

Amended 3/5/92, Amend & No Pass (S. 5397)

MAR 6 1992

Place On Calendar

HOUSE FILE 2390
BY COMMITTEE ON LABOR
AND INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 642)

Passed House, Date 3/11/92 (p. 544) Passed Senate, Date 3/31/92 (p. 1120)
Vote: Ayes 98 Nays 0 Vote: Ayes 38 Nays 9

Approved April 17, 1992 (p. 1628)

*Repassed House 4/6/92 (p. 1099)
Ayes 96, Nays 0*

A BILL FOR

1 An Act relating to the recovery of interest, court costs, and
2 attorney fees by the labor commissioner, occupational safety
3 and health penalties, elevator inspections, boiler inspection,
4 and amusement park permit and inspection fees.

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

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HF 2390

1 Section 1. Section 88.14, subsections 1, 3, 4, and 9, Code
2 Supplement 1991, are amended to read as follows:

3 1. WILLFUL VIOLATIONS. Any employer who willfully or
4 repeatedly violates the requirements of section 88.4, any
5 standard, rule, or order adopted or issued pursuant to section
6 88.5, or regulations-prescribed rules adopted pursuant to this
7 chapter, may be assessed a civil penalty of not-less-than-five
8 thousand-dollars-and not more than seventy thousand dollars
9 for each violation, but not less than five thousand dollars
10 for each willful violation.

11 3. NONSERIOUS VIOLATIONS. Any employer who has received a
12 citation for a violation of the requirements of section 88.4,
13 of any standard, rule or order promulgated adopted or issued
14 pursuant to section 88.5 or of rules prescribed pursuant to
15 this chapter and such the violation is specifically determined
16 not to be of a serious nature, may be assessed a civil penalty
17 of up to one seven thousand dollars for each such violation.

18 4. FAILURE TO CORRECT. Any employer who fails to correct
19 a violation for which a citation has been issued under section
20 88.7, subsection 1, within the period permitted for its
21 correction (~~which period shall not begin to run until the date~~
22 ~~of the final order of the appeal board in the case of any~~
23 ~~review proceeding under section 88.8 initiated by the employer~~
24 ~~in good faith and not solely for delay or avoidance of~~
25 ~~penalties~~), may be assessed a civil penalty of not more than
26 one seven thousand dollars for each day during which such the
27 failure or violation continues. The period for correction
28 shall not begin until the date of the final order of the
29 appeal board of any review proceeding under section 88.8
30 initiated by the employer in good faith and not solely for
31 delay or avoidance of penalties.

32 9. VIOLATION OF POSTING REQUIREMENTS. Any employer who
33 violates any of the posting, reporting, or record-keeping
34 recordkeeping requirements as-prescribed under the-provisions
35 of this chapter, shall be assessed a civil penalty of up to

1 one seven thousand dollars for each violation.

2 Sec. 2. Section 88A.4, Code 1991, is amended to read as
3 follows:

4 88A.4 PERMIT AND INSPECTION FEES.

5 Annual inspection fees under this chapter shall be as
6 follows:

7 1. Permit fees.

8 a. One through ten rides, or devices or concessions, ten
9 twenty dollars.

10 b. Eleven or more rides, or devices or concessions, twenty
11 thirty dollars.

12 2. Mechanical and electrical inspection fees for amusement
13 rides and devices.

14 a. For rides which are designed for seventy-five pounds or
15 less per passenger unit, ~~forty~~ sixty dollars for each
16 inspection.

17 b. For rides which are designed for seventy-five pounds or
18 more and for which the manufacturer's recommended assembly
19 time is less than forty work hours, ~~seventy-five~~ ninety
20 dollars for each inspection.

21 c. For rides for which the manufacturer's recommended
22 assembly time is forty work hours or more, one hundred twenty
23 dollars for each inspection.

24 3. Electrical inspection of concession booths, and
25 amusement devices fees, ~~twenty-five~~ thirty-five dollars each.

26 4. Special inspectors authorization fee, ~~two~~ twenty-five
27 dollars each. The special inspectors authorization shall
28 allow a person to perform inspections only on rides, devices,
29 and concession booths of an operator who makes the request for
30 the special inspectors authorization. The failure of a
31 special inspector to inform the commissioner of violations
32 shall not subject the commissioner to liability for any
33 damages incurred.

34 Sec. 3. Section 89.2, subsection 4, Code 1991, is amended
35 to read as follows:

1 4. "Place of public assembly" means any building or
2 portion of a building designed, intended, and used for
3 occupation by persons for purposes of entertainment,
4 instruction, or amusement and shall include theaters, motion
5 picture theaters, hospitals, places of worship, schools,
6 colleges, and institutions of health and custodial care, but
7 does not include eating and drinking establishments.

8 Sec. 4. Section 89.4, subsection 1, Code 1991, is amended
9 by adding the following new paragraph:

10 NEW PARAGRAPH. h. Hot water heating boilers used for
11 heating pools or spas where burner input is no greater than
12 eighteen thousand seven hundred seventy-two British thermal
13 units per hour.

14 Sec. 5. Section 89A.6, subsection 5, Code 1991, is amended
15 to read as follows:

16 5. A report of every inspection shall be filed with the
17 commissioner by the inspector or special inspector, on a form
18 approved by and containing all information required by the
19 commissioner, after the inspection has been completed and
20 within the time provided by rule, but not to exceed thirty
21 days. The report shall include all information required by
22 the commissioner to determine whether the owner of the
23 facility has complied with applicable rules. For the
24 inspection required by subsection 1, the report shall indicate
25 whether the facility has been installed in accordance with the
26 detailed plans and specifications approved by the
27 commissioner, and meets the requirements of the applicable
28 rules. The failure of a special inspector to inform the
29 commissioner of violations shall not subject the commissioner
30 to liability for any damages incurred.

31 Sec. 6. Section 91.4, Code Supplement 1991, is amended by
32 adding the following new subsections:

33 NEW SUBSECTION. 8. The commissioner may recover interest,
34 court costs, and any attorney fees incurred in recovering any
35 amounts due. Attorney fees recovered in an action brought

1 under the jurisdiction of the commissioner shall be deposited
2 in the general fund of the state. The commissioner is exempt
3 from the payment of any filing fee or other court costs
4 including but not limited to fees paid to county sheriffs.
5 NEW SUBSECTION. 9. The commissioner may establish rules
6 pursuant to chapter 17A to assess and collect interest on
7 fees, penalties, and other amounts due the division.

8

EXPLANATION

9 This bill conforms Iowa occupational safety and health Act
10 (OSHA) penalties with those in federal law by removing the
11 minimum penalty of \$5,000 for repeated OSHA violations, and
12 increasing the OSHA penalties for nonserious violations,
13 failure to correct violations, and violations of posting
14 requirements.

15 The bill limits the liability of the labor commissioner
16 when special elevator inspectors or special amusement
17 inspectors, who are licensed by the commissioner but not
18 employed by the division, fail to inform the commissioner of
19 violations.

20 The bill exempts eating and drinking establishments from
21 the definition of places of public assembly under the boiler
22 inspection law, and exempts certain boilers in pools or spas
23 from inspection requirements.

24 The bill increases certain amusement park permit and
25 inspection fees.

26 The bill permits the labor commissioner to recover the
27 interest, court costs, and attorney fees incurred in
28 recovering amounts due, and exempts the commissioner from
29 filing fees and other court costs. Moneys recovered are to be
30 deposited in the state general fund. The commissioner is also
31 allowed to establish rules pursuant to chapter 17A to assess
32 and collect interest for fees, penalties, or any amounts due
33 to the labor division.

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HOUSE FILE 2390
FISCAL NOTE

A fiscal note for House File 2390 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2390 conforms the Iowa Occupational Safety and Health Act (IOSH) with the federal law. Changes include:

1. Removes the minimum penalty of \$5,000 for repeated OSHA violations and increases the OSHA penalties for nonserious violations, failure to correct violations, and violations of posting requirements.
2. Limits the liability of the Labor Commissioner when special elevator inspectors or special amusement inspectors, who are licensed by the Commissioner, but not employed by the Labor Services Division, fail to inform the Commissioner of violations.
3. Exempts eating and drinking establishments from the definition of places of public assembly under the boiler inspection law, and exempts certain boilers in pools or spas from inspection requirements.
4. Increases certain amusement park permit and inspection fees.
5. Allows the Labor Commissioner to recover interest, court costs, and attorneys' fees incurred in recovering amounts due the Division.
6. Allows the Labor Commissioner to establish rules necessary to assess and collect interest for fees, penalties, or any amounts due the Division.

Assumptions:

1. Amusement fees will be increased by \$13,000.
2. Fees recovered through collection and OSHA penalties will result in an additional \$100,000 revenue for the General Fund.
3. The Labor Services Division will require an Attorney I and a system support worker to fully implement the provisions of this bill.

Fiscal Impact:

This bill will increase revenues to the General Fund by \$113,000 each year in FY 1993 and FY 1994. General Fund expenditures will increase by \$68,733 for 2.0 FTE positions each year in FY 1993 and FY 1994. The net fiscal impact of this bill is an increase in General Fund revenues of \$44,267 each year for FY 1993 and FY 1994.

Source: Department of Employment Service - Labor Services Division

(LSB 5269hv, MAS)

FILED MARCH 18, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2390

S-5397

- 1 Amend House File 2390, as passed by the House, as
2 follows:
- 3 1. Page 3, line 33, by striking the word "The"
4 and inserting the following: "Except as provided in
5 chapter 91A, the".
- 6 2. Page 3, line 35, by inserting after the word
7 "due." the following: "The recovery shall only take
8 place after final agency action is taken under chapter
9 17A, or upon judicial review, after final disposition
10 of the case by the court."
- 11 3. Page 4, by inserting after line 7 the
12 following:
13 "Sec. _____. The portion of section 1 of this Act
14 which amends section 88.14, subsection 1, applies
15 retroactively to July 1, 1991, for cases still
16 pending.
- 17 Sec. _____. This Act, being deemed of immediate
18 importance, takes effect upon enactment."
- 19 4. Title page, by striking line 4 and inserting
20 the following: "amusement park permit and inspection
21 fees, and providing a retroactive applicability date
22 and an effective date."
- 23 5. By renumbering as necessary.

By COMMITTEE ON BUSINESS AND
LABOR RELATIONS
RICHARD RUNNING, CHAIRPERSON

S-5397 FILED MARCH 26, 1992

Adopted 3/31 (p. 1120)

SENATE AMENDMENT TO HOUSE FILE 2390

H-5659

1 Amend House File 2390, as passed by the House, as
2 follows:

3 1. Page 3, line 33, by striking the word "The"
4 and inserting the following: "Except as provided in
5 chapter 91A, the".

6 2. Page 3, line 35, by inserting after the word
7 "due." the following: "The recovery shall only take
8 place after final agency action is taken under chapter
9 17A, or upon judicial review, after final disposition"
10 of the case by the court."

11 3. Page 4, by inserting after line 7 the
12 following:

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14 which amends section 88.14, subsection 1, applies
15 retroactively to July 1, 1991, for cases still
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18 importance, takes effect upon enactment."

19 4. Title page, by striking line 4 and inserting
20 the following: "amusement park permit and inspection
21 fees, and providing a retroactive applicability date
22 and an effective date."

23 5. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-5659 FILED APRIL 2, 1992

House concurred 4/6 (p. 1099)

Connors, Ch.
Branstad
Mc Neal
Sherzan
Wissing

15R 642

LABOR & INDUSTRIAL RELATIONS

Now

SENATE/HOUSE FILE 2390
BY (PROPOSED DEPARTMENT OF
EMPLOYMENT SERVICES/LABOR
SERVICES DIVISION BILL)

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

A BILL FOR

1 An Act relating to the recovery of interest, court costs, and
2 attorney fees by the labor commissioner, occupational safety
3 and health penalties, elevator inspections, and amusement park
4 permit and inspection fees.

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

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SUB COMMITTEE ASSIGNMENTS

CHAIR: Connors
COMMITTEE: Labor
2-17-92

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5 standard, rule, or order adopted or issued pursuant to section
6 88.5, or regulations-prescribed rules adopted pursuant to this
7 chapter, may be assessed a civil penalty of ~~not-less-than-five~~
8 ~~thousand-dollars-and~~ not more than seventy thousand dollars
9 for each violation, but not less than five thousand dollars
10 for each willful violation.

11 3. NONSERIOUS VIOLATIONS. Any employer who has received a
12 citation for a violation of the requirements of section 88.4,
13 of any standard, rule or order ~~promulgated~~ adopted or issued
14 pursuant to section 88.5 or of rules prescribed pursuant to
15 this chapter and ~~such~~ the violation is specifically determined
16 not to be of a serious nature, may be assessed a civil penalty
17 of up to one seven thousand dollars for each ~~such~~ violation.

18 4. FAILURE TO CORRECT. Any employer who fails to correct
19 a violation for which a citation has been issued under section
20 88.7, subsection 1, within the period permitted for its
21 correction ~~(which-period-shall-not-begin-to-run-until-the-date~~
22 ~~of-the-final-order-of-the-appeal-board-in-the-case-of-any~~
23 ~~review-proceeding-under-section-88.8-initiated-by-the-employer~~
24 ~~in-good-faith-and-not-solely-for-delay-or-avoidance-of~~
25 ~~penalties)~~, may be assessed a civil penalty of not more than
26 one seven thousand dollars for each day during which ~~such~~ the
27 failure or violation continues. The period for correction
28 shall not begin until the date of the final order of the
29 appeal board of any review proceeding under section 88.8
30 initiated by the employer in good faith and not solely for
31 delay or avoidance of penalties.

32 9. VIOLATION OF POSTING REQUIREMENTS. Any employer who
33 violates any of the posting, reporting, or ~~record-keeping~~
34 recordkeeping requirements ~~as-prescribed~~ under the-provisions
35 of this chapter, shall be assessed a civil penalty of up to

1 ~~one~~ seven thousand dollars for each violation.

2 Sec. 2. Section 88A.4, Code 1991, is amended to read as
3 follows:

4 88A.4 PERMIT AND INSPECTION FEES.

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6 follows:

7 1. Permit fees.

8 a. One through ten rides, or devices or concessions, ~~ten~~
9 twenty dollars.

10 b. Eleven or more rides, or devices or concessions, ~~twenty~~
11 thirty dollars.

12 2. Mechanical and electrical inspection fees for amusement
13 rides and devices.

14 a. For rides which are designed for seventy-five pounds or
15 less per passenger unit, ~~fifty~~ sixty dollars for each
16 inspection.

17 b. For rides which are designed for seventy-five pounds or
18 more and for which the manufacturer's recommended assembly
19 time is less than forty work hours, ~~seventy-five~~ ninety
20 dollars for each inspection.

21 c. For rides for which the manufacturer's recommended
22 assembly time is forty work hours or more, one hundred twenty
23 dollars for each inspection.

24 3. Electrical inspection of concession booths, and
25 amusement devices fees, ~~twenty-five~~ thirty-five dollars each.

26 4. Special inspectors authorization fee, ~~two~~ twenty-five
27 dollars each. The special inspectors authorization shall
28 allow a person to perform inspections only on rides, devices,
29 and concession booths of an operator who makes the request for
30 the special inspectors authorization. The failure of a
31 special inspector to inform the commissioner of violations
32 shall not subject the commissioner to liability for any
33 damages incurred.

34 Sec. 3. Section 89A.6, subsection 5, Code 1991, is amended
35 to read as follows:

1 5. A report of every inspection shall be filed with the
2 commissioner by the inspector or special inspector, on a form
3 approved by and containing all information required by the
4 commissioner, after the inspection has been completed and
5 within the time provided by rule, but not to exceed thirty
6 days. The report shall include all information required by
7 the commissioner to determine whether the owner of the
8 facility has complied with applicable rules. For the
9 inspection required by subsection 1, the report shall indicate
10 whether the facility has been installed in accordance with the
11 detailed plans and specifications approved by the
12 commissioner, and meets the requirements of the applicable
13 rules. The failure of a special inspector to inform the
14 commissioner of violations shall not subject the commissioner
15 to liability for any damages incurred.

16 Sec. 4. Section 91.4, Code Supplement 1991, is amended by
17 adding the following new subsections:

18 NEW SUBSECTION. 8. The commissioner may recover interest,
19 court costs, and any attorney fees incurred in recovering any
20 amounts due. Attorney fees recovered in an action brought
21 under the jurisdiction of the commissioner shall be deposited
22 in the general fund of the state. The commissioner is exempt
23 from the payment of any filing fee or other court costs
24 including but not limited to fees paid to county sheriffs.

25 NEW SUBSECTION. 9. The commissioner may establish rules
26 pursuant to chapter 17A to assess and collect interest on
27 fees, penalties, and other amounts due the division.

28 EXPLANATION

29 This bill conforms Iowa occupational safety and health Act
30 (OSHA) penalties with those in federal law by removing the
31 minimum penalty of \$5,000 for repeated OSHA violations, and
32 increasing the OSHA penalties for nonserious violations,
33 failure to correct violations, and violations of posting
34 requirements.

35 The bill limits the liability of the labor commissioner

1 when special elevator inspectors or special amusement
2 inspectors, who are licensed by the commissioner but not
3 employed by the division, fail to inform the commissioner of
4 violations.

5 The bill increases certain amusement park permit and
6 inspection fees.

7 The bill permits the labor commissioner to recover the
8 interest, court costs, and attorney fees incurred in
9 recovering amounts due, and exempts the commissioner from
10 filing fees and other court costs. Moneys recovered are to be
11 deposited in the state general fund. The commissioner is also
12 allowed to establish rules pursuant to chapter 17A to assess
13 and collect interest for fees, penalties, or any amounts due
14 to the labor division.

15 BACKGROUND STATEMENT

16 SUBMITTED BY THE AGENCY

17 Section 1: Congress revised the OSHA penalties in October
18 1990, and Iowa needs to bring the penalties into conformance
19 with the federal law. Not all of the appropriate changes were
20 made in 1991.

21 Section 2: Increases permit and inspection fees to make
22 the amusement park/ride inspection programs self-supporting
23 for at least the next three years. These fees have not been
24 increased since 1981. The commissioner should not be held
25 liable for the negligence of the special inspectors.

26 Section 3: Special elevator inspectors are licensed by the
27 labor commissioner. The commissioner should not be held
28 liable for the negligence of the special inspectors.

29 Section 4: The commissioner only has authority to recover
30 attorney fees in wage collection cases. The filing fee and
31 court costs to the commissioner are currently waived in wage
32 collection cases. Allowing the division to recover attorney
33 fees and waive the filing fee and court costs will provide
34 additional dollars to the state general fund.

35 Currently, no incentive exists to encourage the prompt

1 payment of moneys owed the state in the Code sections under
2 the jurisdiction of the commissioner. The amounts owed the
3 state need to be recovered and instituting an interest charge
4 will be an incentive to pay the fees, penalties, settlements,
5 or accounts on time.

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HOUSE FILE 2390

AN ACT

RELATING TO THE RECOVERY OF INTEREST, COURT COSTS, AND ATTORNEY FEES BY THE LABOR COMMISSIONER, OCCUPATIONAL SAFETY AND HEALTH PENALTIES, ELEVATOR INSPECTIONS, BOILER INSPECTION, AMUSEMENT PARK PERMIT AND INSPECTION FEES, AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN EFFECTIVE DATE.

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

Section 1. Section 88.14, subsections 1, 3, 4, and 9, Code Supplement 1991, are amended to read as follows:

1. WILLFUL VIOLATIONS. Any employer who willfully or repeatedly violates the requirements of section 88.4, any standard, rule, or order adopted or issued pursuant to section 88.5, or ~~regulations-prescribed rules adopted~~ pursuant to this chapter, may be assessed a civil penalty of ~~not less than five thousand dollars and not more than seventy thousand dollars~~ for each violation, but not less than five thousand dollars for each willful violation.

3. NONSERIOUS VIOLATIONS. Any employer who has received a citation for a violation of the requirements of section 88.4, of any standard, rule or order promulgated ~~adopted or issued~~ pursuant to section 88.5 or of rules prescribed pursuant to this chapter and such the violation is specifically determined

not to be of a serious nature, may be assessed a civil penalty of up to one seven thousand dollars for each such violation.

4. FAILURE TO CORRECT. Any employer who fails to correct a violation for which a citation has been issued under section 88.7, subsection 1, within the period permitted for its correction ~~(which period shall not begin to run until the date of the final order of the appeal board in the case of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties)~~, may be assessed a civil penalty of not more than one seven thousand dollars for each day during which the failure or violation continues. The period for correction shall not begin until the date of the final order of the appeal board of any review proceeding under section 88.8 initiated by the employer in good faith and not solely for delay or avoidance of penalties.

9. VIOLATION OF POSTING REQUIREMENTS. Any employer who violates any of the posting, reporting, or record keeping ~~recordkeeping~~ requirements ~~as prescribed under the provisions~~ of this chapter, shall be assessed a civil penalty of up to one seven thousand dollars for each violation.

Sec. 2. Section 88A.4, Code 1991, is amended to read as follows:

88A.4 PERMIT AND INSPECTION FEES.

Annual inspection fees under this chapter shall be as follows:

1. Permit fees.

- a. One through ten rides, or devices or concessions, ten twenty dollars.
- b. Eleven or more rides, or devices or concessions, twenty thirty dollars.

2. Mechanical and electrical inspection fees for amusement rides and devices.

- a. For rides which are designed for seventy-five pounds or less per passenger unit, fifty sixty dollars for each inspection.

b. For rides which are designed for seventy-five pounds or more and for which the manufacturer's recommended assembly time is less than forty work hours, ~~seventy-five~~ ninety dollars for each inspection.

c. For rides for which the manufacturer's recommended assembly time is forty work hours or more, one hundred twenty dollars for each inspection.

3. Electrical inspection of concession booths, and amusement devices fees, ~~twenty-five~~ thirty-five dollars each.

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4. "Place of public assembly" means any building or portion of a building designed, intended, and used for occupation by persons for purposes of entertainment, instruction, or amusement and shall include theaters, motion picture theaters, hospitals, places of worship, schools, colleges, and institutions of health and custodial care, but does not include eating and drinking establishments.

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NEW PARAGRAPH. h. Hot water heating boilers used for heating pools or spas where burner input is no greater than eighteen thousand seven hundred seventy-two British thermal units per hour.

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Sec. 6. Section 91.4, Code Supplement 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 8. Except as provided in chapter 91A, the commissioner may recover interest, court costs, and any attorney fees incurred in recovering any amounts due. The recovery shall only take place after final agency action is taken under chapter 17A, or upon judicial review, after final disposition of the case by the court. Attorney fees recovered in an action brought under the jurisdiction of the commissioner shall be deposited in the general fund of the state. The commissioner is exempt from the payment of any filing fee or other court costs including but not limited to fees paid to county sheriffs.

NEW SUBSECTION. 9. The commissioner may establish rules pursuant to chapter 17A to assess and collect interest on fees, penalties, and other amounts due the division.

Sec. 7. The portion of section 1 of this Act which amends section 88.14, subsection 1, applies retroactively to July 1, 1991, for cases still pending.

Sec. 8. This Act, being deemed of immediate importance, takes effect upon enactment.

ROBERT C. ARNOULD
Speaker of the House

MICHAEL E. GRONSTAL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2390, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 17, 1992

TERRY E. BRANSTAD
Governor

HF 2390