

Senate Study Bill 3003

Bill Text

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1 1 Section 1. Section [22.7](#), Code Supplement 2001, is amended
1 2 by adding the following new subsection:

1 3 NEW SUBSECTION. 43. Records filed with the division of
1 4 workers' compensation of the department of workforce
1 5 development which contain or permit the ascertainment of the
1 6 identity of an injured employee or an injured employee's
1 7 dependent as provided in section 86.44.

1 8 Sec. 2. Section [85.1](#), subsection 6, Code 2001, is amended
1 9 to read as follows:

1 10 6. Employers may with respect to an employee or a
1 11 classification of employees exempt from coverage provided by
1 12 this chapter pursuant to subsection 1, 2, or 3

~~1 13 , 4, or 5~~

~~1 14 -, other~~

1 13 than the employee or classification of employees with respect
1 14 to whom a rule of liability or a method of compensation is
1 15 established by the Congress of the United States, assume a
1 16 liability for compensation imposed upon employers by this
1 17 chapter, for the benefit of employees within the coverage of
1 18 this chapter, by the purchase of valid workers' compensation
1 19 insurance which does not specifically

~~1 20 including~~

~~1 21 - exclude the~~

1 20 employee or classification of employees. The purchase of and
1 21 acceptance by an employer of valid workers' compensation
1 22 insurance applicable to the employee or classification of
1 23 employees constitutes an assumption by the employer of
1 24 liability without any further act on the part of the employer,
1 25 but only with respect to the employee or classification of
1 26 employees as are within the coverage of the workers'
1 27 compensation insurance contract and only for the time period
1 28 in which the insurance contract is in force. Upon an election
1 29 of such coverage, the employee or classification of employees
1 30 shall accept compensation in the manner provided by this
1 31 chapter and the employer shall be relieved from any other
1 32 liability for recovery of damage, or other compensation for
1 33 injury.

1 34 Sec. 3. Section [85.22](#), Code 2001, is amended by striking
1 35 the section and inserting in lieu thereof the following:

2 1 85.22 LIABILITY OF OTHERS INDEMNITY AND SUBROGATION.

2 2 1. When an employee receives an injury, dies, or incurs an
2 3 occupational disease or an occupational hearing loss for which
2 4 workers' compensation benefits are payable under this chapter,
2 5 chapter 85A, or chapter 85B, under circumstances creating a
2 6 cause of action for damages for personal injury or wrongful
2 7 death against a third party other than the employee's employer
2 8 or any employee of the employer as provided in section 85.20,
2 9 the employer shall promptly pay all workers' compensation
2 10 benefits that accrue and the employee may pursue the cause of
2 11 action against the third party without waiving workers'
2 12 compensation benefits.

2 13 2. If the employee receives a recovery from the third
2 14 party, the employer shall be indemnified for the workers'
2 15 compensation benefits actually paid less prorated attorney

2 16 fees as provided in this section. The employer shall have a
2 17 lien upon the cause of action and recovery to secure its right
2 18 of indemnification and an offset against any workers'
2 19 compensation benefits that become payable after the third-
2 20 party recovery is disbursed. The employer may be subrogated
2 21 to the rights of the employee if the employee fails to
2 22 commence an action against the third party.

2 23 3. The employee shall give the employer written notice of
2 24 making a claim against a third party and shall provide a copy
2 25 of the original notice and petition to the employer within ten
2 26 days after commencing an action against a third party.
2 27 Failure to give the notice shall not prejudice the employer or
2 28 the cause of action against the third party. The employer's
2 29 lien is perfected by filing written notice in the office of
2 30 the clerk of the district court where the action against the
2 31 third party is pending. The lien is binding on any person who
2 32 has actual knowledge that the employee has received workers'
2 33 compensation benefits from the employer. The employer shall
2 34 provide an itemized statement showing the amount of its lien
2 35 whenever requested by the employee or the third party.

3 1 4. The employer may request in writing that the employee
3 2 commence an action against a third party. If the employee
3 3 fails to commence the action within ninety days after the
3 4 request, the employer is subrogated to the rights of the
3 5 employee to pursue the cause of action against the third
3 6 party. The employer may commence a subrogation action without
3 7 giving prior notice to the employee within the last thirty
3 8 days prior to the time the cause of action would be barred by
3 9 any applicable statute of limitation. An employer who
3 10 exercises subrogation rights shall give the employee written
3 11 notice of making a claim against a third party and shall
3 12 provide a copy of the original notice and petition to the
3 13 employee within ten days after commencing an action against a
3 14 third party. The employee shall reasonably cooperate with the
3 15 employer's efforts to pursue the cause of action.

3 16 5. A recovery from a third party shall be disbursed as
3 17 follows:

3 18 a. Fees for the employee's attorney, including
3 19 administrative expenses of litigation, shall be paid. Any
3 20 dispute concerning attorney fees or the validity and amount of
3 21 the employer's right to indemnification shall be determined by
3 22 the court having jurisdiction of the third-party action. The
3 23 proportion of the total recovery that is paid for attorney
3 24 fees shall be computed to the nearest one-hundredth of a
3 25 percent to determine the factor for prorated attorney fees. A
3 26 party is responsible for prorated attorney fees allocable to
3 27 the portion of the recovery received by the party.

3 28 b. The employer shall pay all unpaid workers' compensation
3 29 benefits which have accrued at the time the third-party
3 30 recovery is disbursed and the employer shall then be
3 31 indemnified for the workers' compensation benefits actually
3 32 paid from the date the benefits were paid less prorated
3 33 attorney fees. The employer shall not be indemnified for
3 34 interest paid pursuant to section 85.30 or additional benefits
3 35 paid pursuant to section 86.13.

4 1 c. Any portion of the net recovery remaining after the
4 2 disbursements provided in paragraphs "a" and "b" shall be paid
4 3 to the employee, subject to the employer's right of offset.

4 4 6. If a person's entitlement to workers' compensation
4 5 benefits is undetermined at the time the third-party recovery
4 6 is disbursed, or if additional benefits become due after the
4 7 third-party recovery is disbursed, the employer's liability
4 8 for those benefits shall be satisfied by offsetting the amount
4 9 of benefits for which the employer would be liable if there
4 10 had not been a third-party recovery against the remainder paid
4 11 to the person entitled to benefits under subsection 5,
4 12 paragraph "c". If satisfaction of the employer's liability by

4 13 offset causes a portion of the third-party recovery to be
4 14 received by the employer, the employer shall reimburse the
4 15 person entitled to benefits for the prorated attorney fees
4 16 attributable to the amount of the employer's liability that is
4 17 satisfied by offset. The person entitled to benefits shall be
4 18 reimbursed for prorated attorney fees on weekly compensation
4 19 or any other benefit payable directly to the person at the
4 20 time the benefit would be due if there had not been a third-
4 21 party recovery. The person entitled to benefits shall be
4 22 reimbursed for prorated attorney fees within thirty days after
4 23 the person submits proof to the employer that the person has
4 24 paid charges for which the employer would be liable under
4 25 section 85.27 if there had not been a third-party recovery.
4 26 Amounts reimbursed to the person entitled to benefits for
4 27 prorated attorney fees are subject to the employer's right of
4 28 offset.

4 29 7. A settlement with a third party is effective only if
4 30 both the employer and employee give written consent, or if it
4 31 is approved by the workers' compensation commissioner. When
4 32 granting approval, the commissioner may also determine the
4 33 validity and amount of the employer's right to
4 34 indemnification.

4 35 8. As used in this section:

5 1 a. "Employee" includes the employee's trustee, guardian,
5 2 conservator, estate, or other legal representative.

5 3 b. "Employer" includes an insurance carrier acting
5 4 pursuant to chapter 87 and any other person who pays or is
5 5 legally obligated to pay workers' compensation benefits to the
5 6 employee on behalf of the employer.

5 7 c. "Recovery" means a payment of anything of value, from
5 8 or on behalf of the third party, paid to or as directed by the
5 9 employee, in resolution of the employee's cause of action for
5 10 damages for personal injury or wrongful death against the
5 11 third party regardless of the manner in which the payment is
5 12 characterized. "Recovery" does not include a payment made in
5 13 good faith to resolve a claim for damage to the employee's
5 14 tangible property, a claim made by a person other than the
5 15 employee, or a claim for loss of consortium.

5 16 Sec. 4. Section [85.27](#), subsection 3, Code Supplement 2001,
5 17 is amended to read as follows:

5 18 3. Notwithstanding section 85.26, subsection 4, charges
5 19 believed to be excessive or unnecessary may be referred by the
5 20 employer, insurance carrier, or health service provider to the
5 21 workers' compensation commissioner for determination, and the
5 22 commissioner may utilize the procedures provided in sections
5 23 86.38 and 86.39, or set by rule, and conduct such inquiry as
5 24 the commissioner deems necessary. Any health service provider
5 25 charges not in dispute shall be paid directly to the health
5 26 service provider prior to utilization of procedures provided
5 27 in sections 86.38 and 86.39 or set by rule. A health service
5 28 provider rendering treatment to an employee whose injury is
5 29 compensable under this section agrees to be bound by such
5 30 charges as allowed by the workers' compensation commissioner
5 31 and shall not recover in law or equity any amount in excess of
5 32 charges set by the commissioner. When a dispute under chapter
5 33 85, 85A, or 85B regarding reasonableness of a fee for medical
5 34 services arises between a health service provider and an
5 35 employer or insurance carrier, the health service provider,
6 1 employer, or insurance carrier shall not seek payment from the
6 2 injured employee. When a dispute under chapter 85, 85A, or
6 3 85B regarding reasonableness of a fee for medical services
6 4 arises between a health service provider and an insurance
6 5 carrier, the health service provider shall not seek payment
6 6 from the employer.

6 7 Sec. 5. Section [85.27](#), subsection 4, Code Supplement 2001,
6 8 is amended to read as follows:

6 9 4. For purposes of this section, the employer is obliged

6 10 to furnish reasonable services and supplies to treat an
6 11 injured employee, and has the right to choose the care. The
6 12 employer is liable for the reasonable cost of the care chosen
6 13 by the employer or by the employer's representative. The
6 14 treatment must be offered promptly and be reasonably suited to
6 15 treat the injury without undue inconvenience to the employee.
6 16 If the employee has reason to be dissatisfied with the care
6 17 offered, the employee should communicate the basis of such
6 18 dissatisfaction to the employer, in writing if requested,
6 19 following which the employer and the employee may agree to
6 20 alternate care reasonably suited to treat the injury. If the
6 21 employer and employee cannot agree on such alternate care, the
6 22 commissioner may, upon application and reasonable proofs of
6 23 the necessity therefor, allow and order other care. In an
6 24 emergency, the employee may choose the employee's care at the
6 25 employer's expense, provided the employer or the employer's
6 26 agent cannot be reached immediately. An application made
6 27 under this subsection shall be considered an original
6 28 proceeding for purposes of commencement and contested case
6 29 proceedings under section 85.26. The hearing shall be
6 30 conducted pursuant to chapter 17A. Before a hearing is
6 31 scheduled, the parties may choose a telephone hearing or an
6 32 in-person hearing. A request for an in-person hearing shall
6 33 be approved unless the in-person hearing would be impractical
6 34 because of the distance between the parties to the hearing.
6 35 The workers' compensation commissioner shall issue a decision
7 1 within ten working days of receipt of an application for
7 2 alternate care made pursuant to a telephone hearing or within
7 3 fourteen working days of receipt of an application for
7 4 alternate care made pursuant to an in-person hearing. The
7 5 employer shall notify an injured employee of the employee's
7 6 ability to contest the employer's choice of care pursuant to
7 7 this subsection.

7 8 Sec. 6. Section [85.27](#), subsection 6, Code Supplement 2001,
7 9 is amended to read as follows:

7 10 6. While a contested case proceeding for determination of
7 11 liability for workers' compensation benefits is pending before
7 12 the workers' compensation commissioner relating to an injury
7 13 alleged to have given rise to treatment, no debt collection,
7 14 as defined by section 537.7102, shall be undertaken against an
7 15 employee, or the employee's dependents or employer, for the
7 16 collection of charges for that treatment rendered an employee
7 17 by any health service provider. However, the health service
7 18 provider may send one itemized written bill to the employee
7 19 and the employee's employer setting forth the amount of the
7 20 charges in connection with the treatment after notification of
7 21 the contested case proceeding.

7 22 Sec. 7. Section [85.27](#), subsection 7, Code Supplement 2001,
7 23 is amended to read as follows:

7 24 7. If, after the third day of incapacity to work following
7 25 the date of sustaining a compensable injury which does not
7 26 result in permanent partial disability, or if, at any time
7 27 after sustaining a compensable injury which results in
7 28 permanent partial disability, an employee, who is not
7 29 receiving weekly benefits under section 85.33 or section
7 30 85.34, subsection 1, returns to work and is required to leave
7 31 work for one full day or less to receive services pursuant to
7 32 this section, the employee shall be paid an amount equivalent
7 33 to the wages lost at the employee's regular rate of pay for
7 34 the time the employee is required to leave work. For the
7 35 purposes of this subsection, "day of incapacity to work" means
8 1 eight hours of accumulated absence from work due to incapacity
8 2 to work or due to the receipt of services pursuant to this
8 3 section. The employer shall make the payments under this
8 4 subsection as wages to the employee after making such
8 5 deductions from the amount as legally required or customarily
8 6 made by the employer from wages. Payments made under this

8 7 subsection shall be required to be reimbursed pursuant to any
8 8 insurance policy covering workers' compensation. Payments
8 9 under this subsection shall not be construed to be payment of
8 10 weekly benefits.
8 11 Sec. 8. Section [85.38](#), subsection 2, unnumbered paragraph
8 12 2, Code 2001, is amended to read as follows:
8 13 If an employer denies liability under this chapter, chapter
8 14 85A, or chapter 85B, for payment for any medical services
8 15

~~received~~
- ~~or weekly compensation requested~~ by an employee

~~with~~

8 16

~~a disability~~
-, and the employee is a beneficiary under either
8 17 an individual or group plan for nonoccupational illness,
8 18 injury, or disability, the nonoccupational plan shall not deny
8 19 payment

~~for the medical services received~~
- ~~of benefits under~~
8 20 ~~the plan~~ on the basis that the employer's liability

~~for the~~

8 21

~~medical services~~
- under this chapter, chapter 85A, or chapter
8 22 85B is unresolved.
8 23 Sec. 9. Section [86.42](#), Code 2001, is amended to read as
8 24 follows:
8 25 86.42 JUDGMENT BY DISTRICT COURT ON AWARD.
8 26 Any party in interest may present a

~~certified~~

- copy of an
8 27 order or decision of the commissioner, from which a timely
8 28 petition for judicial review has not been filed or if judicial
8 29 review has been filed, which has not had execution or
8 30 enforcement stayed as provided in section 17A.19, subsection
8 31 5, or an order or decision of a deputy commissioner from which
8 32 a timely appeal has not been taken within the agency and which
8 33 has become final by the passage of time as provided by rule
8 34 and section 17A.15, or an agreement for settlement approved by
8 35 the commissioner, and all papers in connection therewith, to
9 1 the district court where judicial review of the agency action
9 2 may be commenced. The court shall render a decree or judgment
9 3 and cause the clerk to notify the parties. The decree or
9 4 judgment, in the absence of a petition for judicial review or
9 5 if judicial review has been commenced, in the absence of a
9 6 stay of execution or enforcement of the decision or order of
9 7 the workers' compensation commissioner, or in the absence of
9 8 an act of any party which prevents a decision of a deputy
9 9 workers' compensation commissioner from becoming final, has
9 10 the same effect and in all proceedings in relation thereto is
9 11 the same as though rendered in a suit duly heard and
9 12 determined by the court.

9 13 Sec. 10. Section [86.43](#), Code 2001, is amended to read as
9 14 follows:

9 15 86.43 JUDGMENT MODIFICATION OF.
9 16 Upon the presentation to the court of a

~~certified~~

- copy of a

9 17 decision of the workers' compensation commissioner, ending,
9 18 diminishing, or increasing the compensation under the
9 19 provisions of this chapter, the court shall revoke or modify
9 20 the decree or judgment to conform to such decision.

9 21 Sec. 11. Section 86.44, Code 2001, is amended to read as
9 22 follows:

9 23 86.44 CONFIDENTIALITY.

9 24 1. All verbal or written information relating to the
9 25 subject matter of an agreement and transmitted between any
9 26 party to a dispute and a mediator to resolve a dispute
9 27 pursuant to this chapter or chapter 85, 85A, or 85B, during
9 28 any stage of a mediation or a dispute resolution process
9 29 conducted by a mediator as provided in this section, whether
9 30 reflected in notes, memoranda, or other work products in the
9 31 case files, is a confidential communication except as
9 32 otherwise expressly provided in this chapter. Mediators
9 33 involved in a mediation or a dispute resolution process shall
9 34 not be examined in any judicial or administrative proceeding
9 35 regarding confidential communications and are not subject to
10 1 judicial or administrative process requiring the disclosure of
10 2 confidential communications.

10 3 For purposes of this

~~section~~

- subsection, "mediator" means a

10 4 chief deputy workers' compensation commissioner or deputy
10 5 workers' compensation commissioner acting in the capacity to
10 6 resolve a dispute pursuant to this chapter or chapter 85, 85A,
10 7 or 85B, or an employee of the division of workers'
10 8 compensation involved during any stage of a process to resolve
10 9 a dispute.

10 10 2. a. Except as otherwise provided in this subsection,
10 11 all records filed with the division of workers' compensation
10 12 pursuant to section 85.26, 86.11, or 86.13, which contain or
10 13 permit the ascertainment of the identity of an injured
10 14 employee or the injured employee's dependent, shall be kept
10 15 confidential, unless otherwise ordered by a court.

10 16 b. A record described in paragraph "a" may be disclosed
10 17 under any of the following circumstances:

10 18 (1) Pursuant to the terms of a written waiver of
10 19 confidentiality by the injured employee or the injured
10 20 employee's dependent.

10 21 (2) The use of records by a governmental body for the
10 22 compilation of statistical data after deletion of the identity
10 23 of the injured employee or the injured employee's dependent.

10 24 (3) To the injured employee or the injured employee's
10 25 dependent, or the agent or attorney of the injured employee or
10 26 dependent.

10 27 (4) To the person that filed the confidential record.

10 28 (5) To an employer, insurance carrier, or third-party
10 29 administrator of workers' compensation claims, or a designee,
10 30 who is involved in administering a claim for benefits made
10 31 with respect to the injury or death of an employee.

10 32 (6) To all parties in a contested case proceeding before
10 33 the workers' compensation commissioner in which the injured
10 34 employee or the injured employee's dependent is a party.

10 35 (7) In compliance with a subpoena.

11 1 Sec. 12. NEW SECTION. 87.1A PROOF OF INSURANCE COVERAGE.

11 2 The workers' compensation commissioner may, by rule,
11 3 require every employer subject to this chapter to present
11 4 satisfactory evidence to the workers' compensation
11 5 commissioner that the employer has secured the employer's
11 6 liability to pay compensation as provided in this chapter. If
11 7 the method of securing the payment of compensation by the
11 8 employer changes, the employer shall report the change to the

11 9 workers' compensation commissioner within ten days after such
11 10 change occurs.

11 11 EXPLANATION

11 12 This bill makes several changes to the workers'
11 13 compensation law.

11 14 Code section 22.7 is amended to provide that records filed
11 15 with the division of workers' compensation of the department
11 16 of workforce development, which contain or permit the
11 17 ascertainment of the identity of an injured employee or an
11 18 injured employee's dependent, shall be kept confidential as
11 19 provided in Code chapter 22 and not be disclosed except under
11 20 limited circumstances.

11 21 Code section 85.1 is amended to provide that the workers'
11 22 compensation law applies to exempt household, casual, and
11 23 agricultural employees if such employees are covered by a
11 24 workers' compensation insurance policy, unless the exempt
11 25 classifications are specifically excluded by the policy.

11 26 Current Code section 85.22, governing an employer's
11 27 subrogation and indemnification rights regarding payment of
11 28 benefits, is stricken and replaced. The new language provides
11 29 the procedure for an employer to seek recovery of workers'
11 30 compensation benefits paid from a liable third party. The new
11 31 language also permits an employer to be subrogated to a
11 32 recovery an injured employee may receive. The procedure and
11 33 priority for distributing moneys received by an employer or
11 34 employee arising out of an injury permitting workers'
11 35 compensation benefits is also provided.

12 1 Code section 85.27, subsection 3, is amended to provide
12 2 that if a dispute arises between a health service provider and
12 3 an insurance carrier concerning the reasonableness of a fee
12 4 for medical services, the health service provider shall not
12 5 seek payment of the fee from the employer.

12 6 Code section 85.27, subsection 4, is amended to provide
12 7 that the employer or the employer's representatives are
12 8 responsible for payment of the reasonable cost of all medical
12 9 services chosen and provided at their direction to an injured
12 10 worker.

12 11 Code section 85.27, subsection 6, is amended to provide
12 12 that no debt collection shall be undertaken against an
12 13 employer for treatment charges while a contested case
12 14 proceeding for determination of workers' compensation benefits
12 15 liability is pending.

12 16 Code section 85.27, subsection 7, is amended to provide
12 17 that a "day of incapacity to work" means eight work hours
12 18 which can be accumulated over more than one day toward meeting
12 19 the three-day incapacity to work threshold under the
12 20 subsection.

12 21 Code section 85.38 is amended to provide that a
12 22 nonoccupational, individual, or group insurance plan shall not
12 23 deny payment of benefits to an employee under the plan for
12 24 weekly compensation because the employer's liability for
12 25 workers' compensation is unresolved.

12 26 Code sections 86.42 and 86.43 are amended to eliminate the
12 27 requirement that a party who wishes to enforce a workers'
12 28 compensation award initially made by the workers' compensation
12 29 division must present a certified copy of the order or
12 30 decision to the district court.

12 31 Code section 86.44 is amended to provide that records filed
12 32 with the division of workers' compensation of the department
12 33 of workforce development, which contain or permit the
12 34 ascertainment of the identity of an injured employee or an
12 35 injured employee's dependent, shall be kept confidential as
13 1 provided in Code chapter 22 and not disclosed except under
13 2 limited circumstances.

13 3 New Code section 87.1A gives the workers' compensation
13 4 commissioner the authority to require employers to submit
13 5 proof of employer's liability insurance for payment of

13 6 workers' compensation.
13 7 LSB 5323XC 79
13 8 ec/sh/8