

FEB 26 2004

COMMERCE, REGULATION & LABOR

HOUSE FILE 2376
BY CONNORS

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

A BILL FOR

1 An Act relating to workers' compensation, including certain
2 benefits and procedures administered by the workers'
3 compensation commissioner, workers' compensation liability
4 insurance, liability insurance, confidential information filed
5 with the workers' compensation commission, liability of third
6 parties, subrogation and indemnification of employers, and
7 repeal of provisions specific to occupational disease
8 compensation, and providing penalties.

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

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HF 2376

1 Section 1. Section 22.7, Code Supplement 2003, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 48. Confidential information filed with
4 the workers' compensation commissioner as defined in section
5 86.45, subsection 1.

6 Sec. 2. Section 85.1, subsection 6, Code 2003, is amended
7 to read as follows:

8 6. Employers may with respect to an employee or a
9 classification of employees exempt from coverage provided by
10 this chapter pursuant to subsection 1, 2, or 3, ~~4~~-~~or~~-~~5~~, other
11 than the employee or classification of employees with respect
12 to whom a rule of liability or a method of compensation is
13 established by the Congress of the United States, assume a
14 liability for compensation imposed upon employers by this
15 chapter, for the benefit of employees within the coverage of
16 this chapter, by the purchase of valid workers' compensation
17 insurance that does not specifically including exclude the
18 employee or classification of employees. The purchase of and
19 acceptance by an employer of valid workers' compensation
20 insurance applicable to the employee or classification of
21 employees constitutes an assumption by the employer of
22 liability without any further act on the part of the employer,
23 but only with respect to the employee or classification of
24 employees as are within the coverage of the workers'
25 compensation insurance contract and only for the time period
26 in which the insurance contract is in force. Upon an election
27 of such coverage, the employee or classification of employees
28 shall accept compensation in the manner provided by this
29 chapter and the employer shall be relieved from any other
30 liability for recovery of damage, or other compensation for
31 injury.

32 Sec. 3. Section 85.22, Code 2003, is amended by striking
33 the section and inserting in lieu thereof the following:

34 NEW SECTION. 85.22 LIABILITY OF OTHERS -- INDEMNITY AND
35 SUBROGATION.

1 1. As used in this section, unless the context otherwise
2 requires:

3 a. "Employee" includes the employee's trustee, guardian,
4 conservator, or other legal representative, or the employee's
5 dependent or trustee, guardian, conservator, or other legal
6 representative of the employee's dependent.

7 b. "Employer" includes an insurance carrier under chapter
8 87 and any other person that pays or is legally obligated to
9 pay workers' compensation benefits to an employee on behalf of
10 the employer.

11 c. "Recovery" means a payment of anything of value, from
12 or on behalf of a third party, to or as directed by an
13 employee, as damages to resolve the employee's cause of action
14 for personal injury or wrongful death against a third party
15 that resulted from an injury, an occupational disease, or an
16 occupational hearing loss for which compensation is payable
17 under this chapter or chapter 85B. "Recovery" does not
18 include a payment that is made in good faith to resolve a
19 claim for damages to an employee's personal property, a claim
20 made by a person other than the employee, or a claim for loss
21 of consortium.

22 2. When an employee receives an injury, dies, or incurs an
23 occupational disease or an occupational hearing loss for which
24 workers' compensation benefits are payable under this chapter
25 or chapter 85B, under circumstances that create a cause of
26 action for damages for personal injury or wrongful death
27 against a third party, other than the employee's employer or
28 any employee of such employer as provided in section 85.20,
29 the employer shall pay all workers' compensation benefits as
30 the benefits become due and the employee may also maintain a
31 cause of action against such third party for damages without
32 waiving any claim for workers' compensation benefits.

33 3. If an injured employee recovers damages from a third
34 party, the employer shall be indemnified out of the recovery
35 of damages to the extent of the workers' compensation benefits

1 paid, with interest, less the employer's pro rata share of
2 attorney fees owed as provided in this section. The employer
3 shall have a lien upon the cause of action and recovery of
4 damages to secure the employer's right of indemnification and
5 shall receive an offset against any workers' compensation
6 benefits that become payable after the recovery of damages
7 from the third party has been disbursed.

8 4. When an injured employee brings an action against a
9 third party, the employee shall give the employer written
10 notice that the employee has made such a claim, by serving a
11 copy of the original notice and petition upon the employer
12 within ten days after commencement of the action. A failure
13 to give such notice shall not prejudice the rights of the
14 employer or the parties to the pending action. The employer's
15 lien securing indemnification is perfected by filing written
16 notice of the lien in the office of the clerk of the court
17 where the action is brought. The lien is binding on any
18 person who has actual knowledge that the employee has received
19 workers' compensation benefits from the employer. The
20 employer shall provide an itemized statement showing the
21 amount of the lien upon request by the employee or the third
22 party against whom the action has been brought.

23 5. An employer may request, in writing, that an injured
24 employee commence a cause of action for damages against a
25 third party. If the employee fails to commence such an action
26 within ninety days after receipt of such a request, the
27 employer is subrogated to the rights of the employee to pursue
28 the action and may recover damages for the injury to the same
29 extent that the employee may recover damages. An employer who
30 exercises subrogation rights shall commence an action in the
31 name of the employee and shall give the employee written
32 notice by providing a copy of the original notice and petition
33 to the employee within ten days after commencement of the
34 action. An employer may commence a subrogation action without
35 first requesting that the employee commence the action, if the

1 action is commenced within thirty days before the applicable
2 statute of limitations would bar the action. The employee
3 shall reasonably cooperate with the employer's efforts to
4 pursue the cause of action.

5 6. In case of recovery of damages by the employee, the
6 court shall enter judgment for distribution of the proceeds
7 thereof as follows:

8 a. A sum sufficient to pay attorney fees to the employee's
9 attorney, including expenses of litigation. The proportion of
10 the total recovery that is payable for attorney fees shall be
11 computed to the nearest one-hundredth of a percent to
12 determine the pro rata shares of attorney fees that are owed
13 by the employee and the employer for that portion of the
14 recovery allocable to each.

15 b. A sum sufficient to indemnify the employer for all
16 workers' compensation benefits paid to the employee as of the
17 time of distribution of the proceeds together with interest
18 calculated from the date the benefits were paid, at the rate
19 provided in section 535.3 for court judgments and decrees,
20 less the employer's pro rata share of attorney fees as
21 determined pursuant to paragraph "a". The employer shall not
22 be indemnified for interest paid or payable to the employee on
23 workers' compensation benefits that were not paid when due
24 under section 85.30 or that were delayed or terminated without
25 reasonable or probable cause or excuse under section 86.13.

26 c. The balance of the net recovery, if any, shall be paid
27 to the employee, subject to the employer's future right of
28 offset.

29 d. Any dispute concerning attorney fees, litigation
30 expenses, or the amount of indemnification owed to the
31 employer shall be determined by the court having jurisdiction
32 of the third-party action.

33 7. a. If the employee's entitlement to workers'
34 compensation benefits is disputed at the time the proceeds of
35 the recovery are distributed, or if additional benefits become

1 due after such distribution, the employer's liability for
2 benefits shall be offset against the net recovery paid to the
3 employee under subsection 6, paragraph "c", before any
4 additional benefits are payable to the employee.

5 b. Satisfaction of the employer's liability to the
6 employee for benefits by an offset constitutes indemnification
7 of the employer to the extent of the offset, and the employer
8 shall pay to the employee the employer's pro rata share of
9 attorney fees allocable to that portion of the recovery that
10 is offset against the employer's liability together with
11 interest that would have been due on the employer's liability
12 if the liability had not been satisfied by the offset. An
13 employee shall be reimbursed for the pro rata share of
14 attorney fees allocable to the employer's offset within thirty
15 days after submitting proof to the employer that the employee
16 has paid charges for which the employer would be liable under
17 section 85.27 if there had not been a recovery from a third
18 party. Amounts paid by an employer to an employee as
19 reimbursement for pro rata attorney fees shall be included in
20 the employee's net recovery under subsection 6, paragraph "c",
21 and are subject to the employer's rights of offset.

22 8. A settlement between an employee or an employer and the
23 third party who is liable for the employee's injury is not
24 effective unless the employee gives written consent to a
25 settlement between the employer and such a third party, or
26 unless the employer gives written consent to a settlement
27 between the employee and such third party or if either the
28 employer or employee refuses consent, upon the written
29 approval of the workers' compensation commissioner. In
30 granting approval, the commissioner may also determine the
31 validity and amount of the employer's claim for
32 indemnification.

33 9. Notwithstanding the provisions of section 85.35, the
34 parties to a settlement approved pursuant to this section may,
35 by express written agreement, retain their respective rights

1 arising under this chapter and chapters 85B, 86, and 87.

2 Sec. 4. Section 85.27, subsections 4, 6, and 7, Code 2003,
3 are amended to read as follows:

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

1 ability to contest the employer's choice of care pursuant to
2 this subsection.

3 6. While a contested case proceeding for determination of
4 liability for workers' compensation benefits is pending before
5 the workers' compensation commissioner relating to an injury
6 alleged to have given rise to treatment, no debt collection,
7 as defined by section 537.7102, shall be undertaken against an
8 employee or the employee's dependents for the collection of
9 charges for that treatment rendered an employee by any health
10 service provider. However, the health service provider may
11 send one itemized written bill to the employee setting forth
12 the amount of the charges in connection with the treatment
13 after notification of the contested case proceeding. The
14 workers' compensation commissioner shall impose a civil
15 penalty upon any person who willfully and knowingly violates
16 this subsection, in an amount to be determined by the
17 commissioner, of not less than one hundred dollars and not
18 more than one thousand dollars for each violation, payable to
19 the employee or the employee's dependents against whom the
20 violation occurred.

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

1 subsection as wages to the employee after making such
2 deductions from the amount as legally required or customarily
3 made by the employer from wages. Payments made under this
4 subsection shall be required to be reimbursed pursuant to any
5 insurance policy covering workers' compensation. Payments
6 under this subsection shall not be construed to be payment of
7 weekly benefits.

8 Sec. 5. Section 85.33, subsection 4, Code 2003, is amended
9 to read as follows:

10 4. If an employee is entitled to temporary partial
11 benefits under subsection 3 ~~of this section~~, the employer for
12 whom the employee was working at the time of injury shall pay
13 to the employee weekly compensation benefits, as provided in
14 section 85.32, for and during the period of temporary partial
15 disability. The temporary partial benefit shall be sixty-six
16 and two-thirds percent of the difference between the
17 employee's weekly earnings at the time of injury, computed in
18 compliance with section 85.36, and the employee's actual gross
19 weekly income from employment during the period of temporary
20 partial disability. ~~If at the time of injury an employee is
21 paid on the basis of the output of the employee, with a
22 minimum guarantee pursuant to a written employment agreement,
23 the minimum guarantee shall be used as the employee's weekly
24 earnings at the time of injury.~~ However, the weekly
25 compensation benefits shall not exceed the payments to which
26 the employee would be entitled under section 85.36 or section
27 85.37, or under subsection 1 of this section.

28 Sec. 6. Section 85.38, subsection 2, Code 2003, is amended
29 to read as follows:

30 2. CREDIT FOR BENEFITS PAID UNDER GROUP PLANS. In the
31 event the employee with a disability shall receive any
32 benefits, including medical, surgical, or hospital benefits,
33 under any group plan covering nonoccupational disabilities
34 contributed to wholly or partially by the employer, which
35 benefits should not have been paid or payable if any rights of

1 recovery existed under this chapter~~7-chapter-85A7~~ or chapter
2 85B, then the amounts so paid to the employee from the group
3 plan shall be credited to or against any compensation
4 payments, including medical, surgical, or hospital, made or to
5 be made under this chapter~~7-chapter-85A7~~ or chapter 85B. The
6 amounts so credited shall be deducted from the payments made
7 under these chapters. Any nonoccupational plan shall be
8 reimbursed in the amount deducted. This section shall not
9 apply to payments made under any group plan which would have
10 been payable even though there was an injury ~~under this~~
11 ~~chapter~~ or an occupational disease under this chapter 85A or
12 an occupational hearing loss under chapter 85B. Any employer
13 receiving such credit shall keep the employee safe and
14 harmless from any and all claims or liabilities that may be
15 made against them by reason of having received the payments
16 only to the extent of the credit.

17 If an employer denies liability under this chapter~~7-chapter~~
18 ~~85A7~~ or chapter 85B, for payment for any medical services
19 received or weekly compensation requested by an employee with
20 ~~a-disability~~, and the employee is a beneficiary under either
21 an individual or group plan for nonoccupational illness,
22 injury, or disability, the nonoccupational plan shall not deny
23 payment ~~for-the-medical-services-received~~ of benefits under
24 the plan on the basis that the employer's liability ~~for-the~~
25 ~~medical-services~~ under this chapter~~7-chapter-85A7~~ or chapter
26 85B is unresolved.

27 Sec. 7. Section 85.55, Code 2003, is amended to read as
28 follows:

29 85.55 WAIVERS PROHIBITED ---PHYSICAL-DEFECTS.

30 No An employee or dependent to whom this chapter applies~~7~~
31 shall not have power to waive any of the provisions of this
32 chapter in regard to the amount of compensation which may be
33 payable to such employee or dependent hereunder. ~~However7-any~~
34 ~~person-who-has-some-physical-defect-which-increases-the-risk~~
35 ~~of-injury7-may7-subject-to-the-approval-of-the-workers¹~~

1 compensation-commissioner, enter into a written agreement with
2 the employee's employer waiving compensation for injuries
3 which may occur directly or indirectly because of such
4 physical defect, provided, however, that such waiver shall not
5 affect the employee's benefits to be paid from the second
6 injury fund under the provisions of section 85.64.

7 Sec. 8. Section 85.61, subsection 2, Code 2003, is amended
8 by adding the following new unnumbered paragraph:

9 NEW UNNUMBERED PARAGRAPH. "Employer" includes and applies
10 to a person who contracts with a contractor for purposes of
11 the person's trade or business and the person shall be subject
12 to the jurisdiction of the workers' compensation commissioner
13 and to all of the provisions of this chapter, chapters 85B,
14 86, and 87, as to any and all personal injuries sustained by
15 the employees of the contractor arising out of and in the
16 course of performance of the contract with the person, if the
17 contractor has failed to insure the contractor's workers'
18 compensation liability or to obtain relief from workers'
19 compensation liability as provided in chapter 87. A person
20 who pays benefits pursuant to this section is considered to be
21 the employer for purposes of the exclusive remedy provisions
22 of sections 85.3 and 85.20, and for purposes of the
23 subrogation and indemnity provisions of section 85.22. A
24 person who pays benefits to the employees of a contractor
25 pursuant to this section is entitled to be indemnified by the
26 contractor with interest. A person shall not be charged a
27 premium for workers' compensation insurance for coverage of a
28 contractor's employees if the person holds a current
29 certificate of insurance or self-insurance showing that the
30 contractor with whom the person has a contract is in
31 compliance with chapter 87.

32 Sec. 9. Section 85.61, subsection 4, paragraph b, Code
33 2003, is amended to read as follows:

34 b. They shall ~~not~~ include a disease ~~unless it shall result~~
35 that results from the injury and ~~they shall not include~~ an

1 occupational disease ~~as-defined-in-section-85A-8.~~

2 Sec. 10. Section 85.70, Code 2003, is amended to read as
3 follows:

4 85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.

5 An employee who has sustained an injury resulting in
6 permanent partial or permanent total disability, for which
7 compensation is payable under this chapter, and who cannot
8 return to gainful employment because of such disability, shall
9 upon application to and approval by the workers' compensation
10 commissioner be entitled to a ~~twenty-dollar~~ one hundred dollar
11 weekly payment from the employer in addition to any other
12 benefit payments, during each full week in which the employee
13 is actively participating in a vocational rehabilitation
14 program recognized by the vocational rehabilitation services
15 division of the department of education. The workers'
16 compensation commissioner's approval of such application for
17 payment may be given only after a careful evaluation of
18 available facts, and after consultation with the employer or
19 the employer's representative. Judicial review of the
20 decision of the workers' compensation commissioner may be
21 obtained in accordance with the terms of the Iowa
22 administrative procedure Act and in section 86.26. Such
23 additional benefit payment shall be paid for a period not to
24 exceed thirteen consecutive weeks except that the workers'
25 compensation commissioner may extend the period of payment not
26 to exceed an additional thirteen weeks if the circumstances
27 indicate that a continuation of training will in fact
28 accomplish rehabilitation. Payments made by an employer
29 pursuant to this section do not constitute payment of weekly
30 compensation benefits.

31 Sec. 11. Section 86.24, subsection 4, Code 2003, is
32 amended to read as follows:

33 4. A transcript of a contested case proceeding shall be
34 provided by an appealing party at the party's cost ~~and-an~~
35 ~~affidavit-shall-be-filed-by-the-appealing-party-or-the-party's~~

1 attorney-with-the-workers'-compensation-commissioner-within
2 ten-days-after-the-filing-of-the-appeal-to-the-workers'
3 compensation-commissioner-stating-that-the-transcript-has-been
4 ordered-and-identifying-the-name-and-address-of-the-reporter
5 or-reporting-firm-from-which-the-transcript-has-been-ordered.

6 Sec. 12. NEW SECTION. 86.45 CONFIDENTIAL INFORMATION.

7 1. "Confidential information", for the purposes of this
8 section, means all information that is filed with the workers'
9 compensation commissioner as a result of an employee's injury
10 or death that would allow the identification of the employee
11 or the employee's dependents. "Confidential information"
12 includes first reports of injury and subsequent reports of
13 claim activity. "Confidential information" does not include
14 pleadings, motions, decisions, opinions, or applications for
15 settlement that are filed with the workers' compensation
16 commissioner.

17 2. The workers' compensation commissioner shall not
18 disclose confidential information except as follows:

19 a. Pursuant to the terms of a written waiver of
20 confidentiality executed by the employee or the dependents of
21 the employee whose information is filed with the workers'
22 compensation commission.

23 b. To another governmental agency, or to an advisory,
24 rating, or research organization, for the purpose of compiling
25 statistical data, evaluating the state's workers' compensation
26 system, or conducting scientific, medical, or public policy
27 research, where such disclosure will not allow the
28 identification of the employee or the employee's dependents.

29 c. To the employee or to the agent or attorney of the
30 employee whose information is filed with the workers'
31 compensation commissioner.

32 d. To the person or to the agent of the person who
33 submitted the information to the workers' compensation
34 commissioner.

35 e. To an agent, representative, attorney, investigator,

1 consultant, or adjuster of an employer, or insurance carrier
2 or third-party administrator of workers' compensation
3 benefits, who is involved in administering a claim for such
4 benefits related to the injury or death of the employee whose
5 information is filed with the workers' compensation
6 commissioner.

7 f. To all parties to a contested case proceeding before
8 the workers' compensation commissioner in which the employee
9 or a dependent of the employee, whose information is filed
10 with the workers' compensation commissioner, is a party.

11 g. In compliance with a subpoena.

12 h. To an agent, representative, attorney, investigator,
13 consultant, or adjuster of the employee, employer, or
14 insurance carrier or third-party administrator of insurance
15 benefits, who is involved in administering a claim for
16 insurance benefits related to the injury or death of the
17 employee whose information is filed with the workers'
18 compensation commissioner.

19 3. This section does not create a cause of action for a
20 violation of its provisions against the workers' compensation
21 commissioner or against the state or any governmental
22 subdivision of the state.

23 Sec. 13. Section 87.8, Code 2003, is amended to read as
24 follows:

25 87.8 INSOLVENCY CLAUSE PROHIBITED.

26 No policy of insurance issued under this chapter shall
27 contain any provision relieving the insurer from payment if
28 the insured becomes insolvent or discharged in bankruptcy
29 during the period that the policy is in operation, or the
30 compensation, or any part of it, is unpaid. An insurer shall
31 pay, when due, all benefits and compensation for which the
32 insured is liable under this state's workers' compensation
33 laws, regardless of whether the insured has reimbursed the
34 insurer or paid any deductible due under the policy of
35 insurance.

1 Sec. 14. Section 96.7, subsection 2, paragraph a,
2 subparagraph (2), unnumbered paragraph 4, Code Supplement
3 2003, is amended to read as follows:

4 The amount of benefits paid to an individual, which is
5 solely due to wage credits considered to be in an individual's
6 base period due to the exclusion and substitution of calendar
7 quarters from the individual's base period under section
8 96.23, shall be charged against the account of the employer
9 responsible for paying the workers' compensation benefits for
10 temporary total disability or during a healing period under
11 section 85.33~~7~~ or section 85.34, subsection 1, ~~or-section~~
12 ~~85A-177~~ or responsible for paying indemnity insurance
13 benefits.

14 Sec. 15. Section 96.23, unnumbered paragraph 1, Code 2003,
15 is amended to read as follows:

16 The department shall exclude three or more calendar
17 quarters from an individual's base period, as defined in
18 section 96.19, subsection 3, if the individual received
19 workers' compensation benefits for temporary total disability
20 or during a healing period under section 85.33~~7~~ or section
21 85.34, subsection 1, ~~or-section-85A-17~~ or indemnity insurance
22 benefits during those three or more calendar quarters, if one
23 of the following conditions applies to the individual's base
24 period:

25 Sec. 16. Section 331.324, subsection 1, paragraph d, Code
26 2003, is amended to read as follows:

27 d. Provide occupational disease compensation to employees
28 as required by chapter 85A 85.

29 Sec. 17. Section 8A.457, section 8A.512, subsection 1,
30 paragraph b, subparagraph (1), and section 84A.5, subsection
31 4, Code Supplement 2003, are amended by striking the figure
32 "85A,".

33 Sec. 18. Section 85.3, subsections 2 and 3, section 85.20,
34 unnumbered paragraph 1, section 85.21, subsections 1 and 3,
35 section 85.22, unnumbered paragraph 1, section 85.26,

1 subsections 1 through 3, section 85.27, subsections 1 and 3,
2 section 85.34, subsections 1, 3, 4, and 5, section 85.35,
3 section 85.38, subsection 4, section 85.49, unnumbered
4 paragraph 1, section 85.60, section 85.61, subsection 11,
5 section 86.8, subsection 1, section 86.9, unnumbered paragraph
6 1, sections 86.13, 86.17, 86.18, and 86.19, section 86.24,
7 subsection 1, sections 86.29, 86.39, 86.44, 87.1, and 87.2,
8 section 87.11, subsection 3, sections 87.13, 87.14A, 87.16,
9 87.21, and 87.22, section 515B.5, subsection 2, paragraph h,
10 section 622.10, subsection 3, paragraph f, section 627.13, and
11 section 729.6, subsection 7, paragraph a, Code 2003, are
12 amended by striking all references to chapter 85A, and the
13 Code editor shall correct any corresponding grammatical
14 constructions.

15 Sec. 19. CODE EDITOR DIRECTIVE. The Code editor shall
16 strike any references to chapter 85A anywhere else in the
17 Code, in any bills awaiting codification, and in any bills
18 enacted by the Eightieth General Assembly, 2004 Regular
19 Session, and shall make any related grammatical corrections.

20 Sec. 20. Chapter 85A, Code 2003, is repealed.

21 EXPLANATION

22 This bill contains various provisions relating to workers'
23 compensation.

24 The bill amends Code section 22.7 to provide that
25 confidential information filed with the workers' compensation
26 commissioner as defined in Code section 86.45, as enacted in
27 the bill, is a confidential public record for purposes of this
28 state's open records law.

29 The bill amends Code section 85.1 to provide that an
30 employer assumes liability for workers' compensation coverage
31 of certain persons exempt from workers' compensation
32 requirements by purchasing coverage that does not specifically
33 exclude them. The bill also amends Code section 85.1 to
34 provide that an employer cannot assume liability for workers'
35 compensation coverage of police officers and fire fighters who

1 are entitled to benefits under Code chapters 410 and 411, and
2 certain officers of a corporation other than a family farm
3 corporation who voluntarily reject workers' compensation
4 coverage. This provision of Code section 85.1 is also amended
5 to provide that an employer may assume liability for certain
6 other exempt employees by purchasing workers' compensation
7 insurance that does not specifically exclude them. Such
8 employees include certain domestic, casual, and agricultural
9 employees. Previously, any employees exempt under this
10 section were covered only if the workers' compensation
11 insurance policy specifically included them in the coverage.

12 Code section 85.22 is amended by striking the section and
13 replacing it with new language relating to the liability of
14 third persons for work-related injuries and to subrogation and
15 indemnification of employers and insurers. The employer's
16 lien securing indemnification for workers' compensation
17 benefits paid is perfected by filing written notice of the
18 lien in the office of the clerk of court where the action is
19 brought. The lien is binding on any person who has actual
20 knowledge that the employee has received workers' compensation
21 benefits from the employer.

22 The bill provides that if an employee recovers damages from
23 a third party, the employer shall be indemnified out of the
24 recovery of damages to the extent of the workers' compensation
25 benefits paid, with interest, less the employer's pro rata
26 share of attorney fees owed as provided in the bill.

27 The bill also provides that if the employee does not
28 commence an action against the third party, the employer shall
29 be subrogated to the rights of the employee by requesting, in
30 writing, that an injured employee commence a cause of action
31 for damages against a third party, and if the employee fails
32 to commence such an action within 90 days after receipt of the
33 request, the employer may pursue the action and recover
34 damages to the same extent that the employee might. An
35 employer is not required to first request that an employee

1 file suit against a third party if the employer commences the
2 action within 30 days before the applicable statute of
3 limitations would bar the suit.

4 The bill also provides that the court shall enter judgment
5 to distribute the proceeds of any recovery by disbursing a
6 sum, sufficient to pay attorney fees to the employee's
7 attorney including costs of litigation; a sum sufficient to
8 indemnify the employer for all workers' compensation benefits
9 paid to the employee at the time of disbursement together with
10 interest calculated from the date benefits were paid; and the
11 balance of the net recovery shall be paid to the employee,
12 subject to the employer's future right of offset if the
13 employee's entitlement to workers' compensation is disputed at
14 the time of disbursement or additional benefits later become
15 due.

16 The bill also provides that satisfaction of the employer's
17 liability to the employee for benefits by an offset
18 constitutes indemnification of the employer to the extent of
19 the offset. The bill provides that an employee shall be
20 reimbursed for the employer's share of attorney fees within 30
21 days after submitting proof to the employer that the employee
22 has paid charges for services, such as medical and hospital
23 services, for which the employer would be liable if there had
24 not been a recovery from a third party. Amounts paid by an
25 employer as reimbursement for attorney fees shall be included
26 in the employee's net recovery allowed and are subject to the
27 employer's rights of offset for future liabilities.

28 The bill also provides that a settlement between an
29 employee or an employer and a third party is not effective
30 unless either the employee or employer who is not involved in
31 the settlement gives written consent or upon written approval
32 of the workers' compensation commissioner.

33 The bill amends Code section 85.27, subsection 4, to
34 provide that the cost of services and supplies chosen by the
35 employer to treat an injured employee, such as surgical,

1 medical, dental, osteopathic, chiropractic, podiatric,
2 physical rehabilitation, nursing, ambulance, and hospital
3 services and supplies, shall be paid by the employer.

4 Code section 85.27, subsection 6, is amended to provide
5 that the workers' compensation commissioner shall impose a
6 civil penalty upon any person who willfully and knowingly
7 violates the subsection by undertaking debt collection against
8 an employee or an employee's dependents for treatment rendered
9 an employee by any health care provider relating to an injury
10 for which a claim for workers' compensation benefits is
11 pending. In that situation the commissioner is required to
12 impose a penalty of not less than \$100 and not more than
13 \$1,000 for each violation, payable to the employee or the
14 employee's dependents against whom the violation occurred.

15 Code section 85.27, subsection 7, is amended to provide
16 that for purposes of the section, "day of incapacity to work"
17 means eight hours of accumulated absence from work due to
18 incapacity to work or due to the receipt of services pursuant
19 to that section.

20 Code section 85.33, subsection 4, is amended to remove a
21 provision applicable to employees who work on the basis of
22 output or piecework which provides that such an injured
23 employee's minimum guarantee of pay instead of actual earnings
24 would be used to calculate the employee's weekly compensation
25 rate for temporary partial workers' compensation benefits.

26 The bill amends Code section 85.38 to provide that if an
27 employer denies liability under Code chapter 85 or 85B for
28 payment of weekly compensation requested by an employee and
29 the employee is a beneficiary under either an individual or
30 group plan for nonoccupational illness, injury, or disability,
31 the nonoccupational plan shall not deny payment of benefits
32 under the plan on the basis that the employer's liability
33 under Code chapter 85 or 85B is unresolved. Code section
34 85.38 currently requires payment by a nonoccupational plan for
35 any medical services received by an injured employee under

1 these circumstances.

2 Code section 85.55 is amended to remove language that
3 allowed an employee with a preexisting physical defect that
4 increased the employee's risk of injury to enter into a
5 written agreement with an employer waiving workers'
6 compensation benefits for injuries that might occur at work
7 resulting either directly or indirectly from the employee's
8 physical defect.

9 The bill amends Code section 85.61, subsection 2, to
10 provide that an "employer", for purposes of Code chapters 85,
11 85B, 86, and 87, includes and applies to a person who
12 contracts with a contractor for purposes of the person's trade
13 or business as to personal injuries sustained by the employees
14 of the contractor arising out of and in the course of
15 performance of the contract with the person, if the contractor
16 has failed to insure the contractor's workers' compensation
17 liability or to obtain relief from workers' compensation
18 liability as provided in Code chapter 87. The provision also
19 states that a person who pays benefits pursuant to this
20 section is considered to be the employer for purposes of the
21 exclusive remedy provisions and for purposes of subrogation
22 and indemnity provisions. A person who pays benefits to the
23 employees of a contractor is entitled to be indemnified by the
24 contractor with interest and shall not be charged a premium
25 for workers' compensation insurance coverage for a
26 contractor's employees if the person holds a current
27 certificate of insurance or self-insurance showing that the
28 contractor is in compliance with Code chapter 87.

29 The bill amends Code section 85.61 to provide that an
30 "injury" or "personal injury" for purposes of this state's
31 workers' compensation laws includes a disease that results
32 from an injury and includes an occupational disease.

33 The bill amends Code section 85.70 to provide that an
34 injured employee with a permanent disability who actively
35 participates in a vocational rehabilitation program shall be

1 paid \$100 instead of \$20 each week by the employer during each
2 week of participation in addition to any other benefit
3 payments and that such payments do not constitute weekly
4 compensation benefits.

5 The bill amends Code section 86.24 to remove the
6 requirement that a party appealing a contested case proceeding
7 must file an affidavit with the commissioner that the
8 transcript of the proceedings has been ordered.

9 The bill adds new Code section 86.45 that defines
10 "confidential information" to mean all information that is
11 filed with the workers' compensation commissioner as a result
12 of an employee's injury or death that would allow
13 identification of the employee or the employee's dependents.
14 "Confidential information" includes first reports of injury
15 and subsequent reports of claim activity but does not include
16 pleadings, motions, decisions, opinions, or applications for
17 settlement that are filed with the workers' compensation
18 commissioner.

19 The bill provides that the workers' compensation
20 commissioner shall not disclose such confidential information
21 except pursuant to the terms of a written waiver of
22 confidentiality executed by the employee or the dependents of
23 the employee whose information is filed with the workers'
24 compensation commissioner; to another governmental agency or
25 to an advisory, rating, or research organization for the
26 purpose of compiling statistical data, or conducting
27 scientific, medical, or public policy research, where such
28 disclosure will not allow identification of the employee or
29 the employee's dependents; to the employee or to the agent or
30 attorney of the employee whose information is filed with the
31 workers' compensation commissioner; to the person or agent of
32 the person who submitted the information to the workers'
33 compensation commissioner; to an agent, representative,
34 attorney, investigator, consultant, or adjuster of an
35 employer, or insurance carrier or third-party administrator of

1 workers' compensation benefits, who is involved in
2 administering a claim for such benefits related to the injury
3 or death of the employee whose information is filed with the
4 workers' compensation commissioner; to all parties to a
5 contested case proceeding before the workers' compensation
6 commissioner in which the employee or a dependent of the
7 employee, whose information is filed with the workers'
8 compensation commissioner, is a party; in compliance with a
9 subpoena; or to an agent, representative, attorney,
10 investigator, consultant, or adjuster of the employee,
11 employer, or insurance carrier or third-party administrator of
12 insurance benefits, who is involved in administering a claim
13 for insurance benefits related to the injury or death of the
14 employee whose information is filed with the workers'
15 compensation commissioner.

16 The bill also provides that new Code section 86.45 does not
17 create a cause of action for a violation of its provisions
18 against the workers' compensation commissioner or against the
19 state or any governmental subdivision of the state.

20 Code section 87.8 is amended by the bill to provide that an
21 insurer must pay, when due, all benefits and compensation for
22 which the insured is liable under this state's workers'
23 compensation laws, regardless of whether the insured has
24 reimbursed the insurer or paid any deductible due under the
25 insurance policy.

26 The bill also repeals Code chapter 85A that dealt
27 separately with the payment of workers' compensation for
28 occupational disease. Currently, under Code chapter 85A, an
29 employee cannot receive workers' compensation benefits for an
30 occupational disease, unless disablement or death from the
31 disease results within three years, in the case of the disease
32 of pneumoconiosis, or within one year in the case of any other
33 occupational disease, after the employee's last injurious
34 exposure to the disease in the employment. By amending Code
35 chapter 85 to provide that an injury for purposes of that

1 chapter includes an occupational disease, an employee can
2 receive compensation for an occupational disease if the
3 employee commences a proceeding within two years from the date
4 of the injury. "Date of injury", for purposes of Code chapter
5 85, has been interpreted by the Iowa Supreme Court to be "the
6 date on which the claimant, as a reasonable person, would be
7 plainly aware of the injury and the causal relationship
8 between the injury and the claimant's employment". Weishaar
9 v. Snap-On Tools Corp., 582 N.W.2d 177, 181 (Iowa 1998). This
10 so-called "discovery rule" allows an employee to receive
11 compensation for an injury or disease that does not become
12 apparent for some time and does not require claims to be made
13 within a specific period of time after the last injurious
14 exposure or end of employment.

15 The bill also contains numerous coordinating amendments
16 that remove references to Code chapter 85A, which is repealed
17 by the bill.

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