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SENATE FILE 72
BY FREEMAN

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

A BILL FOR

1 An Act relating to occupational hearing loss, concerning the
2 definitions, apportionment of hearing loss, and measurement of
3 hearing loss.

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

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S.F. 72

1 Section 1. Section 85.34, subsection 2, paragraph r, Code
2 1997, is amended to read as follows:

3 r. (1) For the loss of hearing, other than occupational
4 hearing loss as defined in section 85B.4, ~~subsection-t~~, weekly
5 compensation during fifty weeks, and for the loss of hearing
6 in both ears, weekly compensation during one hundred seventy-
7 five weeks.

8 (2) For occupational hearing loss, weekly compensation as
9 provided in ~~the-Iowa-occupational-hearing-loss-Act-(chapter~~
10 ~~85B†~~.

11 Sec. 2. Section 85B.4, Code 1997, is amended by striking
12 the section and inserting in lieu thereof the following:

13 85B.4 DEFINITIONS.

14 As used in this chapter, unless the context otherwise
15 provides:

16 1. "Excessive noise exposure" means exposure to sound
17 capable of producing occupational hearing loss.

18 2. "Hearing level" means the measured threshold of hearing
19 sensitivity using audiometric instruments properly calibrated
20 to the American national standards institute audiometric zero
21 reference level.

22 3. "Occupational hearing loss" means that portion of a
23 permanent sensorineural loss of hearing in one or both ears
24 that exceeds an average hearing level of twenty-five decibels
25 for the frequencies five hundred, one thousand, two thousand,
26 and three thousand Hertz, arising out of and in the course of
27 employment caused by excessive noise exposure. "Occupational
28 hearing loss" does not include loss of hearing attributable to
29 age or any other condition or exposure not arising out of and
30 in the course of employment.

31 Sec. 3. Section 85B.5, unnumbered paragraph 1, Code 1997,
32 is amended to read as follows:

33 An excessive noise ~~level~~ exposure is sound which exceeds
34 the times and intensities listed in the following table:

35 Sec. 4. Section 85B.8, unnumbered paragraph 1, Code 1997,

1 is amended to read as follows:

2 A claim for occupational hearing loss ~~due-to-excessive~~
3 ~~noise-levels~~ may be filed ~~six-months~~ after separation from the
4 ~~employment-in-which-the-employee-was-exposed-to~~ excessive
5 noise levels exposure for a period of one month provided that
6 the employee will not be returned to such employment either
7 due to medical restriction or termination of employment. The
8 date of the injury shall be the date of occurrence of any one
9 of the following events:

10 Sec. 5. Section 85B.8, subsection 1, Code 1997, is amended
11 to read as follows:

12 1. Transfer from excessive noise level exposure employment
13 by an employer.

14 Sec. 6. Section 85B.9, Code 1997, is amended by striking
15 the section and inserting in lieu thereof the following:

16 85B.9 MEASURING HEARING LOSS.

17 1. Audiometric instruments, properly calibrated to the
18 American national standards institute specifications, shall be
19 used for measuring hearing levels and in such tests necessary
20 to establish total hearing loss, if any. The hearing tests
21 and examinations shall be conducted in environments which
22 comply with accepted national standards.

23 2. Audiometric examinations shall be administered by
24 persons who are certified by the council for accreditation in
25 occupational hearing conservation or by persons licensed as
26 audiologists under chapter 147, as physicians under chapter
27 148, as osteopathic physicians under chapter 150, or as
28 osteopathic physicians and surgeons under chapter 150A,
29 provided the licensed persons are trained in audiometry.

30 3. In calculating the total amount of hearing loss, the
31 hearing levels at each of the four frequencies, five hundred,
32 one thousand, two thousand, and three thousand Hertz shall be
33 added together and divided by four to determine the average
34 decibel hearing level for each ear. If the resulting average
35 decibel hearing level in either ear is twenty-five decibels or

1 less, the percentage hearing loss for that ear shall be zero.
2 For each resulting average decibel hearing level exceeding
3 twenty-five decibels, an allowance of one and one-half percent
4 shall be made up to the maximum of one hundred percent which
5 is reached at an average decibel hearing level of ninety-two
6 decibels. In determining the total binaural percentage
7 hearing loss, the percentage hearing loss for the ear with
8 better hearing shall be multiplied by five and added to the
9 percentage hearing loss for the ear with worse hearing and the
10 sum of the two divided by six.

11 4. The assessment of the proportion of the total binaural
12 percentage hearing loss that is due to occupational noise
13 exposure shall be made by the employer's regular or consulting
14 physician or licensed audiologist who is trained and has had
15 experience with such assessment. If several audiometric
16 examinations are available for assessment, the physician or
17 audiologist shall determine which examinations shall be used
18 in the final assessment of occupational hearing loss.

19 If the employee disputes the assessment, the employee may
20 select a physician or licensed audiologist similarly trained
21 and experienced to give an assessment of the audiometric
22 examinations.

23 5. This section is applicable in the event of partial
24 permanent or total permanent occupational hearing loss in one
25 or both ears.

26 Sec. 7. NEW SECTION. 85B.9A APPORTIONMENT OF
27 OCCUPATIONAL HEARING LOSS.

28 Apportionment of the total hearing loss between
29 occupational and nonoccupational loss, for purposes of
30 determining occupational hearing loss, may be made by an
31 audiologist or physician, with qualifications set forth in
32 section 85B.9. In determining occupational hearing loss,
33 consideration shall be given to all probable employment and
34 nonemployment sources of loss and of the existence of any
35 prevention measures and programs.

1 Sec. 8. Section 85B.10, Code 1997, is amended to read as
2 follows:

3 85B.10 EMPLOYERS EMPLOYER'S NOTICE OF RESULTS OF TEST.

4 The employer shall communicate to the employee, in writing,
5 the results of an audiometric examination or physical
6 examination of an employee which reflects an average hearing
7 ~~loss-of-the-employee~~ level in one or both ears in excess of
8 twenty-five decibels ~~ANSI-or-ISO~~ for the test frequencies of
9 five hundred, one thousand, two thousand, and three thousand
10 Hertz, as soon as practicable after the examination. The
11 communication shall include the name and ~~address~~
12 qualifications of the person conducting the audiometric
13 examination or physical examination, the site of the
14 examination, the kind or type of test or examinations given,
15 the results of each, and the average decibel ~~loss~~ hearing
16 level, in for the four frequencies, in each ear, ~~if-any~~, and,
17 if known to the employer, whether the hearing loss is
18 sensorineural ~~hearing-loss~~ and, if the hearing loss resulted
19 from another cause, the ~~name-of-the~~ cause.

20 Sec. 9. Section 85B.11, Code 1997, is amended to read as
21 follows:

22 85B.11 PREVIOUS HEARING LOSS EXCLUDED.

23 An employer is liable, as provided in this chapter and
24 subject to the provisions of chapter 85, for an occupational
25 hearing loss to which the employment has contributed, but if
26 previous hearing loss, whether occupational or not, is
27 established by an audiometric examination or other competent
28 evidence, whether or not the employee was exposed to excessive
29 noise level exposure within six months preceding the test, the
30 employer is not liable for the previous loss, nor is the
31 employer liable for a loss for which compensation has
32 previously been paid or awarded. The employer is liable only
33 for the difference between the percent of occupational hearing
34 loss determined as of the date of the audiometric examination
35 used to determine occupational hearing loss and the percentage

1 of loss established by the pre-employment audiometric
2 examination. An amount paid to an employee for occupational
3 hearing loss by any other employer shall be credited against
4 compensation payable by an employer for the hearing loss. An
5 employee shall not receive in the aggregate greater
6 compensation from all employers for occupational hearing loss
7 than that provided in this section for total occupational
8 hearing loss. A payment shall not be made to an employee
9 unless the employee has worked in excessive noise ~~level~~
10 exposure employment for a total period of at least ninety days
11 for the employer from whom compensation is claimed.

12 Sec. 10. Section 85B.12, Code 1997, is amended to read as
13 follows:

14 85B.12 HEARING AID PROVIDED.

15 A reduction of the compensation payable to an employee for
16 occupational hearing loss shall not be made because the
17 employee's ability to communicate may be improved by the use
18 of a hearing aid. An employer who is liable for occupational
19 hearing loss of an employee is required to provide the
20 employee with a hearing aid for each affected ear unless it
21 will not materially improve the employee's ability to
22 communicate.

23 Sec. 11. INTENT. It is the intent of the general assembly
24 that the changes in this Act to the following Code sections
25 merely confirm, and do not modify, the intent of chapter 85B
26 as codified prior to July 1, 1997:

- 27 1. The changes to section 85B.4.
28 2. The changes to section 85B.9.

29 EXPLANATION

30 This bill amends chapter 85B concerning occupational
31 hearing loss. The bill provides, however, that the changes to
32 sections 85B.4 and 85B.9 reflected in the bill are intended by
33 the general assembly to confirm the intent of the chapter
34 prior to the changes.

35 The bill replaces the current definitions section in

1 chapter 85B and provides for the definition of excessive noise
2 exposure, hearing level, and occupational hearing loss.
3 Current law defines excessive noise level and occupational
4 hearing loss.

5 Section 85B.8 is changed to provide that a claim for
6 occupational hearing loss may be filed after separation from
7 the excessive noise for a period of one month provided that
8 the employee will not be returned to such employment.

9 The bill also replaces the current section measuring
10 hearing loss. New section 85B.9A provides that any
11 apportionment of occupational and nonoccupational loss be made
12 by an audiologist or qualified physician and that
13 consideration of all probable sources of loss shall be given
14 in determining occupational hearing loss. The bill also
15 changes section 85B.12 to provide for a hearing aid for each
16 affected ear if certain conditions are met.

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