

House Study Bill 9

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

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

A BILL FOR

1 An Act relating to workers' compensation insurance, benefits, and
2 settlements, and related nonoccupational disability benefits.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1529HC 81
5 av/gg/14

PAG LIN

1 1 Section 1. Section 85.27, subsection 7, Code 2005, is
1 2 amended to read as follows:
1 3 7. If, after the third day of incapacity to work following
1 4 the date of sustaining a compensable injury which does not
1 5 result in permanent partial disability, or if, at any time
1 6 after sustaining a compensable injury which results in
1 7 permanent partial disability, an employee, who is not
1 8 receiving weekly benefits under section 85.33 or section
1 9 85.34, subsection 1, returns to work and is required to leave
1 10 work for one full day or less to receive services pursuant to
1 11 this section, the employee shall be paid an amount equivalent
1 12 to the wages lost at the employee's regular rate of pay for
1 13 the time the employee is required to leave work. For the
1 14 purposes of this subsection, "day of incapacity to work" means
1 15 eight hours of accumulated absence from work due to incapacity
1 16 to work or due to the receipt of services pursuant to this
1 17 section. The employer shall make the payments under this
1 18 subsection as wages to the employee after making such
1 19 deductions from the amount as legally required or customarily
1 20 made by the employer from wages. Payments made under this
1 21 subsection shall be required to be reimbursed pursuant to any
1 22 insurance policy covering workers' compensation. Payments
1 23 under this subsection shall not be construed to be payment of
1 24 weekly benefits.
1 25 Sec. 2. Section 85.35, Code 2005, is amended to read as
1 26 follows:
1 27 85.35 ~~SETTLEMENT IN CONTESTED CASE SETTLEMENTS.~~
1 28 1. The parties to a contested case or persons who are
1 29 involved in a dispute which could culminate in a contested
1 30 case may enter into a settlement of any claim arising under
1 31 this chapter or chapter 85A, 85B, or 86, providing for final
1 32 disposition of the claim, provided that no final disposition
1 33 affecting rights to future benefits may be had when the only
1 34 dispute is the degree of disability resulting from an injury
1 35 for which an award for payments or agreement for settlement
2 1 under section 86.13 has been made. The settlement shall be in
2 2 writing on forms prescribed by the workers' compensation
2 3 commissioner and submitted to the workers' compensation
2 4 commissioner for approval.
2 5 2. The parties may enter into an agreement for settlement
2 6 that establishes the employer's liability, fixes the nature
2 7 and extent of the employee's current right to accrued
2 8 benefits, and establishes the employee's right to statutory
2 9 benefits that accrue in the future.
2 10 3. The parties may enter into a compromise settlement of
2 11 the employee's claim to benefits as a full and final
2 12 disposition of the claim.
2 13 4. The parties may enter into a settlement that is a
2 14 combination of an agreement for settlement and a compromise
2 15 settlement that establishes the employer's liability for part
2 16 of a claim but makes a full and final disposition of other
2 17 parts of a claim.
2 18 5. A contingent settlement may be made and approved.

~~2 19 conditioned upon subsequent approval by a court or
2 20 governmental agency, or upon any other subsequent event that
2 21 is expected to occur within one year from the date of the
2 22 settlement. If the subsequent approval or event does not
2 23 occur, the contingent settlement and its approval may be
2 24 vacated by order of the workers' compensation commissioner
2 25 upon a petition for vacation filed by one of the parties or
2 26 upon agreement by all parties. If a contingent settlement is
2 27 vacated, the running of any period of limitation provided for
2 28 in section 85.26 is tolled from the date the settlement was
2 29 initially approved until the date that the settlement is
2 30 vacated, and the claim is restored to the status that the
2 31 claim held when the contingent settlement was initially
2 32 approved. The contingency on a settlement lapses and the
2 33 settlement becomes final and fully enforceable if an action to
2 34 vacate the contingent settlement or to extend the period of
2 35 time allowed for the subsequent approval or event to occur is
3 1 not initiated within one year from the date that the
3 2 contingent settlement was initially approved.~~

3 3 6. The parties may agree that settlement proceeds, which
3 4 are paid in a lump sum, are intended to compensate the injured
3 5 worker at a given monthly or weekly rate over the life
3 6 expectancy of the injured worker. If such an agreement is
3 7 reached, neither the weekly compensation rate which either has
3 8 been paid, or should have been paid, throughout the case, nor
3 9 the maximum statutory weekly rate applicable to the injury
3 10 shall apply. Instead, the rate set forth in the settlement
3 11 agreement shall be the rate for the case.

~~3 12 The settlement shall not be approved unless evidence of a
3 13 bona fide dispute exists concerning any of the following:~~

~~3 14 1. The claimed injury arose out of or in the course of the
3 15 employment.~~

~~3 16 2. The injured employee gave notice under section 85.23.~~

~~3 17 3. Whether or not the statutes of limitations as provided
3 18 in section 85.26 have run. When the issue involved is whether
3 19 or not the statute of limitations of section 85.26, subsection
3 20 2, has run, the final disposition shall pertain to the right
3 21 to weekly compensation unless otherwise provided for in
3 22 subsection 7 of this section.~~

~~3 23 4. The injury was caused by the employee's willful intent
3 24 to injure the employee's self or to willfully injure another.~~

~~3 25 5. Intoxication, which did not arise out of and in the
3 26 course of employment but which was due to the effects of
3 27 alcohol or another narcotic, depressant, stimulant,
3 28 hallucinogenic, or hypnotic drug not prescribed by an
3 29 authorized medical practitioner, was a substantial factor in
3 30 causing the employee's injury.~~

~~3 31 6. The injury was caused by the willful act of a third
3 32 party directed against the employee for reasons personal to
3 33 such employee.~~

~~3 34 7. This chapter or chapter 85A, 85B, 86 or 87 applies to
3 35 the party making the claim.~~

~~4 1 8. A substantial portion of the claimed disability is
4 2 related to physical or mental conditions other than those
4 3 caused by the injury.~~

~~4 4 7. A settlement shall be approved by the workers'
4 5 compensation commissioner if the parties show all of the
4 6 following:~~

~~4 7 a. Substantial evidence exists to support the terms of the
4 8 settlement.~~

~~4 9 b. Waiver of the employee's right to a hearing, decision,
4 10 and statutory benefits is made knowingly by the employee.~~

~~4 11 c. The settlement is a reasonable and informed compromise
4 12 of the competing interests of the parties.~~

~~4 13 If an employee is represented by legal counsel, it is
4 14 presumed that the required showing for approval of the
4 15 settlement has been made.~~

~~4 16 8. Approval of a settlement by the workers' compensation
4 17 commissioner shall be is binding on the parties and shall not
4 18 be construed as an original proceeding. Notwithstanding any
4 19 provisions of this chapter and chapters 85A, 85B, 86, and 87,
4 20 an approved compromise settlement shall constitute a final bar
4 21 to any further rights arising under this chapter and chapters
4 22 85A, 85B, 86, and 87. Such regarding the subject matter of
4 23 the compromise and a payment made pursuant to a compromise
4 24 settlement agreement shall not be construed as the payment of
4 25 weekly compensation.~~

~~4 26 Sec. 3. Section 85.38, subsection 2, Code 2005, is amended
4 27 to read as follows:~~

~~4 28 2. CREDIT FOR BENEFITS PAID UNDER GROUP PLANS. In the
4 29 event the employee with a disability shall receive any~~

4 30 benefits, including medical, surgical, or hospital benefits,
4 31 under any group plan covering nonoccupational disabilities
4 32 contributed to wholly or partially by the employer, which
4 33 benefits should not have been paid or payable if any rights of
4 34 recovery existed under this chapter, chapter 85A, or chapter
4 35 85B, then the amounts so paid to the employee from the group
5 1 plan shall be credited to or against any compensation
5 2 payments, including medical, surgical, or hospital, made or to
5 3 be made under this chapter, chapter 85A, or chapter 85B. The
5 4 amounts so credited shall be deducted from the payments made
5 5 under these chapters. Any nonoccupational plan shall be
5 6 reimbursed in the amount deducted. This section shall not
5 7 apply to payments made under any group plan which would have
5 8 been payable even though there was an injury under this
5 9 chapter or an occupational disease under chapter 85A or an
5 10 occupational hearing loss under chapter 85B. Any employer
5 11 receiving such credit shall keep the employee safe and
5 12 harmless from any and all claims or liabilities that may be
5 13 made against them by reason of having received the payments
5 14 only to the extent of the credit.

5 15 If an employer denies liability under this chapter, chapter
5 16 85A, or chapter 85B, for payment for any medical services
5 17 received or weekly compensation requested by an employee ~~with~~
~~5 18 a disability~~, and the employee is a beneficiary under either
5 19 an individual or group plan for nonoccupational illness,
5 20 injury, or disability, the nonoccupational plan shall not deny
5 21 payment for the medical services received or for benefits
~~5 22 under the plan on the basis that the employer's liability for~~
~~5 23 the medical services~~ under this chapter, chapter 85A, or
5 24 chapter 85B is unresolved.

5 25 Sec. 4. Section 85.71, Code 2005, is amended to read as
5 26 follows:

5 27 85.71 INJURY OUTSIDE OF STATE.

5 28 If an employee, while working outside the territorial
5 29 limits of this state, suffers an injury on account of which
5 30 the employee, or in the event of death, the employee's
5 31 dependents, would have been entitled to the benefits provided
5 32 by this chapter had such injury occurred within this state,
5 33 such employee, or in the event of death resulting from such
5 34 injury, the employee's dependents, shall be entitled to the
5 35 benefits provided by this chapter, if at the time of such
6 1 injury any of the following is applicable:

~~6 2 1. The employment is principally localized in this state,~~
~~6 3 that is, the employee's employer has a place of business in~~
~~6 4 this or some other state and the employee regularly works in~~
~~6 5 this state, or if the employee's employer has at or from such~~
~~6 6 a place of business in this state and the employee is~~
~~6 7 domiciled in this state.~~

~~6 8 2. The employee is working under a contract of hire made~~
~~6 9 in this state in employment not principally localized in any~~
~~6 10 state and the employee spends a substantial part of the~~
~~6 11 employee's working time working for the employer has a place~~
~~6 12 of business in this state and the employee is domiciled in~~
~~6 13 this state.~~

6 14 3. The employee is working under a contract of hire made
6 15 in this state ~~in employment principally localized in another~~
~~6 16 state, whose workers' compensation law is not applicable to~~
~~6 17 the employee's employer and the employee spends a substantial~~
~~6 18 part of the employee's time working in this state.~~

~~6 19 4. The employee is working under a contract of hire made~~
~~6 20 in this state and sustains an injury for which no remedy is~~
~~6 21 available under the workers' compensation laws of another~~
~~6 22 state.~~

6 23 ~~4.~~ 5. The employee is working under a contract of hire
6 24 made in this state for employment outside the United States.

~~6 25 6. The employee is working under a contract of hire which~~
~~6 26 provides that the employee's workers' compensation claims be~~
~~6 27 governed by Iowa law.~~

6 28 Sec. 5. Section 86.24, subsection 4, Code 2005, is amended
6 29 to read as follows:

6 30 4. A transcript of a contested case proceeding shall be
6 31 provided by an appealing party at the party's cost ~~and an~~
~~6 32 affidavit shall be filed by the appealing party or the party's~~
~~6 33 attorney with the workers' compensation commissioner within~~
~~6 34 ten days after the filing of the appeal to the workers'~~
~~6 35 compensation commissioner stating that the transcript has been~~
~~7 1 ordered and identifying the name and address of the reporter~~
~~7 2 or reporting firm from which the transcript has been ordered.~~

7 3 Sec. 6. Section 87.14A, Code 2005, is amended to read as
7 4 follows:

7 5 87.14A INSURANCE ~~OR BOND~~ REQUIRED.

7 6 An employer subject to this chapter and chapters 85, 85A,
7 7 85B, and 86 shall not engage in business without first
7 8 obtaining insurance covering compensation benefits or
7 9 obtaining relief from insurance as provided in this chapter ~~or~~
~~7 10 furnishing a bond pursuant to section 87.16.~~ A person who
7 11 willfully and knowingly violates this section is guilty of a
7 12 class "D" felony.

7 13 Sec. 7. Section 87.19, unnumbered paragraph 1, Code 2005,
7 14 is amended to read as follows:

7 15 Upon the receipt of information by the workers'
7 16 compensation commissioner of any employer failing to comply
7 17 with ~~sections 87.16 and 87.17~~ section 87.14A, the commissioner
7 18 shall at once notify such employer by certified mail that
7 19 unless such employer comply with the requirements of law,
7 20 legal proceedings will be instituted to enforce such
7 21 compliance.

7 22 Sec. 8. Section 87.20, Code 2005, is amended to read as
7 23 follows:

7 24 87.20 REVOCATION OF RELEASE FROM INSURANCE.

~~7 25 The insurance commissioner with the concurrence of the~~
~~7 26 workers' compensation commissioner~~ may, at any time, upon
7 27 reasonable notice to such employer and upon hearing, revoke
7 28 for cause any order theretofore made relieving any employer
7 29 from carrying insurance as provided by this chapter.

7 30 Sec. 9. Sections 87.16 and 87.17, Code 2005, are repealed.

7 31 EXPLANATION

7 32 This bill relates to workers' compensation insurance,
7 33 payment of workers' compensation benefits, and workers'
7 34 compensation settlements.

7 35 Code section 85.27 is amended to provide that for purposes
8 1 of paying lost wages pursuant to subsection 7, "day of
8 2 incapacity to work" means eight hours of accumulated absence
8 3 from work due to incapacity to work or due to the receipt of
8 4 services pursuant to that section.

8 5 Code section 85.35 is amended to modify settlement
8 6 procedures for workers' compensation claims. The bill
8 7 provides that parties may enter into an agreement for
8 8 settlement that establishes the employer's liability, fixes
8 9 the nature and extent of the employee's rights to accrued
8 10 benefits, and establishes the employee's right to statutory
8 11 benefits that accrue in the future; a compromise settlement of
8 12 an employee's claim to benefits that is a full and final
8 13 disposition of the claim; or a settlement that is a
8 14 combination of an agreement for settlement and a compromise
8 15 settlement that establishes the employer's liability for part
8 16 of a claim but makes a full and final disposition of other
8 17 parts of a claim.

8 18 Code section 85.35 is also amended to provide for a
8 19 contingent settlement, which may be made and approved by the
8 20 workers' compensation commissioner, conditioned upon
8 21 subsequent approval by a court or governmental agency or upon
8 22 any other event that is expected to occur within one year from
8 23 the date of the settlement. The bill provides that if the
8 24 subsequent approval or event does not occur, the contingent
8 25 settlement and its approval can be vacated by order of the
8 26 workers' compensation commissioner upon a petition by one of
8 27 the parties or upon agreement by all parties. If such a
8 28 contingent settlement is vacated, the running of any statute
8 29 of limitations provided for in Code section 85.26 is
8 30 considered to be stopped from the date that the contingent
8 31 settlement was initially approved until the date that the
8 32 settlement is vacated and the claim is then restored to the
8 33 status that it held at the time the settlement was initially
8 34 approved. The contingency on a settlement lapses and the
8 35 settlement becomes final and fully enforceable if an action to
9 1 vacate the settlement or to extend the period of time allowed
9 2 for the subsequent approval or event to occur is not initiated
9 3 within one year from the date that the contingent settlement
9 4 was initially approved.

9 5 Code section 85.35 is also amended to strike the
9 6 requirement that the parties produce evidence of a bona fide
9 7 dispute before a final settlement can be approved by the
9 8 workers' compensation commissioner. The amendment to the Code
9 9 section provides that a settlement cannot be approved unless
9 10 the parties show that substantial evidence exists to support
9 11 the terms of the settlement, waiver of the employee's right to
9 12 a hearing, decision, and statutory benefits is made knowingly
9 13 by the employee, and the settlement is a reasonable and
9 14 informed compromise of the competing interests of the parties.
9 15 The amendment to the Code section also provides that if an
9 16 employee is represented by legal counsel, it is presumed that

9 17 the required showing has been made.
9 18 The bill amends Code section 85.38 to provide that if an
9 19 employer denies liability under Code chapter 85, 85A, or 85B,
9 20 for payment of weekly compensation requested by an employee
9 21 and the employee is a beneficiary under either an individual
9 22 or group plan for nonoccupational illness, injury, or
9 23 disability, the nonoccupational plan shall not deny payment of
9 24 benefits under the plan on the basis that the employer's
9 25 liability under Code chapter 85, 85A, or 85B is unresolved.
9 26 Code section 85.38 currently requires payment by a
9 27 nonoccupational plan for any medical services received by an
9 28 injured employee under these circumstances.
9 29 Code section 85.71 is amended to revise the jurisdiction of
9 30 the workers' compensation commissioner over Iowa employees who
9 31 are injured while working outside the state. The revisions
9 32 allow jurisdiction where an employer has a place of business
9 33 in this state and the employee regularly works at or from such
9 34 a place of business; where the employer has a place of
9 35 business in this state and the employee is domiciled in this
10 1 state; where the employee is working under a contract of hire
10 2 made in this state and the employee spends a substantial part
10 3 of the employee's time working in this state; where the
10 4 employee is working under a contract of hire made in this
10 5 state and sustains an injury for which no remedy is available
10 6 under the workers' compensation laws of another state; and
10 7 where the employee is working under a contract of hire which
10 8 provides that the employee's workers' compensation claims be
10 9 governed by Iowa law. The commissioner continues to have
10 10 jurisdiction where an employee is working under a contract of
10 11 hire made in this state for employment outside the United
10 12 States.
10 13 Code section 86.24 is amended to remove the requirement
10 14 that in an appeal to the workers' compensation commissioner,
10 15 the appealing party or that party's attorney must file an
10 16 affidavit within 10 days after filing the appeal stating that
10 17 a transcript has been ordered.
10 18 The bill repeals Code section 87.16, which requires an
10 19 employer who has failed to carry workers' compensation
10 20 insurance or to obtain relief from carrying such insurance, to
10 21 furnish a bond approved by the workers' compensation
10 22 commissioner. Code section 87.14A is amended to remove the
10 23 reference to the bonding requirements contained in Code
10 24 section 87.16. The bill also repeals Code section 86.17,
10 25 which requires an employer to post a notice stating the nature
10 26 of the security furnished in lieu of insurance to secure
10 27 workers' compensation payments.
10 28 Code section 87.19 is amended to provide that an employer
10 29 that fails to comply with the provisions of Code chapters 85,
10 30 85A, 85B, 86, and 87, as set forth in Code section 87.14A, may
10 31 be subject to enforcement proceedings.
10 32 The bill amends Code section 87.20 to provide that the
10 33 insurance commissioner may revoke, for cause, an order
10 34 relieving an employer from carrying insurance as required by
10 35 Code chapter 87 without the concurrence of the workers'
11 1 compensation commissioner.
11 2 LSB 1529HC 81
11 3 av/gg/14