

# Senate File 2314 - Introduced

SENATE FILE \_\_\_\_\_  
BY DOTZLER

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act requiring imposition of a penalty for certain delays in  
2 commencement or terminations of workers' compensation  
3 benefits, and providing an applicability date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 5566SS 82  
6 av/nh/8

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1 1 Section 1. Section 86.13, unnumbered paragraph 4, Code  
1 2 2007, is stricken.  
1 3 Sec. 2. NEW SECTION. 86.13B DELAY IN COMMENCEMENT OR  
1 4 TERMINATION OF BENEFITS == PENALTY == LEGISLATIVE INTENT.  
1 5 1. For the purposes of this section:  
1 6 a. "Affirmative obligation" means the duty described in  
1 7 subsection 2 to pay benefits in full on or before the due  
1 8 date. "Affirmative obligation" includes the duty to  
1 9 investigate and evaluate whether or not benefits are due.  
1 10 b. "Benefits" means any benefits, compensation, interest  
1 11 on compensation, or interest on other benefits due under  
1 12 section 85.27, 85.28, 85.29, 85.30, 85.31, 85.32, 85.33,  
1 13 85.34, 535.2, or 535.3.  
1 14 c. "Commissioner" means the workers' compensation  
1 15 commissioner.  
1 16 d. "Compensation" means transportation expenses and other  
1 17 benefits, except services, supplies, care, or treatment  
1 18 provided under section 85.27, subsection 1, 4, or 5.  
1 19 e. "Due date" means the date that payment is due for any  
1 20 of the following, as follows:  
1 21 (1) For the principal amount of compensation due, the due  
1 22 date is the day after the last day of each seven-day period in  
1 23 which compensation becomes payable.  
1 24 (2) For interest added to compensation, the due date is  
1 25 the seventh day after the due date of the principal amount of  
1 26 compensation.  
1 27 (3) For the principal amount of benefits due, the due date  
1 28 is thirty days after the benefits, including but not limited  
1 29 to services, supplies, treatment, or care provided under  
1 30 section 85.27, were or should have been furnished to an  
1 31 employee and ten days after transportation expenses were paid  
1 32 by an employee.  
1 33 (4) For interest added to benefits, the due date is the  
1 34 date provided by law or contract.  
1 35 f. "Failure to perform" means the failure to perform an  
2 1 affirmative obligation.  
2 2 g. "Legal excuse" means an excuse given by an employer for  
2 3 a failure to perform an affirmative obligation which satisfies  
2 4 all of the following criteria:  
2 5 (1) The excuse actually existed during any period in which  
2 6 there was a failure by an employer to perform.  
2 7 (2) The excuse was preceded by a reasonable investigation  
2 8 and evaluation by the employer of whether benefits were due.  
2 9 (3) The excuse was actually the cause of the failure to  
2 10 perform upon which the employer contemporaneously relied when  
2 11 failing to perform an affirmative obligation.  
2 12 (4) The excuse is reasonable under the facts and  
2 13 circumstances.  
2 14 A claim by an employer that an affirmative obligation was  
2 15 fairly debatable as a matter of law, which can be objectively  
2 16 determined, does not constitute a legal excuse.  
2 17 2. An employer has an affirmative obligation to pay  
2 18 benefits in full on or before the due date. The affirmative  
2 19 obligation arises on the date that an employer becomes aware

2 20 that an injury arising out of and in the course of employment  
2 21 may have been sustained or is claimed by an employee to have  
2 22 been sustained. The affirmative obligation continues until  
2 23 all benefits due have been paid in full. An affirmative  
2 24 obligation arises regardless of whether an employee makes a  
2 25 claim for benefits that are due or which will become due.  
2 26 3. The commissioner shall impose a penalty on an employer  
2 27 as provided in subsection 4, if the commissioner makes both of  
2 28 the following findings:  
2 29 a. The employer failed to perform an affirmative  
2 30 obligation.  
2 31 b. The employer failed to prove the existence of a legal  
2 32 excuse for the employer's failure to perform an affirmative  
2 33 obligation.  
2 34 4. A penalty shall be imposed by the commissioner on an  
2 35 employer for failure to perform an affirmative obligation  
3 1 pursuant to subsection 3 that is payable to the employee to  
3 2 whom the affirmative obligation is owed in an amount that is  
3 3 equal to the amount of the benefits that were not paid on or  
3 4 before the due date, unless the commissioner finds that there  
3 5 are mitigating facts and circumstances. If the commissioner  
3 6 finds that there are mitigating facts and circumstances the  
3 7 commissioner may reduce the amount of the penalty imposed on  
3 8 the employer to an amount that is not less than fifty percent  
3 9 of the amount of the benefits that were not paid on or before  
3 10 the due date. For the purposes of this subsection, mitigating  
3 11 facts and circumstances include but are not limited to any of  
3 12 the following:  
3 13 a. The brevity of the failure to perform the affirmative  
3 14 obligation owed to the employee.  
3 15 b. The low dollar value or the low number of the benefits  
3 16 that were not paid on or before the due date.  
3 17 c. The lack of any prior penalty assessment against the  
3 18 employer.  
3 19 d. The fact that the employer made a good faith attempt to  
3 20 inform the employee of the reason for the employer's failure  
3 21 to perform and to seek input from the employee concerning the  
3 22 validity of the reason given.  
3 23 e. The lack of harm to the employee or to the workers'  
3 24 compensation system caused by the employer's failure to  
3 25 perform the affirmative obligation.  
3 26 f. Other mitigating facts and circumstances determined by  
3 27 the commissioner to be relevant.  
3 28 5. Alternatively, or in addition to receiving penalties  
3 29 under this section, an employee may file a lawsuit in district  
3 30 court for actual and punitive damages against an employer  
3 31 based on the employer's failure to perform an affirmative  
3 32 obligation as provided in this section. The court may award  
3 33 actual and punitive damages to the employee upon a finding of  
3 34 both of the following:  
3 35 a. The employer failed to perform an affirmative  
4 1 obligation owed to the employee.  
4 2 b. The employer failed to prove the existence of a legal  
4 3 excuse for the employer's failure to perform an affirmative  
4 4 obligation owed to the employee.  
4 5 6. If an employee claims punitive damages under subsection  
4 6 5, the employer may offer as a defense against imposition of  
4 7 punitive damages, evidence of mitigating facts and  
4 8 circumstances as provided in subsection 4. If the employer  
4 9 offers such a defense, the employee may offer evidence that a  
4 10 penalty was imposed by the commissioner previously against the  
4 11 employer at any time either pursuant to section 86.13, Code  
4 12 2007, or pursuant to this section.  
4 13 7. If punitive damages are awarded in the district court,  
4 14 the amount of such damages shall be reduced by the amount of  
4 15 any penalty that was imposed by the commissioner pursuant to  
4 16 this section for the employer's failure to perform the  
4 17 affirmative obligation that is the subject of the lawsuit.  
4 18 8. A claim for failure to perform an affirmative  
4 19 obligation shall be made under this section within five years  
4 20 of the failure to perform the affirmative obligation.  
4 21 Sec. 3. INTENT == APPLICABILITY. It is the intent of the  
4 22 general assembly in enacting this section to abrogate the  
4 23 common law tort based on a failure to pay workers'  
4 24 compensation benefits for all failures to perform an  
4 25 affirmative obligation that occur on or after July 1, 2008.  
4 26 However, if a failure to perform an affirmative obligation  
4 27 occurred prior to July 1, 2008, an employee may file a claim  
4 28 either for imposition of benefits under section 86.13,  
4 29 unnumbered paragraph 4, Code 2007, or under this section if  
4 30 the claim is made within five years of the employer's failure

4 31 to perform the affirmative obligation.

4 32 EXPLANATION

4 33 This bill strikes the current penalty provision for failure  
4 34 to pay workers' compensation benefits contained in Code  
4 35 section 86.13 and creates new Code section 86.13B, which  
5 1 requires the imposition of a penalty on employers for certain  
5 2 delays in commencement or terminations of workers'  
5 3 compensation benefits.

5 4 The bill provides that an employer has an affirmative  
5 5 obligation to pay workers' compensation benefits on or before  
5 6 the date the benefits are due. An "affirmative obligation" is  
5 7 defined as a duty to pay benefits in full on or before the due  
5 8 date and includes the duty to investigate and evaluate whether  
5 9 or not such benefits are due.

5 10 The workers' compensation commissioner is required to  
5 11 impose a penalty on an employer payable to the employee if the  
5 12 commissioner finds that the employer failed to perform an  
5 13 affirmative obligation to pay benefits and failed to prove the  
5 14 existence of a legal excuse for such failure to pay. The  
5 15 amount of the penalty is required to equal the amount of the  
5 16 benefits that were not timely paid, unless the commissioner  
5 17 finds that there are mitigating facts and circumstances. In  
5 18 that case the penalty may be reduced to an amount that is not  
5 19 less than 50 percent of the amount of the benefits that were  
5 20 not timely paid.

5 21 Alternatively, or in addition to the right to receive  
5 22 penalties under the new Code section, an employee may file a  
5 23 lawsuit in district court for actual and punitive damages  
5 24 based on an employer's failure to perform an affirmative  
5 25 obligation to pay workers' compensation benefits. Punitive  
5 26 damages may be awarded only upon a finding that the employer  
5 27 failed to perform an affirmative obligation owed to the  
5 28 employee and failed to prove the existence of a legal excuse  
5 29 for that failure. An employer may present evidence of  
5 30 mitigating facts and circumstances as a defense. In response,  
5 31 an employee may present evidence that prior penalties have  
5 32 been assessed against the employer.

5 33 The expressed intent of the bill is to abrogate the common  
5 34 law tort based on the failure to pay workers' compensation  
5 35 benefits, for all such failures that occur on or after July 1,  
6 1 2008. However, if a failure to perform an affirmative  
6 2 obligation occurred prior to July 1, 2008, an employee may  
6 3 file a claim either for imposition of benefits under Code  
6 4 section 86.13, unnumbered paragraph 4, which is stricken by  
6 5 the bill, or under new Code section 86.13B if the claim is  
6 6 made within five years of such failure.

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