

San Fisher 5/28 To Date 4/8/91

FILED MAR 20 1991

SENATE FILE 441
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 314)

Passed Senate, Date 3/26/91 (p. 863) Passed House, Date 4/25/91 (p. 1528)
Vote: Ayes 49 Nays 0 Vote: Ayes 96 Nays 0

Approved May 10, 1991 (p. 1842)

*Repassed Senate as further amended
4/30/91 (p. 1558)
Age 49 - May 9*

A BILL FOR

1 An Act relating to workers' compensation self-insurance, imposing
2 civil and criminal penalties, and providing an appropriation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. The commissioner of insurance shall adopt by
2 rule pursuant to chapter 17A amendments to the insurance
3 division's existing rules governing relief of employers from
4 mandatory workers' compensation insurance pursuant to section
5 87.11. The amendments shall generally provide for the
6 following:

7 1. The commissioner of insurance shall require more timely
8 and higher quality financial information as the basis for risk
9 assessment and determination of minimum security requirements,
10 including, but not limited to:

11 a. Required annual, quarterly, and material change in
12 circumstances financial filings. Federal securities and
13 exchange commission forms may be accepted for publicly held
14 companies by the commissioner in lieu of the division's forms
15 to avoid unnecessary duplication.

16 b. Financial statements filed with the division shall be
17 certified by a certified public accountant. Loss reserves and
18 claims history of an employer's self-insurance program shall
19 be certified by an independent actuary.

20 2. Reasonable protection for confidential proprietary
21 information in financial filings.

22 3. Eligibility for relief from insurance shall be
23 conditioned upon an employer receiving a minimum score of one
24 on the point system established in 191 IAC 57.3. A self-
25 insurer with an accredited safety program shall receive at
26 least one point. The commissioner of insurance may determine
27 by rule, order, or other agency action what will be accepted
28 by the commissioner of insurance as an accredited safety
29 program.

30 4. The required security shall be increased to reflect
31 inflation since 1984, and may be increased in the future as
32 necessary to reflect inflation or other changes generally
33 affecting the adequacy of posted security.

34 5. Terms of acceptable surety bond or alternative forms of
35 financial security shall provide for payment of the division's

1 administrative expenses, up to a maximum of ten percent of the
2 bond or other security.

3 6. A financial security mechanism other than a surety bond
4 may be accepted by the commissioner if the alternative
5 mechanism provides security of timely payment upon the
6 commissioner's demand equal to a surety bond and is otherwise
7 satisfactory to the commissioner.

8 Sec. 2. Section 25A.14, subsection 11, Code 1991, is
9 amended to read as follows:

10 11. Any claim for financial loss based upon an act or
11 omission in financial regulation, including but not limited to
12 examinations, inspections, audits, or other financial
13 oversight responsibilities, pursuant to Titles XIX through
14 XXIII, and chapter 87 of Title V.

15 Subsection 11 applies to all cases filed on or after July
16 1, 1986, and does not expand any existing cause of action or
17 create any new cause of action against the state.

18 Sec. 3. Section 87.11, Code 1991, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 3. A fee of fifty dollars, to be
21 submitted with each filing required by the commissioner of
22 insurance, including but not limited to the annual and
23 quarterly financial statements, and material change
24 statements.

25 Sec. 4. Section 87.11, Code 1991, is amended by adding the
26 following new unnumbered paragraphs:

27 NEW UNNUMBERED PARAGRAPH. If an employer becomes insolvent
28 and a debtor under 11 U.S.C. section 701 et seq. or under 11
29 U.S.C. section 1101 et seq., on or after January 1, 1990, this
30 paragraph applies. The commissioner of insurance may request
31 of the industrial commissioner that all future payments of
32 workers' compensation weekly benefits, medical expenses, or
33 other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be
34 commuted to a present lump sum. The industrial commissioner
35 shall fix the lump sum of probable future medical expenses and

1 weekly compensation benefits, or other benefits payable
2 pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at
3 their present value upon the basis of interest at the rate
4 provided in section 535.3 for court judgments and decrees.
5 The employer and the association shall be discharged from all
6 further liability for the commuted workers' compensation claim
7 upon payment of the present lump sum to either the claimant,
8 or a licensed insurer for purchase of an annuity or other
9 periodic payment plan for the benefit of the claimant.

10 NEW UNNUMBERED PARAGRAPH. The commissioner of insurance
11 shall not be required to pay more for all claims of an
12 insolvent self-insured employer than is available for payment
13 of such claims from the security given under this section.

14 NEW UNNUMBERED PARAGRAPH. Notwithstanding contrary
15 provisions of section 85.45, any future payment of medical
16 expenses, weekly compensation benefits, or other payments by
17 the commissioner of insurance from the security given under
18 this section, pursuant to chapter 85, 85A, 85B, 86, or 87,
19 shall be deemed an undue expense, hardship, or inconvenience
20 upon the employer for purposes of a full commutation pursuant
21 to section 85.45, subsection 2.

22 NEW UNNUMBERED PARAGRAPH. Financial statements provided to
23 the commissioner pursuant to this section may be held as
24 confidential, proprietary trade secrets, pursuant to section
25 22.7, subsection 3, upon the request of the employer, subject
26 to rules adopted by the commissioner, and are not subject to
27 disclosure or examination under chapter 22.

28 Sec. 5. NEW SECTION. 87.11A EXAMINATION REQUIRED.

29 The commissioner may at any time examine or inquire into
30 the affairs of any self-insured employer. A domestic self-
31 insured employer, or a self-insured employer not subject to
32 periodic examination in its state of origin, shall be examined
33 at least once during each three-year period.

34 Sec. 6. NEW SECTION. 87.11B OBLIGATION TO ASSIST AN
35 EXAMINATION -- OATHS.

1 If a self-insured employer is being examined, the officers,
2 employees, or agents of the employer, shall produce for
3 inspection all books, documents, papers, and other information
4 concerning the affairs of the employer and shall otherwise
5 assist in such examination to the extent possible. The
6 commissioner, or the commissioner's legally authorized
7 representative in charge of the examination, may administer
8 oaths and take testimony bearing upon the affairs of any
9 employer under examination.

10 Sec. 7. NEW SECTION. 87.11C SELF-INSURANCE EXAMINERS.

11 The commissioner of insurance shall appoint one or more
12 self-insurance examiners. An examiner while conducting an
13 examination, possesses all the powers conferred upon the
14 commissioner for such purposes. A self-insurance examiner is
15 subject to the same powers and conditions as imposed under
16 sections 507.4 through 507.7.

17 Sec. 8. NEW SECTION. 87.11D PAYMENT OF EXAMINATION
18 EXPENSES BY THE SELF-INSURED EMPLOYER.

19 The commissioner of insurance, upon the completion of an
20 examination, or at such regular intervals prior to completion
21 as the commissioner determines, shall prepare an account of
22 the costs incurred in performing and preparing the report of
23 such examinations which shall be charged to and paid by the
24 self-insured employer examined, and upon failure or refusal of
25 any self-insured employer to pay such a charge, the amount of
26 the charge may be recovered in an action brought in the name
27 of the state, and the commissioner may also revoke the
28 employer's exemption under section 87.11. All fees collected
29 in connection with an examination shall be paid into the
30 insurance division revolving fund.

31 Sec. 9. NEW SECTION. 87.11E PENALTIES FOR FILING FALSE
32 FINANCIAL STATEMENTS.

33 1. It is unlawful for any person to make or cause to be
34 made, in any document filed with the commissioner of insurance
35 under this chapter, any statement of material fact which is,

1 at the time and in the light of circumstances under which it
2 is made, false or misleading, or, in connection with such
3 statement, to omit to state a material fact necessary in order
4 to make the statements made, in the light of the circumstances
5 under which they are made, not misleading.

6 2. The following persons shall not commit any of the acts
7 or omissions prohibited by subsection 3:

8 a. An employer.

9 b. A person administering a self-insurance program, in
10 whole or in part, on behalf of an employer.

11 c. A partner of the employer or administrator.

12 d. An officer of the employer or administrator.

13 e. A director of the employer or administrator.

14 f. A person occupying a similar status or performing
15 similar functions as persons described in paragraphs "a"
16 through "e".

17 g. A person directly or indirectly controlling the
18 employer or administrator.

19 3. A person listed under subsection 2 shall not do any of
20 the following:

21 a. File an application for relief under section 87.11
22 which as of its effective date, or as of any date after filing
23 in the case of an order denying relief, was incomplete in any
24 material respect or contained any statement which was, in
25 light of the circumstances under which it was made, false or
26 misleading with respect to any material fact.

27 b. Willfully violate or willfully fail to comply with any
28 provision of sections 87.11 through 87.11B, or any rule or
29 order adopted or issued pursuant to such sections.

30 4. The commissioner of insurance may deny, suspend or
31 revoke a certificate of relief issued pursuant to section
32 87.11, or may impose a civil penalty for a violation of this
33 section.

34 5. A civil penalty levied under subsection 4 shall not
35 exceed one thousand dollars per violation per person, and

1 shall not exceed ten thousand dollars in a single proceeding
2 against any one person. All civil penalties shall be
3 deposited in the general fund of the state pursuant to section
4 505.7.

5 6. A person who willfully and knowingly violates this
6 section, or a rule or order adopted or issued pursuant to this
7 section, is guilty of a class "D" felony. The commissioner of
8 insurance may refer such evidence as is available concerning
9 violations of this section to the attorney general or the
10 proper county attorney who may, with or without such
11 reference, institute appropriate criminal proceedings under
12 this section. This section does not limit the power of the
13 state to punish a person for conduct which constitutes a crime
14 under any other statute.

15 Sec. 10. There is appropriated from the general fund of
16 the state from examination assessment revenues of the
17 insurance division of the department of commerce collected
18 pursuant to section 87.110, for the fiscal year beginning July
19 1, 1991, and ending June 30, 1992, the following amount, or so
20 much thereof as is necessary, to be used for the purposes
21 designated:

22 For salaries, support, maintenance, miscellaneous purposes,
23 and for not more than the following full-time equivalent
24 positions:

| | | |
|----------|------|--------|
| 25 | \$ | 50,000 |
| 26 | FTEs | 1.0 |

27 Of the amount appropriated in this section, the insurance
28 division shall expended a sufficient amount to employ one
29 full-time self-insurance examiner.

30 EXPLANATION

31 Section 1 of this bill instructs the insurance commissioner
32 to adopt by rule certain general changes in existing rules.
33 Included in the changes to be adopted by rule are: Annual,
34 quarterly, and material changes financial filings. Federal
35 securities and exchange commission forms would be accepted in

1 lieu of state forms for publicly held companies to avoid
2 unnecessary duplication of efforts; filings to be certified by
3 a certified public accountant and loss reserves and claims
4 history to be certified by an independent actuary; minimum
5 score of one point as a condition of self-insurance, but to
6 award one point to a self-insurer with an accredited safety
7 program, so that ineligibility is a matter of choice; increase
8 the minimum bond (\$300,000), to reflect past inflation, and
9 index the minimum bond to an appropriate inflation index to
10 adjust for future inflation; expansion of financial security
11 mechanisms accepted, including letters of credit if
12 alternatives are as secure as surety bond and otherwise
13 satisfy the commissioner; terms of acceptable bond or other
14 forms of financial security to include the division's
15 administrative costs, up to a maximum of 10 percent of the
16 bond.

17 Section 2 extends the state tort claims Act (chapter 25A)
18 immunity from liability enjoyed by the state and its employees
19 to the activities of the insurance commissioner and division
20 staff in the oversight and administration of workers'
21 compensation self-insurance. This immunity is already
22 provided in connection with the financial oversight of
23 traditional insurance. The amendment in section 2 would bar
24 suits for negligence in monitoring, or distributing, the
25 security given by an employer or group of employers who are
26 seeking or have received a current certificate of relief from
27 the requirement of carrying workers' compensation insurance
28 under Code sections 87.4 and 87.11.

29 Section 3 imposes a fee of \$50 per required filing pay for
30 the cost of reviewing and processing self-insurer's financial
31 statements.

32 Section 4 allows workers' compensation claims against an
33 insolvent workers' compensation self-insured employer to be
34 commuted to their present value. This section would apply to
35 bankruptcies on or after January 1, 1990. Payment of the

1 present value would then be made from assets of the employer
2 and security posted with the insurance commissioner.
3 Reduction of present and probable future claims to their
4 present value allows payment of a lump sum to permit permanent
5 closure of the insolvency estate. Section 4 also protects
6 proprietary information contained in financial statements from
7 disclosure as a public record.

8 Sections 5 through 8 provide the insurance commissioner
9 with similar examination resources and authority for workers'
10 compensation self-insurance as provided for the financial
11 oversight of traditional insurers. The costs of financial
12 oversight such as examinations are made fully assessable to
13 workers' compensation self-insurers.

14 Section 9 imposes criminal and civil penalties for filing
15 false financial statements with the insurance commissioner
16 parallel to those applied under securities law to public
17 companies.

18 Section 10 provides an appropriation fully assessable as an
19 examination expense to self-insured employers for an examiner
20 dedicated to and specialized in self-insurance.

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SENATE FILE 441

H-3521

1 Amend Senate File 441, as passed by the Senate, as
2 follows:

3 1. Page 2, by striking lines 28 and 29 and
4 inserting the following: "and a debtor under 11
5 U.S.C., on or after January 1, 1990, this".

6 2. Page 3, line 5, by striking the words
7 "employer and the association" and inserting the
8 following: "commissioner of insurance".

9 3. Page 6, by inserting after line 29 the
10 following:

11 "Sec. ____ . Section 347.14, Code 1991, is amended
12 by adding the following new subsection:

13 NEW SUBSECTION. 9A. Certify levies for a tax in
14 excess of any tax levy limit to meet its obligations
15 to pay the premium costs on tort liability insurance,
16 property insurance, workers' compensation insurance,
17 and any other insurance that may be necessary for the
18 prudent management and operation of the county public
19 hospital, the costs of a self-insurance program, the
20 costs of a local government risk pool, and amounts
21 payable under any insurance agreements to provide or
22 procure such insurance, self-insurance program, or
23 local government risk pool."

24 4. By renumbering as necessary.

By COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS
RENAUD of Polk, Chairperson

H-3521 FILED APRIL 5, 1991

Adopted 4/25/91 (p. 1527)

HOUSE AMENDMENT TO
SENATE FILE 441

S-3628

1 Amend Senate File 441, as passed by the Senate, as
2 follows:

3 1. Page 2, by striking lines 28 and 29 and
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18 prudent management and operation of the county public
19 hospital, the costs of a self-insurance program, the
20 costs of a local government risk pool, and amounts
21 payable under any insurance agreements to provide or
22 procure such insurance, self-insurance program, or
23 local government risk pool."

24 4. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3628 FILED APRIL 29, 1991

Senate concurred 4/30/91 (p. 1558)

PETERSON, CH.
RUNNING
FURMAN

SSB 314
BUSINESS - LABOR RELATIONS

SENATE FILE 441
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR RELATIONS
BILL BY CHAIRPERSON RUNNING)

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

A BILL FOR

1 An Act relating to workers' compensation self-insurance, imposing
2 civil and criminal penalties, and providing an appropriation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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9 assessment and determination of minimum security requirements,
10 including, but not limited to:

11 a. Required annual, quarterly, and material change in
12 circumstances financial filings. Federal securities and
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14 companies by the commissioner in lieu of the division's forms
15 to avoid unnecessary duplication.

16 b. Financial statements filed with the division shall be
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18 claims history of an employer's self-insurance program shall
19 be certified by an independent actuary.

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21 information in financial filings.

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26 least one point. The commissioner of insurance may determine
27 by rule, order, or other agency action what will be accepted
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31 inflation since 1984, and may be increased in the future as
32 necessary to reflect inflation or other changes generally
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34 5. Terms of acceptable surety bond or alternative forms of
35 financial security shall provide for payment of the division's

1 administrative expenses, up to a maximum of ten percent of the
2 bond or other security.

3 6. A financial security mechanism other than a surety bond
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8 Sec. 2. Section 25A.14, subsection 11, Code 1991, is
9 amended to read as follows:

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14 XXIII, and chapter 87 of Title V.

15 Subsection 11 applies to all cases filed on or after July
16 1, 1986, and does not expand any existing cause of action or
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33 other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be
34 commuted to a present lump sum. The industrial commissioner
35 shall fix the lump sum of probable future medical expenses and

1 weekly compensation benefits, or other benefits payable
2 pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at
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4 provided in section 535.3 for court judgments and decrees.
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8 or a licensed insurer for purchase of an annuity or other
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12 insolvent self-insured employer than is available for payment
13 of such claims from the security given under this section.

14 NEW UNNUMBERED PARAGRAPH. Notwithstanding contrary
15 provisions of section 85.45, any future payment of medical
16 expenses, weekly compensation benefits, or other payments by
17 the commissioner of insurance from the security given under
18 this section, pursuant to chapter 85, 85A, 85B, 86, or 87,
19 shall be deemed an undue expense, hardship, or inconvenience
20 upon the employer for purposes of a full commutation pursuant
21 to section 85.45, subsection 2.

22 NEW UNNUMBERED PARAGRAPH. Financial statements provided to
23 the commissioner pursuant to this section may be held as
24 confidential, proprietary trade secrets, pursuant to section
25 22.7, subsection 3, upon the request of the employer, subject
26 to rules adopted by the commissioner, and are not subject to
27 disclosure or examination under chapter 22.

28 Sec. 5. NEW SECTION. 87.11A EXAMINATION REQUIRED.

29 The commissioner may at any time examine or inquire into
30 the affairs of any self-insured employer. A domestic self-
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32 periodic examination in its state of origin, shall be examined
33 at least once during each three-year period.

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35 EXAMINATION -- OATHS.

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3 inspection all books, documents, papers, and other information
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11 The commissioner of insurance shall appoint one or more
12 self-insurance examiners. An examiner while conducting an
13 examination, possesses all the powers conferred upon the
14 commissioner for such purposes. A self-insurance examiner is
15 subject to the same powers and conditions as imposed under
16 sections 507.4 through 507.7.

17 Sec. 8. NEW SECTION. 87.11D PAYMENT OF EXAMINATION
18 EXPENSES BY THE SELF-INSURED EMPLOYER.

19 The commissioner of insurance, upon the completion of an
20 examination, or at such regular intervals prior to completion
21 as the commissioner determines, shall prepare an account of
22 the costs incurred in performing and preparing the report of
23 such examinations which shall be charged to and paid by the
24 self-insured employer examined, and upon failure or refusal of
25 any self-insured employer to pay such a charge, the amount of
26 the charge may be recovered in an action brought in the name
27 of the state, and the commissioner may also revoke the
28 employer's exemption under section 87.11. All fees collected
29 in connection with an examination shall be paid into the
30 insurance division revolving fund.

31 Sec. 9. NEW SECTION. 87.11E PENALTIES FOR FILING FALSE
32 FINANCIAL STATEMENTS.

33 1. It is unlawful for any person to make or cause to be
34 made, in any document filed with the commissioner of insurance
35 under this chapter, any statement of material fact which is,

1 at the time and in the light of circumstances under which it
2 is made, false or misleading, or, in connection with such
3 statement, to omit to state a material fact necessary in order
4 to make the statements made, in the light of the circumstances
5 under which they are made, not misleading.

6 2. The following persons shall not commit any of the acts
7 or omissions prohibited by subsection 3:

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10 whole or in part, on behalf of an employer.

11 c. A partner of the employer or administrator.

12 d. An officer of the employer or administrator.

13 e. A director of the employer or administrator.

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15 similar functions as persons described in paragraphs "a"
16 through "e".

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18 employer or administrator.

19 3. A person listed under subsection 2 shall not do any of
20 the following:

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23 in the case of an order denying relief, was incomplete in any
24 material respect or contained any statement which was, in
25 light of the circumstances under which it was made, false or
26 misleading with respect to any material fact.

27 b. Willfully violate or willfully fail to comply with any
28 provision of sections 87.11 through 87.11B, or any rule or
29 order adopted or issued pursuant to such sections.

30 4. The commissioner of insurance may deny, suspend or
31 revoke a certificate of relief issued pursuant to section
32 87.11, or may impose a civil penalty for a violation of this
33 section.

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35 exceed one thousand dollars per violation per person, and

1 shall not exceed ten thousand dollars in a single proceeding
2 against any one person. All civil penalties shall be
3 deposited in the general fund of the state pursuant to section
4 505.7.

5 6. A person who willfully and knowingly violates this
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8 insurance may refer such evidence as is available concerning
9 violations of this section to the attorney general or the
10 proper county attorney who may, with or without such
11 reference, institute appropriate criminal proceedings under
12 this section. This section does not limit the power of the
13 state to punish a person for conduct which constitutes a crime
14 under any other statute.

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17 insurance division of the department of commerce collected
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19 1, 1991, and ending June 30, 1992, the following amount, or so
20 much thereof as is necessary, to be used for the purposes
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22 For salaries, support, maintenance, miscellaneous purposes,
23 and for not more than the following full-time equivalent
24 positions:

| | | |
|----------|------|--------|
| 25 | \$ | 50,000 |
| 26 | FTEs | 1.0 |

27 Of the amount appropriated in this section, the insurance
28 division shall expended a sufficient amount to employ one
29 full-time self-insurance examiner.

30 EXPLANATION

31 Section 1 of this bill instructs the insurance commissioner
32 to adopt by rule certain general changes in existing rules.
33 Included in the changes to be adopted by rule are: Annual,
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19 to the activities of the insurance commissioner and division
20 staff in the oversight and administration of workers'
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22 provided in connection with the financial oversight of
23 traditional insurance. The amendment in section 2 would bar
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25 security given by an employer or group of employers who are
26 seeking or have received a current certificate of relief from
27 the requirement of carrying workers' compensation insurance
28 under Code sections 87.4 and 87.11.

29 Section 3 imposes a fee of \$50 per required filing pay for
30 the cost of reviewing and processing self-insurer's financial
31 statements.

32 Section 4 allows workers' compensation claims against an
33 insolvent workers' compensation self-insured employer to be
34 commuted to their present value. This section would apply to
35 bankruptcies on or after January 1, 1990. Payment of the

1 present value would then be made from assets of the employer
2 and security posted with the insurance commissioner.
3 Reduction of present and probable future claims to their
4 present value allows payment of a lump sum to permit permanent
5 closure of the insolvency estate. Section 4 also protects
6 proprietary information contained in financial statements from
7 disclosure as a public record.

8 Sections 5 through 8 provide the insurance commissioner
9 with similar examination resources and authority for workers'
10 compensation self-insurance as provided for the financial
11 oversight of traditional insurers. The costs of financial
12 oversight such as examinations are made fully assessable to
13 workers' compensation self-insurers.

14 Section 9 imposes criminal and civil penalties for filing
15 false financial statements with the insurance commissioner
16 parallel to those applied under securities law to public
17 companies.

18 Section 10 provides an appropriation fully assessable as an
19 examination expense to self-insured employers for an examiner
20 dedicated to and specialized in self-insurance.

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SENATE FILE 441

AN ACT
RELATING TO WORKERS' COMPENSATION SELF-INSURANCE, IMPOSING
CIVIL AND CRIMINAL PENALTIES, AND PROVIDING AN APPROPRIA-
TION.

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

Section 1. The commissioner of insurance shall adopt by rule pursuant to chapter 17A amendments to the insurance division's existing rules governing relief of employers from mandatory workers' compensation insurance pursuant to section 87.11. The amendments shall generally provide for the following:

1. The commissioner of insurance shall require more timely and higher quality financial information as the basis for risk assessment and determination of minimum security requirements, including, but not limited to:

a. Required annual, quarterly, and material change in circumstances financial filings. Federal securities and exchange commission forms may be accepted for publicly held companies by the commissioner in lieu of the division's forms to avoid unnecessary duplication.

b. Financial statements filed with the division shall be certified by a certified public accountant. Loss reserves and claims history of an employer's self-insurance program shall be certified by an independent actuary.

2. Reasonable protection for confidential proprietary information in financial filings.

3. Eligibility for relief from insurance shall be conditioned upon an employer receiving a minimum score of one on the point system established in 191 IAC 57.3. A self-insurer with an accredited safety program shall receive at least one point. The commissioner of insurance may determine by rule, order, or other agency action what will be accepted

by the commissioner of insurance as an accredited safety program.

4. The required security shall be increased to reflect inflation since 1984, and may be increased in the future as necessary to reflect inflation or other changes generally affecting the adequacy of posted security.

5. Terms of acceptable surety bond or alternative forms of financial security shall provide for payment of the division's administrative expenses, up to a maximum of ten percent of the bond or other security.

6. A financial security mechanism other than a surety bond may be accepted by the commissioner if the alternative mechanism provides security of timely payment upon the commissioner's demand equal to a surety bond and is otherwise satisfactory to the commissioner.

Sec. 2. Section 25A.14, subsection 11, Code 1991, is amended to read as follows:

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to Titles XIX through XXIII, and chapter 87 of Title V.

Subsection 11 applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

Sec. 3. Section 87.11, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

Sec. 4. Section 87.11, Code 1991, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990,

this paragraph applies. The commissioner of insurance may request of the industrial commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to chapter 85, 85A, 85B, 86, or 87 be commuted to a present lump sum. The industrial commissioner shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

NEW UNNUMBERED PARAGRAPH. The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

NEW UNNUMBERED PARAGRAPH. Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to chapter 85, 85A, 85B, 86, or 87, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

NEW UNNUMBERED PARAGRAPH. Financial statements provided to the commissioner pursuant to this section may be held as confidential, proprietary trade secrets, pursuant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner, and are not subject to disclosure or examination under chapter 22.

Sec. 5. NEW SECTION. 87.11A EXAMINATION REQUIRED.

The commissioner may at any time examine or inquire into the affairs of any self-insured employer. A domestic self-insured employer, or a self-insured employer not subject to periodic examination in its state of origin, shall be examined at least once during each three-year period.

Sec. 6. NEW SECTION. 87.11B OBLIGATION TO ASSIST AN EXAMINATION -- OATHS.

If a self-insured employer is being examined, the officers, employees, or agents of the employer, shall produce for inspection all books, documents, papers, and other information concerning the affairs of the employer and shall otherwise assist in such examination to the extent possible. The commissioner, or the commissioner's legally authorized representative in charge of the examination, may administer oaths and take testimony bearing upon the affairs of any employer under examination.

Sec. 7. NEW SECTION. 87.11C SELF-INSURANCE EXAMINERS.

The commissioner of insurance shall appoint one or more self-insurance examiners. An examiner while conducting an examination, possesses all the powers conferred upon the commissioner for such purposes. A self-insurance examiner is subject to the same powers and conditions as imposed under sections 507.4 through 507.7.

Sec. 8. NEW SECTION. 87.11D PAYMENT OF EXAMINATION EXPENSES BY THE SELF-INSURED EMPLOYER.

The commissioner of insurance, upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, shall prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the self-insured employer examined, and upon failure or refusal of any self-insured employer to pay such a charge, the amount of the charge may be recovered in an action brought in the name of the state, and the commissioner may also revoke the employer's exemption under section 87.11. All fees collected in connection with an examination shall be paid into the insurance division revolving fund.

Sec. 9. NEW SECTION. 87.11E PENALTIES FOR FILING FALSE FINANCIAL STATEMENTS.

1. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner of insurance under this chapter, any statement of material fact which is, at the time and in the light of circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2. The following persons shall not commit any of the acts or omissions prohibited by subsection 3:

- a. An employer.
- b. A person administering a self-insurance program, in whole or in part, on behalf of an employer.
- c. A partner of the employer or administrator.
- d. An officer of the employer or administrator.
- e. A director of the employer or administrator.
- f. A person occupying a similar status or performing similar functions as persons described in paragraphs "a" through "e".

g. A person directly or indirectly controlling the employer or administrator.

3. A person listed under subsection 2 shall not do any of the following:

a. File an application for relief under section 87.11 which as of its effective date, or as of any date after filing in the case of an order denying relief, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Willfully violate or willfully fail to comply with any provision of sections 87.11 through 87.11B, or any rule or order adopted or issued pursuant to such sections.

4. The commissioner of insurance may deny, suspend or revoke a certificate of relief issued pursuant to section

87.11, or may impose a civil penalty for a violation of this section.

5. A civil penalty levied under subsection 4 shall not exceed one thousand dollars per violation per person, and shall not exceed ten thousand dollars in a single proceeding against any one person. All civil penalties shall be deposited in the general fund of the state pursuant to section 505.7.

6. A person who willfully and knowingly violates this section, or a rule or order adopted or issued pursuant to this section, is guilty of a class "D" felony. The commissioner of insurance may refer such evidence as is available concerning violations of this section to the attorney general or the proper county attorney who may, with or without such reference, institute appropriate criminal proceedings under this section. This section does not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

Sec. 10. There is appropriated from the general fund of the state from examination assessment revenues of the insurance division of the department of commerce collected pursuant to section 87.11D, for the fiscal year beginning July 1, 1991, and ending June 30, 1992, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

| | | |
|---|------|--------|
| For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions: | \$ | 50,000 |
| | FTEs | 1.0 |

Of the amount appropriated in this section, the insurance division shall expended a sufficient amount to employ one full-time self-insurance examiner.

Sec. 11. Section 147.14, Code 1991, is amended by adding the following new subsection:

SF 441

NEW SUBSECTION. 9A. Certify levies for a tax in excess of any tax levy limit to meet its obligations to pay the premium costs on tort liability insurance, property insurance, workers' compensation insurance, and any other insurance that may be necessary for the prudent management and operation of the county public hospital, the costs of a self-insurance program, the costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 441, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 10, 1991

TERRY E. BRANSTAD
Governor