-six point nineteen (86.19), Code  
27 1977, is amended by striking the section and inserting in  
28 lieu thereof the following:

29 86.19 REPORTING OF PROCEEDINGS.

30 1. The industrial commissioner, or a deputy commissioner,  
31 may appoint or may direct a party to furnish at the party's  
32 initial expense a certified shorthand reporter to be present  
33 and report, or to furnish mechanical means to record, and  
34 if necessary, transcribe proceedings of any contested case  
35 under this chapter, chapters eighty-five (85) and eighty-five

1 A (85A) of the Code and fix the reasonable amount of  
2 compensation for such service. The charges shall be taxed  
3 as costs and the party initially paying the expense of the  
4 presence or transcription shall be reimbursed. The reporter  
5 shall faithfully and accurately report the proceedings.

6 2. Notwithstanding the requirements of section seventeen  
7 A point twelve (17A.12), subsection seven (7) of the Code,  
8 a certified shorthand reporter, appointed by the presiding  
9 officer in a contested case proceeding or by the industrial  
10 commissioner in an appeal proceeding, may maintain and thus  
11 have the responsibility for the recording or stenographic  
12 notes for the period required by section seventeen A point  
13 twelve (17A.12), subsection seven (7), of the Code.

14 Sec. 13. Section eighty-six point twenty (86.20), unnum-  
15 bered paragraph five (5), Code 1977, is amended to read as  
16 follows:

17 If a memorandum of agreement is filed and approved pursuant  
18 to section 86.13 or an award for payments is granted pursuant  
19 ~~to section 86.23~~ the employer or insurance carrier shall be  
20 entitled to credit for amounts paid under this section.

21 Sec. 14. Section eighty-six point twenty-four (86.24),  
22 Code 1977, is amended by striking the section and inserting  
23 in lieu thereof the following:

24 86.24 APPEALS WITHIN THE AGENCY.

25 1. Any party aggrieved by a decision, order, ruling, find-  
26 ing or other act of a deputy commissioner in a contested case  
27 proceeding arising under this chapter or chapter eighty-five  
28 (85) or eighty-five A (85A) of the Code may appeal to the  
29 industrial commissioner in the time and manner provided by  
30 rule. The hearing on an appeal shall be in Polk county unless  
31 the industrial commissioner shall direct the hearing be held  
32 elsewhere.

33 2. In addition to the provisions of section seventeen  
34 A point fifteen (17A.15) of the Code, the industrial  
35 commissioner may affirm, modify, or reverse the decision of

1 a deputy commissioner or he may remand the decision to the  
2 deputy commissioner for further proceedings.

3 3. In addition to the provisions of section seventeen  
4 A point fifteen (17A.15) of the Code, the industrial  
5 commissioner, on appeal, may limit the presentation of evidence  
6 as provided by rule.

7 4. A transcript of a contested case proceeding shall be  
8 provided by the appealing party at his or her cost and shall  
9 be filed with the industrial commissioner within thirty days  
10 after the filing of the appeal to the industrial commissioner.

11 Sec. 15. Section eighty-six point twenty-six (86.26),  
12 Code 1977, is amended to read as follows:

13 86.26 JUDICIAL REVIEW. Judicial review of decisions or  
14 orders of the industrial commissioner ~~in-a-proceeding-on-re-~~  
15 ~~view-of-an-arbitration-decision~~ may be sought in accordance  
16 with the terms of ~~the-Iowa-administrative-procedure-Act~~ chapter  
17 seventeen A (17A) of the Code. Notwithstanding the terms  
18 of ~~the-Iowa-administrative-procedure-Act~~ chapter seventeen  
19 A (17A) of the Code, petitions for judicial review may be  
20 filed in the district court of the county in which the hearing  
21 under section 86.17 was held. Such a review proceeding shall  
22 be accorded priority over other matters pending before the  
23 district court.

24 Sec. 16. Section eighty-six point thirty-two (86.32),  
25 Code 1977, is amended to read as follows:

26 86.32 COSTS ~~ON-APPEAL~~ OF JUDICIAL REVIEW. In proceedings  
27 for judicial review of compensation cases the clerk shall  
28 charge no fee for any service rendered except the filing fee  
29 and transcript fees when the transcript of a judgment is  
30 required. The taxation of costs ~~in-such-appeals~~ on judicial  
31 review shall be in the discretion of the court.

32 Sec. 17. Section eighty-six point thirty-six (86.36),  
33 subsection one (1), Code 1977, is amended by striking the  
34 subsection.

35 Sec. 18. Section eighty-six point thirty-six (86.36),

1 subsection two (2), unnumbered paragraph one (1) Code 1977,  
2 is amended to read as follows:

3 ~~Whenever~~ In addition to the manner provide in chapter  
4 seventeen A (17A) of the Code, whenever service or delivery  
5 of any notice is made on a nonresident employer under the  
6 provisions of section 85.3, subsection 2, the same shall be  
7 done in the following manner:

8 Sec. 19. Section eighty-six point thirty-six (86.36),  
9 subsections three (3) and four (4), Code 1977, are amended  
10 to read as follows:

11 3. In lieu of mailing said copy of notice to the non-  
12 resident employer in a foreign state, plaintiff may cause  
13 the same to be personally served or delivered in the foreign  
14 state on such employer by any adult person not a party to  
15 the proceedings, by delivering said copy of notice to the  
16 nonresident employer or by offering to make such delivery  
17 in case ~~he~~ delivery is refused to-accept-delivery.

18 4. Proof of the filing of a copy of said notice with the  
19 secretary of state and proof of the mailing or personal  
20 delivery of the copy to said nonresident employer shall be  
21 made by affidavit of the party doing said acts. All affidavits  
22 of service or delivery shall be endorsed upon or attached  
23 to the original of the papers to which they relate and all  
24 such proofs of service or delivery, including the certified  
25 mail return receipt shall be forthwith filed with the original  
26 of the papers.

27 Sec. 20. Section eighty-six point forty-two (86.42), Code  
28 1977, is amended to read as follows:

29 86.42 JUDGMENT BY DISTRICT COURT ON AWARD. Any party  
30 in interest may present a certified copy of an order or de-  
31 cision of the commissioner, from which no timely petition  
32 for judicial review has been filed ~~within-the-time-allowed~~  
33 ~~therefor~~ or if judicial review has been filed, which has not  
34 had execution or enforcement stayed as provided in section  
35 seventeen A point nineteen (17A.19), subsection five (5) of

1 the Code, or an order or decision of a deputy commissioner  
2 from which no timely appeal has been taken within the agency  
3 and which has become final by the passage of time as provided  
4 by rule and section seventeen A point fifteen (17A.15) of  
5 the Code, or a memorandum of agreement approved by the  
6 commissioner, and all papers in connection therewith, to the  
7 district court of the county in which the injury occurred  
8 where judicial review of the agency action may be commenced,  
9 whereupon said court shall render a decree or judgment in  
10 accordance therewith and cause the clerk to notify the parties.  
11 Such decree or judgment, in the absence of a petition for  
12 judicial review or if judicial review has been commenced,  
13 in the absence of a stay of execution or enforcement of the  
14 decision or order of the industrial commissioner, or in the  
15 absence of an act of any party which prevents a decision of  
16 a deputy industrial commissioner from becoming final, shall  
17 have the same effect and in all proceedings in relation thereto  
18 shall thereafter be the same as though rendered in a suit  
19 duly heard and determined by said court.

20 Sec. 21. Sections eighty-five point forty-six (85.46),  
21 eighty-six point twenty-one (86.21), eighty-six point twenty-  
22 two (86.22), eighty-six point twenty-three (86.23), eighty-  
23 six point twenty-five (86.25), eighty-six point twenty-eight  
24 (86.28), eighty-six point thirty-four (86.34), eighty-six  
25 point thirty-five (86.35), and eighty-six point thirty-seven  
26 (86.37), Code 1977, are repealed.

27 EXPLANATION

28 Since the Iowa Administrative Procedure Act was enacted,  
29 there has been confusion in the manner in which a workers'  
30 compensation or occupational disease claim is to be handled  
31 because of inconsistent provisions between chapter 17A and  
32 chapters 85 and 86. This bill is to bring the provisions  
33 of chapters 85 and 86 into conformity with the provisions  
34 of chapter 17A.

35

LSB 1113S  
zz/jw/5

SENATE FILE 328

AN ACT

TO RESOLVE DIFFERENCES IN PROCEDURES INVOLVING PROVISIONS OF THE WORKERS' COMPENSATION LAW AND THE IOWA ADMINISTRATIVE PROCEDURE ACT.

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

Section 1. Section eighty-five point three (85.3), subsection two (2), unnumbered paragraph two (2), Code 1977, is amended to read as follows:

Such in addition to those persons authorized to receive personal service as in civil actions as permitted by chapter seventeen A (17A) of the Code, 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, 86, and 87, and seventeen A (17A) of the Code, 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.

Sec. 2. Section eighty-five point twenty-six (85.26), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

85.26 LIMITATIONS OF ACTIONS.

1. No original proceedings for benefits under this chapter, chapter eighty-five A (85A) or eighty-six (86) of the Code, shall be maintained in any contested case unless such proceedings shall be commenced within two years from the date of the occurrence of the injury for which benefits are claimed except as provided by section eighty-six point twenty (86.20) of the Code.

2. Any award for payments or agreement for settlement provided by section eighty-six point thirteen (86.13) of the Code for benefits under the workers' compensation or occupational disease law may, where the amount has not been computed, 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 such award or agreement. Once an award for payments or agreement for settlement as provided by section eighty-six point thirteen (86.13) of the Code for benefits under the workers' compensation or occupational disease law has been made where the amount has not been computed, 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 eighty-five point twenty-seven (85.27) of the Code.

3. Notwithstanding the terms of chapter seventeen A (17A) of the Code, the filing with the industrial 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 eighty-six point thirteen (86.13) of the Code, for benefits under the workers' compensation or occupational disease law shall be the only act constituting "commencement" for purposes of this statutory section.

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

Sec. 3. Section eighty-five point thirty-five (85.35), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

~~When no memorandum of agreement has been filed and approved by the industrial commissioner, 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 or chapter eighty-six (86) of the Code, providing for final disposition of the claim, provided that no final disposition affecting rights to future benefits may be had when the only dispute is the degree of disability resulting from an injury for which an award for payments or agreement for settlement under section eighty-six point thirteen (86.13) of the Code has been made. The settlement shall be in writing and submitted to the industrial commissioner for approval. The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

Sec. 4. Section eighty-five point thirty-five (85.35), subsection three (3), Code 1977, is amended by striking the subsection and inserting in lieu thereof the following:

3. Whether or not the statutes of limitations as provided in section eighty-five point twenty-six (85.26) of the Code have run. When the issue involved is whether or not the statute of limitations of section eighty-five point twenty-six (85.26), subsection two (2) of the Code, has run, the final disposition shall pertain to the right to weekly compensation unless otherwise provided for in subsection seven (7) of section eighty-five point thirty-five (85.35) of the Code.

Sec. 5. Section eighty-five point thirty-five (85.35), subsection seven (7), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

This chapter or chapter 85A, eighty-six (86) or eighty-seven (87) of the Code applies to the party making the claim.

Sec. 6. Section eighty-six point two (86.2), Code 1977, is amended to read as follows:

86.2 APPOINTMENT OF DEPUTIES. The commissioner may appoint four deputy industrial commissioners for whose acts

he the commissioner shall be responsible and who shall serve during the pleasure of the commissioner, and all such deputies must be lawyers admitted to practice in this state.

Sec. 7. Section eighty-six point three (86.3), Code 1977, is amended to read as follows:

86.3 DUTIES OF DEPUTIES. ~~Notwithstanding the provisions of chapter seventeen A (17A) of the Code, in the absence or disability of the industrial commissioner, or when acting under the directions of written delegation of authority to perform specified functions as made by the commissioner, the deputies shall have all of the any necessary specified powers and to perform all of the any necessary or specified duties of the industrial commissioner pertaining to his or her office. Notwithstanding the definitions and terms of chapter seventeen A (17A) of the Code, pertaining to the issuance of final decisions, when the above circumstances exist a deputy commissioner shall have the power to issue a final decision as if issued by the agency.~~

Sec. 8. Section eighty-six point eight (86.8), subsection four (4), Code 1977, is amended to read as follows:

4. To keep records of all proceedings and decisions of such boards; issue subpoenas for witnesses; issue subpoenas duces tecum; administer oaths, examine books and records of parties subject to such provisions.

Sec. 9. Section eighty-six point fourteen (86.14), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.14 CONTESTED CASES.

1. In an original proceeding, all matters relevant to a dispute are subject to inquiry.

2. In a proceeding to reopen an award for payments or agreement for settlement as provided by section eighty-six point thirteen (86.13) of the Code, inquiry shall be into whether or not the condition of the employee warrants an end

to, diminishment of, or increase of compensation so awarded or agreed upon.

Sec. 10. Section eighty-six point seventeen (86.17), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.17 HEARINGS--PRESIDING OFFICER--VENUE.

1. A deputy industrial commissioner may preside over any contested case proceeding brought under this chapter, chapter eighty-five (85) or eighty-five A (85A) of the Code in the manner provided by chapter seventeen A (17A) of the Code. The deputy commissioner or the commissioner may make such inquiries and investigation in contested case proceedings as shall be deemed necessary, consistent with the provisions of section seventeen A point seventeen (17A.17) of the Code.

2. Hearings in contested case proceedings under chapters eighty-five (85), eighty-five A (85A) and eighty-six (86) of the Code shall be held in the judicial district where the injury occurred. By written stipulation of the parties or by the order of a deputy industrial commissioner or the commissioner, a hearing may be held elsewhere. If the injury occurred outside this state, or if the proceeding is not one for benefits resulting from an injury, hearings shall be held in Polk county or as otherwise stipulated by the parties or by order of a deputy industrial commissioner or the industrial commissioner.

Sec. 11. Section eighty-six point eighteen (86.18), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.18 HEARINGS--EVIDENCE.

1. Evidence, process and procedure in contested case proceedings or appeal proceedings within the agency under this chapter, chapters eighty-five (85) and eighty-five A (85A) of the Code shall be as summary as practicable consistent with the requirements of chapter seventeen A (17A) of the

Code.

2. The deposition of any witness may be taken and used as evidence in any pending proceeding or appeal within the agency.

Sec. 12. Section eighty-six point nineteen (86.19), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.19 REPORTING OF PROCEEDINGS.

1. The industrial commissioner, or a deputy commissioner, may appoint or may direct a party to furnish at the party's initial expense a certified shorthand reporter to be present and report, or to furnish mechanical means to record, and if necessary, transcribe proceedings of any contested case under this chapter, chapters eighty-five (85) and eighty-five A (85A) of the Code and fix the reasonable amount of compensation for such service. The charges shall be taxed as costs and the party initially paying the expense of the presence or transcription shall be reimbursed. The reporter shall faithfully and accurately report the proceedings.

2. Notwithstanding the requirements of section seventeen A point twelve (17A.12), subsection seven (7) of the Code, a certified shorthand reporter, appointed by the presiding officer in a contested case proceeding or by the industrial commissioner in an appeal proceeding, may maintain and thus have the responsibility for the recording or stenographic notes for the period required by section seventeen A point twelve (17A.12), subsection seven (7), of the Code.

Sec. 13. Section eighty-six point twenty (86.20), unnumbered paragraph five (5), Code 1977, is amended to read as follows:

If a memorandum of agreement is filed and approved pursuant to section 86.13 or an award for payments is granted pursuant to ~~section 86.23~~ the employer or insurance carrier shall be entitled to credit for amounts paid under this section.

Sec. 14. Section eighty-six point twenty-four (86.24), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.24 APPEALS WITHIN THE AGENCY.

1. Any party aggrieved by a decision, order, ruling, finding or other act of a deputy commissioner in a contested case proceeding arising under this chapter or chapter eighty-five (85) or eighty-five A (85A) of the Code may appeal to the industrial commissioner in the time and manner provided by rule. The hearing on an appeal shall be in Polk county unless the industrial commissioner shall direct the hearing be held elsewhere.

2. In addition to the provisions of section seventeen A point fifteen (17A.15) of the Code, the industrial commissioner may affirm, modify, or reverse the decision of a deputy commissioner or he may remand the decision to the deputy commissioner for further proceedings.

3. In addition to the provisions of section seventeen A point fifteen (17A.15) of the Code, the industrial commissioner, on appeal, may limit the presentation of evidence as provided by rule.

4. A transcript of a contested case proceeding shall be provided by the appealing party at his or her cost and shall be filed with the industrial commissioner within thirty days after the filing of the appeal to the industrial commissioner.

Sec. 15. Section eighty-six point twenty-six (86.26), Code 1977, is amended to read as follows:

86.26 JUDICIAL REVIEW. Judicial review of decisions or orders of the industrial commissioner ~~in a proceeding on review of an arbitration decision~~ may be sought in accordance with the terms of ~~the Iowa administrative procedure Act chapter seventeen A (17A) of the Code.~~ chapter seventeen A (17A) of the Code. Notwithstanding the terms of ~~the Iowa administrative procedure Act chapter seventeen A (17A) of the Code,~~ petitions for judicial review may be

filed in the district court of the county in which the hearing under section 86.17 was held. Such a review proceeding shall be accorded priority over other matters pending before the district court.

Sec. 16. Section eighty-six point thirty-two (86.32), Code 1977, is amended to read as follows:

86.32 COSTS ON APPEAL OF JUDICIAL REVIEW. In proceedings for judicial review of compensation cases the clerk shall charge no fee for any service rendered except the filing fee and transcript fees when the transcript of a judgment is required. The taxation of costs ~~in such appeals on judicial review~~ shall be in the discretion of the court.

Sec. 17. Section eighty-six point thirty-six (86.36), subsection one (1), Code 1977, is amended by striking the subsection.

Sec. 18. Section eighty-six point thirty-six (86.36), subsection two (2), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

Whenever in addition to the manner provided in chapter seventeen A (17A) of the Code, whenever service or delivery of any notice is made on a nonresident employer under the provisions of section 85.3, subsection 2, the same shall be done in the following manner:

Sec. 19. Section eighty-six point thirty-six (86.36), subsections three (3) and four (4), Code 1977, are amended to read as follows:

3. In lieu of mailing said copy of notice to the nonresident employer in a foreign state, plaintiff may cause the same to be personally served or delivered in the foreign state on such employer by any adult person not a party to the proceedings, by delivering said copy of notice to the nonresident employer or by offering to make such delivery in case he delivery is refused to accept delivery.

4. Proof of the filing of a copy of said notice with the

secretary of state and proof of the mailing or personal delivery of the copy to said nonresident employer shall be made by affidavit of the party doing said acts. All affidavits of service or delivery shall be endorsed upon or attached to the original of the papers to which they relate and all such proofs of service or delivery, including the certified mail return receipt shall be forthwith filed with the original of the papers.

Sec. 20. Section eighty-six point forty-two (86.42), Code 1977, is amended to read as follows:

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

shall thereafter be the same as though rendered in a suit duly heard and determined by said court.

Sec. 21. Sections eighty-five point forty-six (85.46), eighty-six point twenty-one (86.21), eighty-six point twenty-two (86.22), eighty-six point twenty-three (86.23), eighty-six point twenty-five (86.25), eighty-six point twenty-eight (86.28), eighty-six point thirty-four (86.34), eighty-six point thirty-five (86.35), and eighty-six point thirty-seven (86.37), Code 1977, are repealed.

ARTHUR A. NEU  
President of the Senate

DALE H. COCHRAN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 328, Sixty-seventh General Assembly.

STEVEN C. CROSS  
Secretary of the Senate

Approved *April 29*, 1977

ROBERT D. RAY  
Governor