

Senate Study Bill 1050

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
WORKFORCE DEVELOPMENT
BILL)

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

A BILL FOR

1 An Act relating to workers' compensation liability insurance, and
2 providing for civil penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1208DP 81
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1 1 Section 1. Section 22.7, Code 2005, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 51. A report of issuance or cancellation
1 4 of a policy of workers' compensation liability insurance made
1 5 pursuant to section 87.1, subsection 4.
1 6 Sec. 2. Section 85.1, subsection 6, Code 2005, is amended
1 7 to read as follows:
1 8 6. Employers may with respect to an employee or a
1 9 classification of employees exempt from coverage provided by
1 10 this chapter pursuant to subsection 1, 2, or 3, 4, or 5, other
1 11 than the employee or classification of employees with respect
1 12 to whom a rule of liability or a method of compensation is
1 13 established by the Congress of the United States, assume a
1 14 liability for compensation imposed upon employers by this
1 15 chapter, for the benefit of employees within the coverage of
1 16 this chapter, by the purchase of valid workers' compensation
1 17 insurance specifically including that does not exclude the
1 18 employee or classification of employees. The purchase of and
1 19 acceptance by an employer of valid workers' compensation
1 20 insurance applicable to the employee or classification of
1 21 employees constitutes an assumption by the employer of
1 22 liability without any further act on the part of the employer,
1 23 but only with respect to the employee or classification of
1 24 employees as are within the coverage of the workers'
1 25 compensation insurance contract and only for the time period
1 26 in which the insurance contract is in force. Upon an election
1 27 of such coverage, the employee or classification of employees
1 28 shall accept compensation in the manner provided by this
1 29 chapter and the employer shall be relieved from any other
1 30 liability for recovery of damage, or other compensation for
1 31 injury.
1 32 Sec. 3. Section 85.61, subsection 2, Code 2005, is amended
1 33 by adding the following new unnumbered paragraph:
1 34 NEW UNNUMBERED PARAGRAPH. "Employer" includes a person who
1 35 contracts with a contractor to perform an activity that is a
2 1 regular part of the person's trade or business and such person
2 2 is liable for the payment of benefits pursuant to the
2 3 provisions of this chapter, chapters 85A, 85B, and 86, as to
2 4 any and all personal injuries sustained by the employees of
2 5 the contractor arising out of and in the course of performance
2 6 of the contract with the person, if the contractor has failed
2 7 to insure the contractor's workers' compensation liability or
2 8 to obtain relief from insurance as provided in chapter 87. A
2 9 person who pays benefits pursuant to this paragraph is
2 10 considered to be the employer for purposes of the exclusive
2 11 remedy provisions of sections 85.3 and 85.20, and for purposes
2 12 of the subrogation and indemnity provisions of section 85.22.
2 13 A person who pays benefits to the employees of a contractor
2 14 pursuant to this paragraph is entitled to be indemnified by
2 15 the contractor with interest. A person shall not be charged a
2 16 premium for workers' compensation insurance for coverage of a

2 17 contractor's employees if the person holds a current
2 18 certificate of insurance or self-insurance showing that the
2 19 contractor with whom the person has a contract, is in
2 20 compliance with chapter 87.

2 21 Sec. 4. Section 87.1, Code 2005, is amended to read as
2 22 follows:

2 23 87.1 INSURANCE OF LIABILITY REQUIRED.

2 24 1. Every employer subject to the provisions of this and
2 25 chapters 85, 85A, 85B, and 86, unless relieved therefrom as
2 26 hereinafter provided, shall insure the employer's liability
2 27 thereunder in some corporation, association, or organization
2 28 approved by the commissioner of insurance.

2 29 2. A motor carrier who contracts with an owner-operator
2 30 who is acting as an independent contractor pursuant to section
2 31 85.61, subsection 13, shall not be required to insure the
2 32 motor carrier's liability for the owner-operator. A motor
2 33 carrier may procure compensation liability insurance coverage
2 34 for these owner-operators, and may charge the owner-operator
2 35 for the costs of the premiums. A motor carrier shall require
3 1 the owner-operator to provide and maintain a certificate of
3 2 workers' compensation insurance covering the owner-operator's
3 3 employees. An owner-operator shall remain responsible for
3 4 providing compensation liability insurance for the owner=
3 5 operator's employees.

3 6 3. Every such employer shall exhibit, on demand of the
3 7 workers' compensation commissioner, evidence of the employer's
3 8 compliance with this section; and if such employer refuses, or
3 9 neglects to comply with this section, the employer shall be
3 10 liable in case of injury to any worker in the employer's
3 11 employ under the common law as modified by statute.

3 12 4. a. Every insurer that issues a policy of workers'
3 13 compensation liability insurance providing coverage required
3 14 by this section shall, within thirty days after issuance and
3 15 after subsequent cancellation of the policy, report such
3 16 issuance or cancellation to the workers' compensation
3 17 commissioner or to the commissioner's designee in the manner
3 18 prescribed by the commissioner by rule. Such report shall
3 19 include the name and address of the insured employer; the name
3 20 and address of the insurer that issued the policy; the
3 21 effective date of the policy; the effective date of the
3 22 cancellation, if applicable; any deductible included in the
3 23 policy; and such other information as the commissioner
3 24 requires by rule.

3 25 b. Notwithstanding chapter 22, a report of issuance or
3 26 cancellation of a policy of workers' compensation liability
3 27 insurance made pursuant to this subsection shall be kept
3 28 confidential and is not subject to public examination or
3 29 copying. The workers' compensation commissioner or the
3 30 commissioner's designee may publicly disclose information
3 31 contained in such a report to persons other than the insured,
3 32 the insurer, and persons servicing the policy, except that
3 33 information relating to experience, payroll, loss data, the
3 34 expiration date of the policy, and classification information
3 35 shall not be publicly disclosed except as is reasonably
4 1 necessary in the course of a regulatory investigation or
4 2 enforcement action.

4 3 c. The absence of a report showing that a policy of
4 4 workers' compensation liability insurance was issued to an
4 5 employer and was in effect on a particular date creates a
4 6 rebuttable presumption that such a policy was not issued or in
4 7 effect on that date.

4 8 d. If an insurer fails to report the issuance or
4 9 cancellation of a policy of workers' compensation liability
4 10 insurance in the time and manner required by this subsection
4 11 and by rule, the workers' compensation commissioner may assess
4 12 a civil penalty against the insurer in the amount of one
4 13 hundred dollars for each failure to report. The commissioner
4 14 may increase the civil penalty against the insurer to one
4 15 thousand dollars for each failure to report if such failure is
4 16 discovered in the course of a contested case proceeding that
4 17 was filed against an employer because the employer appeared to
4 18 be uninsured due to the absence of a report by the insurer
4 19 showing that a policy of workers' compensation liability
4 20 insurance was in effect for the employer.

4 21 Sec. 5. NEW SECTION. 87.2A PENALTY FOR FAILURE TO
4 22 INSURE.

4 23 The workers' compensation commissioner may assess a civil
4 24 penalty against any employer who is required by this chapter
4 25 to purchase workers' compensation insurance or to qualify for
4 26 relief from such insurance and fails to do so. The amount of
4 27 the penalty shall be an amount equal to one hundred percent of

4 28 the employer's workers' compensation insurance premium for the
4 29 year for which the penalty is assessed, as determined by the
4 30 commissioner of insurance. In computing the premium, it shall
4 31 be conclusively presumed that the highest number of employees
4 32 employed by the employer at any time during that year were
4 33 employed throughout the entire year, that all employees earned
4 34 the statewide average weekly wage throughout the entire year,
4 35 and that all employees were in the classification carrying the
5 1 highest premium rate that existed in the employer's workforce
5 2 during that year. After deducting expenses, including
5 3 attorney fees, incurred in collecting the penalties assessed,
5 4 fifty percent of all penalties collected shall be deposited in
5 5 the general fund of the state and the remaining fifty percent
5 6 of the penalties collected shall be deposited in the second
5 7 injury fund.

5 8 Sec. 6. Section 87.8, Code 2005, is amended to read as
5 9 follows:

5 10 87.8 INSOLVENCY CLAUSE PROHIBITED.

5 11 ~~No~~ A policy of insurance issued under this chapter shall
5 12 not contain any provision relieving the insurer from payment
5 13 if the insured becomes insolvent or discharged in bankruptcy
5 14 during the period that the policy is in operation, or the
5 15 compensation, or any part of it, is unpaid, notwithstanding
5 16 any deductible contained in the policy.

5 17 Sec. 7. Section 87.11, unnumbered paragraph 1, Code 2005,
5 18 is amended to read as follows:

5 19 When an employer coming under this chapter furnishes
5 20 satisfactory proofs to the insurance commissioner of such
5 21 employer's solvency and financial ability to pay the
5 22 compensation and benefits as by law provided and to make such
5 23 payments to the parties when entitled thereto, or when such
5 24 employer deposits with the insurance commissioner security
5 25 satisfactory to the insurance commissioner ~~and the workers'~~
5 26 ~~compensation commissioner~~ as guaranty for the payment of such
5 27 compensation, such employer shall be relieved of the
5 28 provisions of this chapter requiring insurance; but such
5 29 employer shall, from time to time, furnish such additional
5 30 proof of solvency and financial ability to pay as may be
5 31 required by such insurance commissioner ~~or workers'~~
5 32 ~~compensation commissioner~~. Such security shall be held in
5 33 trust for the sole purpose of paying compensation and benefits
5 34 and is not subject to attachment, levy, execution,
5 35 garnishment, liens, or any other form of encumbrance. A

6 1 political subdivision, including a city, county, community
6 2 college, or school corporation, that is self-insured for
6 3 workers' compensation is not required to submit a plan or
6 4 program to the insurance commissioner for review and approval.

6 5 Sec. 8. Section 87.11, unnumbered paragraph 3, Code 2005,
6 6 is amended to read as follows:

6 7 If an employer becomes insolvent and a debtor under 11
6 8 U.S.C., on or after January 1, 1990, or ceases doing business,
6 9 this paragraph applies. The ~~commissioner of insurance~~
6 10 ~~commissioner~~ may request of the workers' compensation
6 11 commissioner that all future payments of workers' compensation
6 12 weekly benefits, medical expenses, or other payments pursuant
6 13 to chapter 85, 85A, 85B, 86, or 87 be commuted to a present
6 14 lump sum. The workers' compensation commissioner shall fix
6 15 the lump sum of probable future medical expenses and weekly
6 16 compensation benefits, or other benefits payable pursuant to
6 17 chapter 85, 85A, 85B, 86, or 87, capitalized at their present
6 18 value upon the basis of interest at the rate provided in
6 19 section 535.3 for court judgments and decrees. If an employer
6 20 ceases doing business without becoming insolvent, the

6 21 insurance commissioner shall publish notice of the time and
6 22 manner for filing claims against the employer in a newspaper
6 23 of general circulation in the county or counties within this
6 24 state where the employer is known to have maintained a place
6 25 of business. The notice shall be published in two series of
6 26 publications. The first series of publications shall be
6 27 published once each week for three consecutive weeks as soon
6 28 as reasonably practical after the date that the insurance
6 29 commissioner becomes aware that the employer has ceased doing
6 30 business. The second series of publications shall be
6 31 published once each week for three consecutive weeks within
6 32 the period of one year before the time for filing claims
6 33 expires. Defects in the notice or publication shall not
6 34 affect the period for filing claims against the employer or
6 35 give rise to a claim against the insurance commissioner. All
7 1 claims that are not otherwise barred shall become barred if
7 2 not filed within five years after the date the employer ceased
7 3 doing business, as determined by the insurance commissioner.

7 4 including claims for review reopening, benefits under section
7 5 85.27, and latent injuries. The insurance commissioner of
7 6 insurance shall be discharged from all further liability for
7 7 the commuted workers' compensation claim upon payment of the
7 8 present lump sum to either the claimant, or a licensed insurer
7 9 for purchase of an annuity or other periodic payment plan for
7 10 the benefit of the claimant.

7 11 Sec. 9. Section 87.14A, Code 2005, is amended to read as
7 12 follows:

7 13 87.14A INSURANCE OR BOND REQUIRED.

7 14 An employer subject to this chapter and chapters 85, 85A,
7 15 85B, and 86 shall not engage in business without first
7 16 obtaining insurance covering compensation benefits or
7 17 obtaining relief from insurance as provided in this chapter or
7 18 furnishing a bond pursuant to section 87.16. A person who
7 19 willfully and knowingly violates this section is guilty of a
7 20 class "D" felony.

7 21 Sec. 10. Section 87.19, unnumbered paragraph 1, Code 2005,
7 22 is amended to read as follows:

7 23 Upon the receipt of information by the workers'
7 24 compensation commissioner of any employer failing to comply
7 25 with sections 87.16 and 87.17 section 87.14A, the commissioner
7 26 shall at once notify such employer by certified mail that
7 27 unless such employer comply with the requirements of law,
7 28 legal proceedings will be instituted to enforce such
7 29 compliance.

7 30 Sec. 11. Section 87.20, Code 2005, is amended to read as
7 31 follows:

7 32 87.20 REVOCATION OF RELEASE FROM INSURANCE.

7 33 The insurance commissioner with the concurrence of the
7 34 workers' compensation commissioner may, at any time, upon
7 35 reasonable notice to such employer and upon hearing, revoke
8 1 for cause any order theretofore made relieving any employer
8 2 from carrying insurance as provided by this chapter.

8 3 Sec. 12. NEW SECTION. 87.25 ENFORCEMENT PROCEEDINGS.

8 4 1. Notwithstanding the provisions of sections 17A.11 and
8 5 17A.17, subsection 8, the workers' compensation commissioner
8 6 or a deputy workers' compensation commissioner may preside
8 7 over any contested case proceeding brought under this chapter.

8 8 2. In any action brought for the purpose of assessing a
8 9 civil penalty pursuant to this chapter, official notice shall
8 10 be taken of the records of the workers' compensation
8 11 commissioner. A statement from the insurance commissioner
8 12 that an employer has not obtained relief from insurance
8 13 pursuant to this chapter is presumed to be accurate.

8 14 3. The workers' compensation commissioner may petition any
8 15 court of competent jurisdiction for an entry of judgment on
8 16 any order assessing a civil penalty imposed pursuant to this
8 17 chapter. A court shall enter judgment for the unpaid portion
8 18 of the civil penalty assessed, upon a verified statement by
8 19 the workers' compensation commissioner that a civil penalty
8 20 was assessed and the amount of the penalty that remains
8 21 unpaid. A fee shall not be charged to the workers'
8 22 compensation commissioner for filing a petition, return of
8 23 service, entry of judgment, or issuance of execution on a
8 24 judgment. The costs of an action brought pursuant to this
8 25 subsection may be assessed against the defendant. The sheriff
8 26 of any county in this state shall execute upon property to
8 27 enforce the judgment without payment of fees in advance.

8 28 4. If so requested by the workers' compensation
8 29 commissioner or the treasurer of state, the attorney general
8 30 or a county attorney of any county in this state shall assist
8 31 the workers' compensation commissioner in the collection of
8 32 penalties assessed. In addition, the workers' compensation
8 33 commissioner may contract with one or more attorneys licensed
8 34 in this state, to obtain and enforce judgments and subrogation
8 35 and indemnity rights on behalf of the workers' compensation
9 1 commissioner and to pay for the contracted services from the
9 2 penalties collected.

9 3 Sec. 13. Sections 87.16 and 87.17, Code 2005, are
9 4 repealed.

9 5 EXPLANATION

9 6 This bill contains various provisions relating to workers'
9 7 compensation liability insurance.

9 8 The bill amends Code section 85.1 to provide that certain
9 9 persons are exempt from workers' compensation coverage, such
9 10 as police officers and fire fighters who are entitled to
9 11 benefits under Code chapters 410 and 411, and certain officers
9 12 of a corporation other than a family farm corporation who
9 13 voluntarily reject workers' compensation coverage. Code
9 14 section 85.1 is also amended to provide that an employer may

9 15 assume liability for certain exempt employees by purchasing
9 16 workers' compensation insurance that does not exclude such
9 17 employees. Previously, such employees were covered only if
9 18 the workers' compensation insurance policy specifically
9 19 included them in the coverage.

9 20 The bill amends Code section 85.61, subsection 2, to
9 21 provide that a person who contracts with a contractor to
9 22 perform an activity that is a regular part of the person's
9 23 trade or business is liable as an employer for the payment of
9 24 workers' compensation benefits for personal injuries sustained
9 25 by the employees of the contractor while performing the
9 26 contract with the person, if the contractor has failed to
9 27 insure the contractor's workers' compensation liability or to
9 28 obtain relief from workers' compensation liability as provided
9 29 in Code chapter 87. A person who pays benefits pursuant to
9 30 this provision is considered to be the employer for purposes
9 31 of the exclusive remedy provisions and for purposes of
9 32 subrogation and indemnity provisions. A person who pays
9 33 benefits to the employees of a contractor is entitled to be
9 34 indemnified by the contractor with interest and shall not be
9 35 charged a premium for workers' compensation insurance coverage
10 1 for a contractor's employees if the person holds a current
10 2 certificate of insurance or self-insurance showing that the
10 3 contractor is in compliance with Code chapter 87.

10 4 Code section 87.1 adds a new provision requiring every
10 5 insurer that issues workers' compensation liability insurance
10 6 policies to file a report with the workers' compensation
10 7 commissioner within 30 days of the issuance or cancellation of
10 8 such a policy. The bill requires the reports to be kept
10 9 confidential, notwithstanding the public records law in Code
10 10 chapter 22. The workers' compensation commissioner may
10 11 publicly disclose some information contained in the reports
10 12 except that information relating to experience, payroll, loss
10 13 data, the policy's expiration date, or classification shall
10 14 not be disclosed unless the disclosure of that information is
10 15 reasonably necessary in the course of a regulatory
10 16 investigation or enforcement action. The bill also provides
10 17 that the absence of such a report creates a rebuttable
10 18 presumption that a policy of workers' compensation insurance
10 19 was not issued to an employer or was not in effect on a
10 20 particular date.

10 21 An insurer who fails to report the issuance or cancellation
10 22 of a workers' compensation insurance policy as required by the
10 23 provision may be assessed a civil penalty by the workers'
10 24 compensation commissioner in the amount of \$100 for each
10 25 failure to report and \$1,000 for each failure to report if
10 26 such failure is discovered in the course of a contested case
10 27 proceeding that was filed against an employer because the
10 28 employer appeared to be uninsured due to the absence of the
10 29 report.

10 30 The bill creates a new Code section 87.2A allowing the
10 31 workers' compensation commissioner to assess a civil penalty
10 32 against any employer who is required by Code chapter 87 to
10 33 purchase workers' compensation insurance or to qualify for
10 34 relief from such insurance and fails to do so. The bill
10 35 provides that the penalty assessed shall be an amount equal to
11 1 100 percent of the employer's workers' compensation premium
11 2 for the year for which the penalty is assessed, as determined
11 3 by the commissioner of insurance, and that in computing the
11 4 premium it shall be conclusively presumed that the highest
11 5 number of employees employed by the employer at any time
11 6 during that year were employed throughout the entire year,
11 7 that all employees earned the statewide average weekly wage
11 8 throughout the entire year, and that all employees were in the
11 9 classification carrying the highest premium rate that existed
11 10 in the employer's workforce during that year. The bill
11 11 further provides that after deducting the expenses, including
11 12 attorney fees, incurred in collecting the penalties assessed,
11 13 50 percent of all penalties collected shall be deposited in
11 14 the state general fund and the remaining 50 percent shall be
11 15 deposited in the second injury fund.

11 16 Code section 87.8 is amended to provide that a policy of
11 17 workers' compensation liability insurance shall not contain a
11 18 provision relieving the insurer from liability if the insured
11 19 becomes insolvent or bankrupt even if the policy contains a
11 20 deductible.

11 21 Code section 87.11 is amended to provide that the amount of
11 22 security deposited by a self-insured employer shall be
11 23 determined by the insurance commissioner and not the workers'
11 24 compensation commissioner and that the security is held in
11 25 trust for the sole purpose of paying compensation and benefits

11 26 and is not subject to attachment, levy, execution,
11 27 garnishment, liens, or any other form of encumbrance. The
11 28 bill also provides that proof of solvency shall be given to
11 29 the insurance commissioner, not the workers' compensation
11 30 commissioner.

11 31 Code section 87.11 is also amended to provide that if a
11 32 self-insured employer ceases doing business without becoming
11 33 insolvent, the insurance commissioner shall publish notice of
11 34 the time and manner for filing claims against the employer as
11 35 specified in the bill. Defects in the notice or publication
12 1 do not affect the period for filing claims against the
12 2 employer or give rise to claims against the insurance
12 3 commissioner and certain claims not otherwise barred become
12 4 barred if not filed within five years after the date the
12 5 employer ceased doing business, as determined by the insurance
12 6 commissioner.

12 7 The bill repeals Code section 87.16, which requires an
12 8 employer who has failed to carry workers' compensation
12 9 insurance or to obtain relief from carrying such insurance, to
12 10 furnish a bond approved by the workers' compensation
12 11 commissioner. Code section 87.14A is amended to remove the
12 12 reference to the bonding requirements contained in Code
12 13 section 87.16. The bill also repeals Code section 86.17,
12 14 which requires an employer to post a notice stating the nature
12 15 of the security furnished in lieu of insurance to secure
12 16 workers' compensation payments.

12 17 Code section 87.19 is amended to provide that an employer
12 18 that fails to comply with the provisions of Code chapters 85,
12 19 85A, 85B, 86, and 87, as set forth in Code section 87.14A, may
12 20 be subject to enforcement proceedings.

12 21 The bill amends Code section 87.20 to provide that the
12 22 insurance commissioner may revoke, for cause, an order
12 23 relieving an employer from carrying insurance as required by
12 24 Code chapter 87 without the concurrence of the workers'
12 25 compensation commissioner.

12 26 The bill adds a new Code section 87.25 concerning
12 27 enforcement proceedings. The bill gives the workers'
12 28 compensation commissioner or a deputy the authority to preside
12 29 over any contested case brought under Code chapter 87,
12 30 notwithstanding Code sections 17A.11 and 17A.17, subsection 8.

12 31 The bill provides that in an action brought for the purpose
12 32 of assessing a civil penalty, official notice shall be taken
12 33 of the workers' compensation commissioner's records. A
12 34 statement from the insurance commissioner that an employer has
12 35 not obtained relief from insurance pursuant to Code chapter 87
13 1 is presumed to be accurate.

13 2 The bill allows the workers' compensation commissioner to
13 3 petition any court of competent jurisdiction for an entry of
13 4 judgment on any order assessing a civil penalty. No fee can
13 5 be charged to the commissioner for filing a petition, return
13 6 of service, entry of judgment, or issuance of execution on a
13 7 judgment, although the costs of an action brought under this
13 8 section may be assessed against the defendant employer. The
13 9 sheriff of any county is required to execute upon property to
13 10 enforce a judgment received under this chapter without
13 11 prepayment of fees.

13 12 The bill requires the attorney general or a county attorney
13 13 of any county to assist the workers' compensation commissioner
13 14 in collecting penalties assessed, upon request of the
13 15 commissioner or the treasurer of state. In addition, the
13 16 workers' compensation commissioner has the authority to
13 17 contract with other attorneys licensed in Iowa to obtain and
13 18 enforce judgments and subrogation and indemnity rights on
13 19 behalf of the commissioner and to pay for the contracted
13 20 services from the penalties collected.

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