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SENATE FILE 244  
BY COURTNEY

BUSINESS & LABOR

Passed Senate, Date \_\_\_\_\_ Passed House, 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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SE 244  
BUSINESS & LABOR

1 Section 1. Section 22.7, Code 2005, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 51. 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 2005, 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 2005, is amended by striking  
33 the section and inserting in lieu thereof the following:

34 85.22 LIABILITY OF OTHERS -- INDEMNITY AND SUBROGATION.

35 1. As used in this section, unless the context otherwise

1 requires:

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

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

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

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

32 3. If an injured employee recovers damages from a third  
33 party, the employer shall be indemnified out of the recovery  
34 of damages to the extent of the workers' compensation benefits  
35 paid, with interest, less the employer's pro rata share of

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

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

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

1 statute of limitations would bar the action. The employee  
2 shall reasonably cooperate with the employer's efforts to  
3 pursue the cause of action.

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

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

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

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

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

32 7. a. If the employee's entitlement to workers'  
33 compensation benefits is disputed at the time the proceeds of  
34 the recovery are distributed, or if additional benefits become  
35 due after such distribution, the employer's liability for

1 benefits shall be offset against the net recovery paid to the  
2 employee under subsection 6, paragraph "c", before any  
3 additional benefits are payable to the employee.

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

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

32 9. Notwithstanding the provisions of section 85.35, the  
33 parties to a settlement approved pursuant to this section may,  
34 by express written agreement, retain their respective rights  
35 arising under this chapter and chapters 85B, 86, and 87.

1 Sec. 4. Section 85.27, subsections 6 and 7, Code 2005, are  
2 amended to read as follows:

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 2005, 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 2005, 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-85A~~7 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-85A~~7 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 ~~85A~~7 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-85A~~7 or chapter  
26 85B is unresolved.

27 Sec. 7. Section 85.61, subsection 2, Code 2005, is amended  
28 by adding the following new unnumbered paragraph:

29 NEW UNNUMBERED PARAGRAPH. "Employer" includes and applies  
30 to a person who contracts with a contractor for purposes of  
31 the person's trade or business and the person shall be subject  
32 to the jurisdiction of the workers' compensation commissioner  
33 and to all of the provisions of this chapter, chapters 85B,  
34 86, and 87, as to any and all personal injuries sustained by  
35 the employees of the contractor arising out of and in the

1 course of performance of the contract with the person, if the  
2 contractor has failed to insure the contractor's workers'  
3 compensation liability or to obtain relief from workers'  
4 compensation liability as provided in chapter 87. A person  
5 who pays benefits pursuant to this section is considered to be  
6 the employer for purposes of the exclusive remedy provisions  
7 of sections 85.3 and 85.20, and for purposes of the  
8 subrogation and indemnity provisions of section 85.22. A  
9 person who pays benefits to the employees of a contractor  
10 pursuant to this section is entitled to be indemnified by the  
11 contractor with interest. A person shall not be charged a  
12 premium for workers' compensation insurance for coverage of a  
13 contractor's employees if the person holds a current  
14 certificate of insurance or self-insurance showing that the  
15 contractor with whom the person has a contract is in  
16 compliance with chapter 87.

17 Sec. 8. Section 85.61, subsection 4, paragraph b, Code  
18 2005, is amended to read as follows:

19 b. They shall ~~not~~ include a disease ~~unless-it-shall-result~~  
20 that results from the injury and they ~~shall-not-include~~ an  
21 occupational disease ~~as-defined-in-section-85A-8~~.

22 Sec. 9. Section 86.24, subsection 4, Code 2005, is amended  
23 to read as follows:

24 4. A transcript of a contested case proceeding shall be  
25 provided by an appealing party at the party's cost ~~and-an~~  
26 ~~affidavit-shall-be-filed-by-the-appealing-party-or-the-party's~~  
27 ~~attorney-with-the-workers'-compensation-commissioner-within~~  
28 ~~ten-days-after-the-filing-of-the-appeal-to-the-workers'~~  
29 ~~compensation-commissioner-stating-that-the-transcript-has-been~~  
30 ~~ordered-and-identifying-the-name-and-address-of-the-reporter~~  
31 ~~or-reporting-firm-from-which-the-transcript-has-been-ordered~~.

32 Sec. 10. NEW SECTION. 86.45 CONFIDENTIAL INFORMATION.

33 1. "Confidential information", for the purposes of this  
34 section, means all information that is filed with the workers'  
35 compensation commissioner as a result of an employee's injury

1 or death that would allow the identification of the employee  
2 or the employee's dependents. "Confidential information"  
3 includes first reports of injury and subsequent reports of  
4 claim activity. "Confidential information" does not include  
5 pleadings, motions, decisions, opinions, or applications for  
6 settlement that are filed with the workers' compensation  
7 commissioner.

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

10 a. Pursuant to the terms of a written waiver of  
11 confidentiality executed by the employee or the dependents of  
12 the employee whose information is filed with the workers'  
13 compensation commission.

14 b. To another governmental agency, or to an advisory,  
15 rating, or research organization, for the purpose of compiling  
16 statistical data, evaluating the state's workers' compensation  
17 system, or conducting scientific, medical, or public policy  
18 research, where such disclosure will not allow the  
19 identification of the employee or the employee's dependents.

20 c. To the employee or to the agent or attorney of the  
21 employee whose information is filed with the workers'  
22 compensation commissioner.

23 d. To the person or to the agent of the person who  
24 submitted the information to the workers' compensation  
25 commissioner.

26 e. To an agent, representative, attorney, investigator,  
27 consultant, or adjuster of an employer, or insurance carrier  
28 or third-party administrator of workers' compensation  
29 benefits, who is involved in administering a claim for such  
30 benefits related to the injury or death of the employee whose  
31 information is filed with the workers' compensation  
32 commissioner.

33 f. To all parties to a contested case proceeding before  
34 the workers' compensation commissioner in which the employee  
35 or a dependent of the employee, whose information is filed

1 with the workers' compensation commissioner, is a party.

2 g. In compliance with a subpoena.

3 h. To an agent, representative, attorney, investigator,  
4 consultant, or adjuster of the employee, employer, or  
5 insurance carrier or third-party administrator of insurance  
6 benefits, who is involved in administering a claim for  
7 insurance benefits related to the injury or death of the  
8 employee whose information is filed with the workers'  
9 compensation commissioner.

10 3. This section does not create a cause of action for a  
11 violation of its provisions against the workers' compensation  
12 commissioner or against the state or any governmental  
13 subdivision of the state.

14 Sec. 11. Section 87.8, Code 2005, is amended to read as  
15 follows:

16 87.8 INSOLVENCY CLAUSE PROHIBITED.

17 No policy of insurance issued under this chapter shall  
18 contain any provision relieving the insurer from payment if  
19 the insured becomes insolvent or discharged in bankruptcy  
20 during the period that the policy is in operation, or the  
21 compensation, or any part of it, is unpaid. An insurer shall  
22 pay, when due, all benefits and compensation for which the  
23 insured is liable under this state's workers' compensation  
24 laws, regardless of whether the insured has reimbursed the  
25 insurer or paid any deductible due under the policy of  
26 insurance.

27 Sec. 12. Section 96.7, subsection 2, paragraph a,  
28 subparagraph (2), unnumbered paragraph 4, Code 2005, is  
29 amended to read as follows:

30 The amount of benefits paid to an individual, which is  
31 solely due to wage credits considered to be in an individual's  
32 base period due to the exclusion and substitution of calendar  
33 quarters from the individual's base period under section  
34 96.23, shall be charged against the account of the employer  
35 responsible for paying the workers' compensation benefits for

1 temporary total disability or during a healing period under  
2 section 85.33~~7~~ or section 85.34, subsection 1, ~~or-section~~  
3 ~~85A-177~~ or responsible for paying indemnity insurance  
4 benefits.

5 Sec. 13. Section 96.23, unnumbered paragraph 1, Code 2005,  
6 is amended to read as follows:

7 The department shall exclude three or more calendar  
8 quarters from an individual's base period, as defined in  
9 section 96.19, subsection 3, if the individual received  
10 workers' compensation benefits for temporary total disability  
11 or during a healing period under section 85.33~~7~~ or section  
12 85.34, subsection 1, ~~or-section-85A-17~~ or indemnity insurance  
13 benefits during those three or more calendar quarters, if one  
14 of the following conditions applies to the individual's base  
15 period:

16 Sec. 14. Section 331.324, subsection 1, paragraph d, Code  
17 2005, is amended to read as follows:

18 d. Provide occupational disease compensation to employees  
19 as required by chapter 85A 85.

20 Sec. 15. Section 8A.457, section 8A.512, subsection 1,  
21 paragraph b, subparagraph (1), and section 84A.5, subsection  
22 4, Code 2005, are amended by striking the figure "85A,".

23 Sec. 16. Section 85.3, subsections 2 and 3; section 85.20,  
24 unnumbered paragraph 1; section 85.21, subsections 1 and 3;  
25 section 85.22, unnumbered paragraph 1; section 85.26,  
26 subsections 1 through 3; section 85.27, subsections 1 and 3;  
27 section 85.34, subsections 3, 4, and 5; section 85.35; section  
28 85.38, subsection 4; section 85.49, unnumbered paragraph 1;  
29 section 85.60; section 85.61, subsection 11; section 86.8,  
30 subsection 1; section 86.9, unnumbered paragraph 1; sections  
31 86.13, 86.17, 86.18, and 86.19; section 86.24, subsection 1;  
32 sections 86.29, 86.39, 86.44, 87.1, and 87.2; section 87.11,  
33 subsection 3; sections 87.13, 87.14A, 87.16, 87.21, and 87.22;  
34 section 515B.5, subsection 2, paragraph h; section 622.10,  
35 subsection 3, paragraph f; section 627.13; and section 729.6,

1 subsection 7, paragraph a, Code 2005, are amended by striking  
2 all references to chapter 85A, and the Code editor shall  
3 correct any corresponding grammatical constructions.

4 Sec. 17. CODE EDITOR DIRECTIVE. The Code editor shall  
5 strike any references to chapter 85A anywhere else in the  
6 Code, in any bills awaiting codification, and in any bills  
7 enacted by the Eighty-first General Assembly, 2005 Regular  
8 Session, and shall make any related grammatical corrections.

9 Sec. 18. Chapter 85A, Code 2005, is repealed.

10

EXPLANATION

11 This bill contains various provisions relating to workers'  
12 compensation.

13 The bill amends Code section 22.7 to provide that  
14 confidential information filed with the workers' compensation  
15 commissioner as defined in Code section 86.45, as enacted in  
16 the bill, is a confidential public record for purposes of this  
17 state's open records law.

18 The bill amends Code section 85.1 to provide that an  
19 employer assumes liability for workers' compensation coverage  
20 of certain persons exempt from workers' compensation  
21 requirements by purchasing coverage that does not specifically  
22 exclude them. The bill also amends Code section 85.1 to  
23 provide that an employer cannot assume liability for workers'  
24 compensation coverage of police officers and fire fighters who  
25 are entitled to benefits under Code chapters 410 and 411, and  
26 certain officers of a corporation other than a family farm  
27 corporation who voluntarily reject workers' compensation  
28 coverage. This provision of Code section 85.1 is also amended  
29 to provide that an employer may assume liability for certain  
30 other exempt employees by purchasing workers' compensation  
31 insurance that does not specifically exclude them. Such  
32 employees include certain domestic, casual, and agricultural  
33 employees. Previously, any employees exempt under this  
34 section were covered only if the workers' compensation  
35 insurance policy specifically included them in the coverage.

1 Code section 85.22 is amended by striking the section and  
2 replacing it with new language relating to the liability of  
3 third persons for work-related injuries and to subrogation and  
4 indemnification of employers and insurers. The employer's  
5 lien securing indemnification for workers' compensation  
6 benefits paid is perfected by filing written notice of the  
7 lien in the office of the clerk of court where the action is  
8 brought. The lien is binding on any person who has actual  
9 knowledge that the employee has received workers' compensation  
10 benefits from the employer.

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

16 The bill also provides that if the employee does not  
17 commence an action against the third party, the employer shall  
18 be subrogated to the rights of the employee by requesting, in  
19 writing, that an injured employee commence a cause of action  
20 for damages against a third party, and if the employee fails  
21 to commence such an action within 90 days after receipt of the  
22 request, the employer may pursue the action and recover  
23 damages to the same extent that the employee might. An  
24 employer is not required to first request that an employee  
25 file suit against a third party if the employer commences the  
26 action within 30 days before the applicable statute of  
27 limitations would bar the suit.

28 The bill also provides that the court shall enter judgment  
29 to distribute the proceeds of any recovery by disbursing a  
30 sum, sufficient to pay attorney fees to the employee's  
31 attorney including costs of litigation; a sum sufficient to  
32 indemnify the employer for all workers' compensation benefits  
33 paid to the employee at the time of disbursement together with  
34 interest calculated from the date benefits were paid; and the  
35 balance of the net recovery shall be paid to the employee,

1 subject to the employer's future right of offset if the  
2 employee's entitlement to workers' compensation is disputed at  
3 the time of disbursement or additional benefits later become  
4 due.

5 The bill also provides that satisfaction of the employer's  
6 liability to the employee for benefits by an offset  
7 constitutes indemnification of the employer to the extent of  
8 the offset. The bill provides that an employee shall be  
9 reimbursed for the employer's share of attorney fees within 30  
10 days after submitting proof to the employer that the employee  
11 has paid charges for services, such as medical and hospital  
12 services, for which the employer would be liable if there had  
13 not been a recovery from a third party. Amounts paid by an  
14 employer as reimbursement for attorney fees shall be included  
15 in the employee's net recovery allowed and are subject to the  
16 employer's rights of offset for future liabilities.

17 The bill also provides that a settlement between an  
18 employee or an employer and a third party is not effective  
19 unless either the employee or employer who is not involved in  
20 the settlement gives written consent or upon written approval  
21 of the workers' compensation commissioner.

22 Code section 85.27, subsection 6, is amended to provide  
23 that the workers' compensation commissioner shall impose a  
24 civil penalty upon any person who willfully and knowingly  
25 violates the subsection by undertaking debt collection against  
26 an employee or an employee's dependents for treatment rendered  
27 an employee by any health care provider relating to an injury  
28 for which a claim for workers' compensation benefits is  
29 pending. In that situation the commissioner is required to  
30 impose a penalty of not less than \$100 and not more than  
31 \$1,000 for each violation, payable to the employee or the  
32 employee's dependents against whom the violation occurred.

33 Code section 85.27, subsection 7, is amended to provide  
34 that for purposes of the section, "day of incapacity to work"  
35 means eight hours of accumulated absence from work due to



1 incapacity to work or due to the receipt of services pursuant  
2 to that section.

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

9 The bill amends Code section 85.38 to provide that if an  
10 employer denies liability under Code chapter 85 or 85B for  
11 payment of weekly compensation requested by an employee and  
12 the employee is a beneficiary under either an individual or  
13 group plan for nonoccupational illness, injury, or disability,  
14 the nonoccupational plan shall not deny payment of benefits  
15 under the plan on the basis that the employer's liability  
16 under Code chapter 85 or 85B is unresolved. Code section  
17 85.38 currently requires payment by a nonoccupational plan for  
18 any medical services received by an injured employee under  
19 these circumstances.

20 The bill amends Code section 85.61, subsection 2, to  
21 provide that an "employer", for purposes of Code chapters 85,  
22 85B, 86, and 87, includes and applies to a person who  
23 contracts with a contractor for purposes of the person's trade  
24 or business as to personal injuries sustained by the employees  
25 of the contractor arising out of and in the course of  
26 performance of the contract with the person, if the contractor  
27 has failed to insure the contractor's workers' compensation  
28 liability or to obtain relief from workers' compensation  
29 liability as provided in Code chapter 87. The provision also  
30 states that a person who pays benefits pursuant to this  
31 section is considered to be the employer for purposes of the  
32 exclusive remedy provisions and for purposes of subrogation  
33 and indemnity provisions. A person who pays benefits to the  
34 employees of a contractor is entitled to be indemnified by the  
35 contractor with interest and shall not be charged a premium

1 for workers' compensation insurance coverage for a  
2 contractor's employees if the person holds a current  
3 certificate of insurance or self-insurance showing that the  
4 contractor is in compliance with Code chapter 87.

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

9 The bill amends Code section 86.24 to remove the  
10 requirement that a party appealing a contested case proceeding  
11 must file an affidavit with the commissioner that the  
12 transcript of the proceedings has been ordered.

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

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

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

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

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

30 The bill also repeals Code chapter 85A that dealt  
31 separately with the payment of workers' compensation for  
32 occupational disease. Currently, under Code chapter 85A, an  
33 employee cannot receive workers' compensation benefits for an  
34 occupational disease, unless disablement or death from the  
35 disease results within three years, in the case of the disease

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

19 The bill also contains numerous coordinating amendments  
20 that remove references to Code chapter 85A, which is repealed  
21 by the bill.

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