

House File 518 - Introduced

HOUSE FILE 518
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 169)

(COMPANION TO LSB 1691SV BY
COMMITTEE ON COMMERCE)

A BILL FOR

- 1 An Act relating to workers' compensation and including
- 2 effective date and applicability provisions.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.16, subsection 2, Code 2017, is
2 amended to read as follows:

3 2. a. By the employee's intoxication, which did not arise
4 out of and in the course of employment but which was due
5 to the effects of alcohol or another narcotic, depressant,
6 stimulant, hallucinogenic, or hypnotic drug not prescribed by
7 an authorized medical practitioner, if the intoxication was a
8 substantial factor in causing the injury.

9 b. For the purpose of disallowing compensation under this
10 subsection, both of the following apply:

11 (1) If the employer shows that, at the time of the injury
12 or immediately following the injury, the employee had positive
13 test results reflecting the presence of alcohol, or another
14 narcotic, depressant, stimulant, hallucinogenic, or hypnotic
15 drug which drug either was not prescribed by an authorized
16 medical practitioner or was not used in accordance with the
17 prescribed use of the drug, it shall be presumed that the
18 employee was intoxicated at the time of the injury and that
19 intoxication was the predominant factor in causing the injury.

20 (2) Once the employer has made a showing as provided
21 in subparagraph (1), the burden of proof shall be on the
22 employee to overcome the presumption by establishing that the
23 employee was not intoxicated at the time of the injury, or that
24 intoxication was not the predominant factor in causing the
25 injury.

26 Sec. 2. Section 85.18, Code 2017, is amended to read as
27 follows:

28 **85.18 Contract to relieve not operative.**

29 No contract, rule, or device whatsoever shall operate to
30 relieve the employer, in whole or in part, from any liability
31 created by **this chapter** except as herein provided. This
32 section does not create a private cause of action.

33 Sec. 3. Section 85.23, Code 2017, is amended to read as
34 follows:

35 **85.23 Notice of injury — failure to give.**

1 Unless the employer or the employer's representative shall
2 have actual knowledge of the occurrence of an injury received
3 within ninety days from the date of the occurrence of the
4 injury, or unless the employee or someone on the employee's
5 behalf or a dependent or someone on the dependent's behalf
6 shall give notice thereof to the employer within ninety days
7 from the date of the occurrence of the injury, no compensation
8 shall be allowed. For the purposes of this section, "date of
9 the occurrence of the injury" means the date that the employee
10 knew or should have known that the injury was work-related.

11 Sec. 4. Section 85.26, subsection 1, Code 2017, is amended
12 to read as follows:

13 1. An original proceeding for benefits under [this chapter](#)
14 or [chapter 85A, 85B, or 86](#), shall not be maintained in any
15 contested case unless the proceeding is commenced within two
16 years from the date of the occurrence of the injury for which
17 benefits are claimed or, if weekly compensation benefits are
18 paid under [section 86.13](#), within three years from the date of
19 the last payment of weekly compensation benefits. For the
20 purposes of this section, "date of the occurrence of the injury"
21 means the date that the employee knew or should have known that
22 the injury was work-related.

23 Sec. 5. Section 85.33, subsection 3, Code 2017, is amended
24 to read as follows:

25 3. a. If an employee is temporarily, partially disabled
26 and the employer for whom the employee was working at the time
27 of injury offers to the employee suitable work consistent
28 with the employee's disability the employee shall accept the
29 suitable work, and be compensated with temporary partial
30 benefits. If the employer offers the employee suitable work
31 and the employee refuses to accept the suitable work with
32 the same offered by the employer, the employee shall not be
33 compensated with temporary partial, temporary total, or healing
34 period benefits during the period of the refusal. Work offered
35 at the employer's principal place of business or established

1 place of operation where the employee has previously worked is
2 presumed to be geographically suitable for an employee whose
3 duties involve travel away from the employer's principal place
4 of business or established place of operation more than fifty
5 percent of the time. If suitable work is not offered by the
6 employer for whom the employee was working at the time of the
7 injury and the employee who is temporarily partially disabled
8 elects to perform work with a different employer, the employee
9 shall be compensated with temporary partial benefits.

10 b. The employer shall communicate an offer of temporary
11 work to the employee in writing, including details of lodging,
12 meals, and transportation, and shall communicate to the
13 employee that if the employee refuses the offer of temporary
14 work, the employee shall communicate the refusal and the reason
15 for the refusal to the employer in writing and that during the
16 period of the refusal the employee will not be compensated with
17 temporary partial, temporary total, or healing period benefits,
18 unless the work refused is not suitable. If the employee
19 refuses the offer of temporary work on the grounds that the
20 work is not suitable, the employee shall communicate the
21 refusal, along with the reason for the refusal, to the employer
22 in writing at the time the offer of work is refused. Failure to
23 communicate the reason for the refusal in this manner precludes
24 the employee from raising suitability of the work as the reason
25 for the refusal until such time as the reason for the refusal
26 is communicated in writing to the employer.

27 Sec. 6. Section 85.34, subsection 2, unnumbered paragraph
28 1, Code 2017, is amended to read as follows:

29 Compensation for permanent partial disability shall begin at
30 ~~the termination of the healing period provided in subsection 1~~
31 when it is medically indicated that maximum medical improvement
32 from the injury has been reached and that the extent of loss or
33 percentage of permanent impairment can be determined by use of
34 the guides to the evaluation of permanent impairment, published
35 by the American medical association, as adopted by the workers'

1 compensation commissioner by rule pursuant to chapter 17A. The
 2 compensation shall be in addition to the benefits provided by
 3 sections 85.27 and 85.28. The compensation shall be based
 4 upon the extent of the disability and upon the basis of eighty
 5 percent per week of the employee's average spendable weekly
 6 earnings, but not more than a weekly benefit amount, rounded to
 7 the nearest dollar, equal to one hundred eighty-four percent of
 8 the statewide average weekly wage paid employees as determined
 9 by the department of workforce development under section 96.19,
 10 subsection 36, and in effect at the time of the injury. The
 11 minimum weekly benefit amount shall be equal to the weekly
 12 benefit amount of a person whose gross weekly earnings are
 13 thirty-five percent of the statewide average weekly wage. For
 14 all cases of permanent partial disability compensation shall
 15 be paid as follows:

16 Sec. 7. Section 85.34, subsection 2, paragraphs m and u,
 17 Code 2017, are amended to read as follows:

18 *m.* The loss of ~~two-thirds~~ of that part of an arm ~~between~~
 19 including the shoulder joint ~~and~~ to the elbow joint shall equal
 20 the loss of an arm and the compensation therefor shall be
 21 weekly compensation during two hundred fifty weeks.

22 *u.* In all cases of permanent partial disability other than
 23 those hereinabove described or referred to in paragraphs "a"
 24 through "t" hereof, the compensation shall be paid during
 25 the number of weeks in relation to five hundred weeks as the
 26 reduction in the employee's earning capacity caused by the
 27 disability bears in relation to the earning capacity that the
 28 employee possessed when the injury occurred. A determination
 29 of the reduction in the employee's earning capacity caused
 30 by the disability shall take into account the permanent
 31 partial disability of the employee and the number of years in
 32 the future it was reasonably anticipated that the employee
 33 would work at the time of the injury. If an employee who is
 34 eligible for compensation under this paragraph returns to work
 35 or is offered work for which the employee receives or would

1 receive the same or greater salary, wages, or earnings than
2 the employee received at the time of the injury, the employee
3 shall be compensated based only upon the employee's functional
4 disability resulting from the injury, and not in relation to
5 the employee's earning capacity. If an employee sustains an
6 injury compensable under this paragraph after reaching the age
7 of sixty-seven, compensation shall be paid to the employee
8 based on the employee's resulting loss of earning capacity
9 not to exceed an amount equal to one hundred fifty weeks of
10 compensation.

11 Sec. 8. Section 85.34, subsection 2, Code 2017, is amended
12 by adding the following new paragraphs:

13 NEW PARAGRAPH. w. In all cases of permanent partial
14 disability described in paragraphs "a" through "t", or paragraph
15 "u" when determining functional disability and not loss of
16 earning capacity, the extent of loss or percentage of permanent
17 impairment shall be determined solely by utilizing the guides
18 to the evaluation of permanent impairment, published by the
19 American medical association, as adopted by the workers'
20 compensation commissioner by rule pursuant to chapter 17A.
21 Lay testimony or agency expertise shall not be utilized in
22 determining loss or percentage of permanent impairment pursuant
23 to paragraphs "a" through "t", or paragraph "u" when determining
24 functional disability and not loss of earning capacity.

25 NEW PARAGRAPH. x. Compensation for permanent partial
26 disability for an injury shall terminate on the date when
27 compensation for permanent total disability for any injury
28 begins. An employee shall not receive compensation for
29 permanent partial disability if the employee is receiving
30 compensation for permanent total disability.

31 Sec. 9. Section 85.34, subsection 3, Code 2017, is amended
32 to read as follows:

33 3. *Permanent total disability.*

34 a. Compensation for an injury causing permanent total
35 disability shall be upon the basis of eighty percent per week

1 of the employee's average spendable weekly earnings, but not
 2 more than a weekly benefit amount, rounded to the nearest
 3 dollar, equal to two hundred percent of the statewide average
 4 weekly wage paid employees as determined by the department
 5 of workforce development under [section 96.19, subsection 36](#),
 6 and in effect at the time of the injury. The minimum weekly
 7 benefit amount is equal to the weekly benefit amount of a
 8 person whose gross weekly earnings are thirty-five percent of
 9 the statewide average weekly wage. The weekly compensation is
 10 payable ~~during the period of the employee's disability until~~
 11 the employee is no longer permanently and totally disabled or
 12 until the employee reaches the age of sixty-seven, whichever
 13 occurs first. If an employee sustains an injury compensable
 14 under this subsection after reaching the age of sixty-seven,
 15 compensation shall be paid to the employee so long as the
 16 employee remains permanently and totally disabled not to exceed
 17 an amount equal to one hundred fifty weeks of compensation.

18 *b.* Such compensation shall be in addition to the benefits
 19 provided in [sections 85.27 and 85.28](#). No compensation shall
 20 be payable under [this subsection](#) for any injury for which
 21 compensation is payable under [subsection 2 of this section](#).
 22 In the event compensation has been paid to any person under
 23 any provision of [this chapter, chapter 85A or chapter 85B](#) for
 24 ~~the same~~ an injury producing a ~~total~~ permanent disability, any
 25 such amounts so paid shall be deducted from the total amount
 26 of compensation payable for such permanent total disability.
 27 An employee shall not receive compensation for permanent
 28 partial disability if the employee is receiving compensation
 29 for permanent total disability.

30 Sec. 10. Section 85.34, subsection 3, Code 2017, is amended
 31 by adding the following new paragraphs:

32 NEW PARAGRAPH. *c.* An employee forfeits the employee's
 33 weekly compensation for a permanent total disability under this
 34 subsection for a week in which the employee is receiving a
 35 payment equal to or greater than fifty percent of the statewide

1 average weekly wage from any of the following sources:

2 (1) Gross earnings from any employer.

3 (2) Payment for services from any source.

4 NEW PARAGRAPH. *d.* An employee is not entitled to
5 compensation for a permanent total disability under this
6 subsection while the employee is receiving unemployment
7 compensation under chapter 96.

8 Sec. 11. Section 85.34, subsections 4 and 5, Code 2017, are
9 amended to read as follows:

10 4. *Credits for excess payments.* If an employee is paid
11 weekly compensation benefits for temporary total disability
12 under [section 85.33, subsection 1](#), for a healing period
13 under [section 85.34, subsection 1](#), or for temporary partial
14 disability under [section 85.33, subsection 2](#), in excess of
15 that required by [this chapter](#) and [chapters 85A, 85B, and 86](#),
16 the excess paid by the employer shall be credited against the
17 liability of the employer for ~~permanent partial disability~~
18 ~~under [section 85.34, subsection 2](#)~~ any future weekly benefits
19 due for an injury to that employee, provided that the employer
20 or the employer's representative has acted in good faith in
21 determining and notifying an employee when the temporary total
22 disability, healing period, or temporary partial disability
23 benefits are terminated.

24 5. *Recovery of employee overpayment.* If an employee is paid
25 any weekly benefits in excess of that required by [this chapter](#)
26 and [chapters 85A, 85B, and 86](#), the excess paid by the employer
27 shall be credited against the liability of the employer for
28 any future weekly benefits due pursuant to [subsection 2](#), for
29 a any current or subsequent injury to the same employee. An
30 ~~overpayment can be established only when the overpayment is~~
31 ~~recognized in a settlement agreement approved under section~~
32 ~~86.13, pursuant to final agency action in a contested case~~
33 ~~which was commenced within three years from the date that~~
34 ~~weekly benefits were last paid for the claim for which the~~
35 ~~benefits were overpaid, or pursuant to final agency action~~

~~1 in a contested case for a prior injury to the same employee.
2 The credit shall remain available for eight years after the
3 date the overpayment was established. If an overpayment
4 is established pursuant to this subsection, the employee
5 and employer may enter into a written settlement agreement
6 providing for the repayment by the employee of the overpayment.
7 The agreement is subject to the approval of the workers'
8 compensation commissioner. The employer shall not take any
9 adverse action against the employee for failing to agree to
10 such a written settlement agreement.~~

11 Sec. 12. Section 85.34, subsection 7, paragraph a, Code
12 2017, is amended to read as follows:

13 ~~a.~~ An employer is fully liable for compensating all only
14 that portion of an employee's disability that arises out of and
15 in the course of the employee's employment with the employer
16 and that relates to the injury that serves as the basis for
17 the employee's claim for compensation under this chapter,
18 or chapter 85A, 85B, or 86. An employer is not liable for
19 compensating an employee's preexisting disability that arose
20 out of and in the course of employment from a prior injury with
21 the employer, to the extent that the employee's preexisting
22 disability has already been compensated under this chapter,
23 or chapter 85A, 85B, or 86. An employer is not liable for
24 compensating an employee's preexisting disability that arose
25 out of and in the course of employment with a different
26 employer or from causes unrelated to employment.

27 Sec. 13. Section 85.34, subsection 7, paragraphs b and c,
28 Code 2017, are amended by striking the paragraphs.

29 Sec. 14. Section 85.39, Code 2017, is amended to read as
30 follows:

31 **85.39 Examination of injured employees.**

32 1. After an injury, the employee, if requested by the
33 employer, shall submit for examination at some reasonable
34 time and place and as often as reasonably requested, to a
35 physician or physicians authorized to practice under the laws

1 of this state or another state, without cost to the employee;
 2 but if the employee requests, the employee, at the employee's
 3 own cost, is entitled to have a physician or physicians
 4 of the employee's own selection present to participate in
 5 the examination. If an employee is required to leave work
 6 for which the employee is being paid wages to attend the
 7 requested examination, the employee shall be compensated at
 8 the employee's regular rate for the time the employee is
 9 required to leave work, and the employee shall be furnished
 10 transportation to and from the place of examination, or the
 11 employer may elect to pay the employee the reasonable cost of
 12 the transportation. The refusal of the employee to submit to
 13 the examination shall ~~suspend~~ forfeit the employee's right to
 14 any compensation for the period of the refusal. Compensation
 15 shall not be payable for the period of ~~suspension~~ refusal.

16 2. If an evaluation of permanent disability has been made by
 17 a physician retained by the employer and the employee believes
 18 this evaluation to be too low, the employee shall, upon
 19 application to the commissioner and upon delivery of a copy of
 20 the application to the employer and its insurance carrier, be
 21 reimbursed by the employer the reasonable fee for a subsequent
 22 examination by a physician of the employee's own choice, and
 23 reasonably necessary transportation expenses incurred for the
 24 examination. The physician chosen by the employee has the
 25 right to confer with and obtain from the employer-retained
 26 physician sufficient history of the injury to make a proper
 27 examination. An employer is only liable to reimburse an
 28 employee for the cost of an examination conducted pursuant to
 29 this subsection if the injury for which the employee is being
 30 examined is determined to be compensable under this chapter or
 31 chapter 85A or 85B. An employer is not liable for the cost of
 32 such an examination if the injury for which the employee is
 33 being examined is determined not to be a compensable injury. A
 34 determination of the reasonableness of a fee for an examination
 35 made pursuant to this subsection, shall be based on the typical

1 fee charged by a medical provider to perform an impairment
2 rating in the local area where the examination is conducted.

3 Sec. 15. Section 85.45, subsection 1, unnumbered paragraph
4 1, Code 2017, is amended to read as follows:

5 Future payments of compensation may be commuted to a present
6 worth lump sum payment only upon application of a party to
7 the commissioner and upon written consent of all parties to
8 the proposed commutation or partial commutation, and on the
9 following conditions:

10 Sec. 16. Section 85.45, Code 2017, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 3. The parties to any commutation or
13 partial commutation of future payments agreed to and ordered
14 pursuant to this section may agree that the employee has the
15 right to benefits pursuant to section 85.27 under such terms
16 and conditions as agreed to by the parties, for a specified
17 period of time after the commutation or partial commutation
18 agreement has been ordered by the workers' compensation
19 commissioner. During that specified period of time, the
20 commissioner shall have jurisdiction of the commutation or
21 partial commutation agreement for the purpose of adjudicating
22 the employee's entitlement to benefits provided for in section
23 85.27 as provided in the agreement.

24 Sec. 17. Section 85.61, subsection 7, unnumbered paragraph
25 1, Code 2017, is amended to read as follows:

26 The words "*personal injury arising out of and in the course*
27 *of the employment*" shall include injuries to employees whose
28 services are being performed on, in, or about the premises
29 which are occupied, used, or controlled by the employer, and
30 also injuries to those who are engaged elsewhere in places
31 where their employer's business requires their presence and
32 subjects them to dangers incident to the business but only
33 if such injuries are found to be the predominant factor in
34 causing the disability for which compensation is claimed under
35 this chapter, or chapter 85A or 85B. For purposes of this

1 subsection, an injury is the predominant factor in causing a
2 disability if more than fifty percent of the disability is
3 attributable to the injury.

4 Sec. 18. Section 85.71, subsection 1, paragraph a, Code
5 2017, is amended to read as follows:

6 a. The employer has a place of business in this state and
7 the employee regularly works at or from that place of business,
8 ~~or the employer has a place of business in this state and the~~
9 ~~employee is domiciled in this state.~~

10 Sec. 19. Section 86.26, Code 2017, is amended to read as
11 follows:

12 **86.26 Judicial review.**

13 1. Judicial review of decisions or orders of the workers'
14 compensation commissioner may be sought in accordance
15 with [chapter 17A](#). Notwithstanding [chapter 17A](#), the Iowa
16 administrative procedure Act, petitions for judicial review
17 may be filed in the district court of the county in which the
18 hearing under [section 86.17](#) was held, the workers' compensation
19 commissioner shall transmit to the reviewing court the original
20 or a certified copy of the entire record of the contested case
21 which is the subject of the petition within thirty days after
22 receiving written notice from the party filing the petition
23 that a petition for judicial review has been filed, and an
24 application for stay of agency action during the pendency of
25 judicial review shall not be filed in the division of workers'
26 compensation of the department of workforce development
27 but shall be filed with the district court. Such a review
28 proceeding shall be accorded priority over other matters
29 pending before the district court.

30 2. Notwithstanding [section 17A.19](#), subsection 5, a timely
31 petition for judicial review filed pursuant to this section
32 shall stay execution or enforcement of a decision or order of
33 the workers' compensation commissioner if the party seeking
34 judicial review posts a bond securing any compensation awarded
35 pursuant to the decision or order with the district court

1 within thirty days of filing the petition, in a reasonable
2 amount as fixed and approved by the court. Unless either the
3 party posting the bond files an objection with the court,
4 within twenty days from the date that the bond is fixed and
5 approved by the court, that the amount of the bond is not
6 reasonable, or the party whose interests are protected by the
7 bond files an objection with the court, within twenty days from
8 the date that the amount of the bond is fixed and approved by
9 the court, that the amount of the bond is not reasonable or
10 adequate, the amount of the bond shall be deemed reasonable and
11 adequate. If, upon objection, the district court orders the
12 amount of the bond posted to be modified, the party seeking
13 judicial review shall repost the bond in the amount ordered,
14 within twenty days of the date of the order modifying the bond,
15 in order to continue the stay of execution or enforcement
16 of the decision or order of the workers' compensation
17 commissioner.

18 Sec. 20. Section 86.39, Code 2017, is amended to read as
19 follows:

20 **86.39 Fees — approval.**

21 1. All fees or claims for legal, medical, hospital, and
22 burial services rendered under [this chapter](#) and [chapters 85,](#)
23 [85A, 85B,](#) and [87](#) are subject to the approval of the workers'
24 compensation commissioner. For services rendered in the
25 district court and appellate courts, the attorney fee is
26 subject to the approval of a judge of the district court.

27 2. An attorney shall not recover fees for legal services
28 based on the amount of compensation voluntarily paid or
29 agreed to be paid to an employee for temporary or permanent
30 disability under this chapter, or chapter 85, 85A, 85B, or
31 87. An attorney shall only recover a fee based on the amount
32 of compensation that the attorney demonstrates would not have
33 been paid to the employee but for the efforts of the attorney.
34 Any disputes over the recovery of attorney fees under this
35 subsection shall be resolved by the workers' compensation

1 commissioner.

2 Sec. 21. Section 86.42, Code 2017, is amended to read as
3 follows:

4 **86.42 Judgment by district court on award.**

5 Any party in interest may present a file-stamped copy
6 of an order or decision of the commissioner, from which a
7 timely petition for judicial review has not been filed or if
8 judicial review has been filed, which has not had execution or
9 enforcement stayed as provided in section 17A.19, subsection
10 5, or section 86.26, subsection 2, or an order or decision
11 of a deputy commissioner from which a timely appeal has not
12 been taken within the agency and which has become final by
13 the passage of time as provided by rule and [section 17A.15](#),
14 or an agreement for settlement approved by the commissioner,
15 and all papers in connection therewith, to the district court
16 where judicial review of the agency action may be commenced.
17 The court shall render a decree or judgment and cause the
18 clerk to notify the parties. The decree or judgment, in the
19 absence of a petition for judicial review or if judicial review
20 has been commenced, in the absence of a stay of execution
21 or enforcement of the decision or order of the workers'
22 compensation commissioner as provided in section 17A.19,
23 subsection 5, or section 86.26, subsection 2, or in the absence
24 of an act of any party which prevents a decision of a deputy
25 workers' compensation commissioner from becoming final, has the
26 same effect and in all proceedings in relation thereto is the
27 same as though rendered in a suit duly heard and determined by
28 the court.

29 Sec. 22. Section 535.3, subsection 1, Code 2017, is amended
30 to read as follows:

31 1. a. Interest shall be allowed on all money due on
32 judgments and decrees of courts at a rate calculated according
33 to [section 668.13](#), ~~except for interest due pursuant to section~~
34 ~~85.30 for which the rate shall be ten percent per year.~~

35 b. Notwithstanding paragraph "a", interest due pursuant

1 to section 85.30 shall accrue from the date each compensation
2 payment is due at an annual rate equal to the one-year treasury
3 constant maturity published by the federal reserve in the most
4 recent H15 report settled prior to the date each compensation
5 payment is due plus two percent.

6 Sec. 23. EFFECTIVE UPON ENACTMENT. This Act, being deemed
7 of immediate importance, takes effect upon enactment.

8 Sec. 24. APPLICABILITY.

9 1. The sections of this Act amending sections 85.16, 85.18,
10 85.23, 85.26, 85.33, 85.34, 85.39, 85.61, 85.71, 86.26, 86.39,
11 and 86.42 apply to injuries occurring on or after the effective
12 date of this Act.

13 2. The sections of this Act amending section 85.45 apply to
14 commutations for which applications are filed on or after the
15 effective date of this Act.

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with
18 the explanation's substance by the members of the general assembly.

19 This bill contains various provisions relating to workers'
20 compensation.

21 Code section 85.16(2) is amended to provide that if an
22 employer shows that at the time of an injury for which workers'
23 compensation is sought, an employee had positive test results
24 reflecting the presence of alcohol or drugs, there is a
25 presumption that the employee was intoxicated at the time of
26 the injury, and the intoxication was the predominant factor in
27 causing the injury, making the injury not compensable. The
28 provision also allows the employee to overcome that presumption
29 by establishing that the employee was not intoxicated or that
30 intoxication was not the predominant factor in causing the
31 injury.

32 Code section 85.18 is amended to provide that imposition of
33 liability on any employer under Code chapter 85 does not create
34 a private cause of action.

35 Code section 85.23 requiring notice of injury and Code

1 section 85.26(1) concerning limitations of actions, are amended
2 to define "date of the occurrence of the injury" to mean the
3 date the employee knew or should have known that the injury was
4 work-related.

5 Code section 85.33(3) concerning an employee who is
6 temporarily, partially disabled, is amended to include
7 requirements for offers of temporary work by employers
8 to employees who are temporarily, partially disabled and
9 requirements for refusal of such work as not suitable by an
10 employee. An employee cannot raise suitability as a reason
11 until such time as the refusal and reason are communicated to
12 the employer in writing.

13 Code section 85.34(2), concerning compensation for
14 permanent partial disability, is amended to provide that such
15 compensation begins when it is medically indicated that maximum
16 medical improvement from the injury has been reached and that
17 the extent of loss or percentage of permanent impairment can be
18 determined by use of the guides to the evaluation of permanent
19 impairment, published by the American medical association,
20 as adopted by the workers' compensation commissioner by rule
21 pursuant to Code chapter 17A.

22 Code section 85.34(2)(m) is amended to modify language
23 providing compensation for a scheduled injury describing the
24 whole rather than two-thirds of the upper arm.

25 Code section 85.34(2)(u) concerning compensation for
26 permanent partial disability for injuries other than scheduled
27 injuries under Code section 85.34(2), paragraphs "a" through
28 "t", is amended to provide that a reduction in the employee's
29 earning capacity caused by a disability must take into account
30 the employee's permanent partial disability and the number of
31 years in the future it was reasonably anticipated the employee
32 would work at the time of the injury. An employee who returns
33 to work or is offered work for the same or more money than the
34 employee received when injured shall be compensated only for
35 functional disability, and not in relation to earning capacity.

1 If an employee is injured after age 67, compensation shall be
2 paid based on the employee's resulting loss of earning capacity
3 not to exceed an amount equal to 150 weeks of compensation.

4 New Code section 85.34(2)(w) provides that a determination
5 of the extent of an employee's loss or permanent impairment
6 for a scheduled injury pursuant to Code section 85.34(2),
7 paragraphs "a" through "t", or paragraph "u" when determining
8 functional disability and not loss of earning capacity,
9 shall be determined solely by use of the guides to the
10 evaluation of permanent impairment, published by the American
11 medical association, as adopted by the workers' compensation
12 commissioner by rule pursuant to Code chapter 17A. Lay
13 testimony or agency expertise cannot be utilized in making this
14 determination.

15 New Code section 85.34(2)(x) provides that compensation for
16 permanent partial disability for an injury terminates on the
17 date when compensation for permanent total disability for any
18 injury begins. An employee shall not receive compensation
19 for permanent partial disability if the employee is receiving
20 compensation for permanent total disability.

21 Code section 85.34(3)(a) is amended to provide that
22 an employee can receive compensation for permanent total
23 disability until the employee is no longer permanently and
24 totally disabled or reaches the age of 67, whichever occurs
25 first. If an employee is injured after reaching the age of
26 67, compensation shall be paid so long as the employee remains
27 permanently and totally disabled not exceed an amount equal to
28 150 weeks of compensation.

29 Code section 85.34(3)(b) is amended to provide that if
30 compensation for an injury producing permanent disability has
31 been paid to a person, the amounts so paid are deductible
32 from the total amount of compensation payable to that person
33 for permanent total disability. An employee cannot receive
34 compensation for permanent partial disability if the employee
35 is receiving compensation for permanent total disability.

1 New Code section 85.34(3)(c) provides that an employee
2 forfeits the employee's weekly compensation for a permanent
3 total disability for a week in which the employee is receiving
4 a payment equal to or greater than 50 percent of the statewide
5 average weekly wage from gross earnings from any employer or
6 payment for services from any source.

7 New Code section 85.34(3)(d) provides that an employee is
8 not entitled to compensation for a permanent total disability
9 while the employee is receiving unemployment compensation under
10 Code chapter 96.

11 Code section 85.34(4) is amended to provide that an employer
12 can receive credit for excess payments of temporary total
13 disability, healing period, or temporary partial disability
14 to an employee against the liability of the employer for any
15 future weekly benefits due for an injury to the employee.

16 Code section 85.34(5) is amended to provide that an employer
17 can receive credit for excess payments of any weekly benefits
18 paid to an employee against the liability of the employer for
19 any future weekly benefits for permanent partial disability
20 that is due for any current or subsequent injury to the
21 same employee. Provisions limiting the establishment of an
22 overpayment and the availability of credit are stricken.

23 Code section 85.34(7)(a) relating to compensation of an
24 employee in the case of successive disabilities is amended to
25 provide that an employer is only liable for that portion of an
26 employee's disability that relates to the injury that serves as
27 the basis for the employee's claim for workers' compensation.
28 An employer is not liable for compensating an employee's
29 preexisting disability that arose out of and in the course of
30 employment with the employer to the extent that the preexisting
31 disability has already been compensated. Code section
32 85.34(7)(b) and (c) relating to compensation of preexisting or
33 combined disabilities and successor employers are stricken.

34 Code section 85.39, relating to medical examinations of
35 injured employees for evaluation of permanent disability, is

1 amended to provide that refusal of an employee to submit to an
2 examination requested by the employer forfeits the employee's
3 right to any compensation for the period of the refusal.

4 Code section 85.39 is also amended to provide that an
5 employer is only liable to reimburse an employee for a medical
6 examination requested by the employee if the injury for which
7 the employee is being examined is found to be compensable under
8 workers' compensation law. An employer is not liable for the
9 cost of the examination if the injury for which the employee
10 is being examined is determined not to be a compensable
11 injury. An employer is liable to pay a reasonable fee for an
12 examination requested by the employee with reasonableness to
13 be determined based on the typical fee charged by a medical
14 provider to perform an impairment rating in the local area
15 where the examination is conducted.

16 Code section 85.45(1), relating to commutations of future
17 payments of compensation, is amended to require that future
18 payments may be commuted only upon application of a party
19 to the workers' compensation commissioner and upon written
20 consent of all parties to the proposed commutation or partial
21 commutation.

22 New Code section 85.45(3) provides that the parties to any
23 commutation or partial commutation of future compensation
24 payments agreed to and ordered pursuant to this Code section
25 may also agree that the employee has the right to benefits
26 pursuant to Code section 85.27 under such terms and conditions
27 as agreed to by the parties, for a specified period of time
28 after the commutation or partial commutation agreement has been
29 ordered by the workers' compensation commissioner. During that
30 specified period of time, the commissioner has jurisdiction
31 of the commutation or partial commutation agreement for
32 the purpose of adjudicating the employee's entitlement to
33 benefits provided for in Code section 85.27 as provided in the
34 agreement.

35 Code section 85.61(7) is amended to provide that for

1 purposes of the definition of "personal injury arising out of
2 and in the course of business", an employee's injury must be
3 found to be the predominant factor in causing the disability
4 for which worker's compensation is claimed. An injury is the
5 predominant factor in causing a disability if more than 50
6 percent of the disability is attributable to the injury.

7 Code section 85.71(1)(a), concerning compensation for
8 injuries that occur outside of the state, is amended to provide
9 that Iowa law is applicable if the employer has a place of
10 business in this state and the employee regularly works at
11 or from that place of business. The statute is no longer
12 applicable when the employer has a place of business in this
13 state and the employee is domiciled in this state.

14 Code section 86.26, which allows judicial review of
15 decisions or orders of the workers' compensation commissioner
16 in district court, is amended to provide that a timely petition
17 for judicial review, that is accompanied by a bond securing any
18 compensation awarded pursuant to the order or decision as fixed
19 and approved by the court, shall stay execution and enforcement
20 of the decision or order. Either party may object to the
21 amount of the bond set by the court as being unreasonable or
22 inadequate.

23 Code section 86.39 is amended to provide that an attorney
24 cannot recover fees for legal services based on the amount of
25 workers' compensation voluntarily paid or agreed to be paid to
26 an employee for temporary or permanent disability. An attorney
27 can only recover a fee based on the amount of compensation
28 that the attorney demonstrates would not have been paid to the
29 employee but for the efforts of the attorney. Disputes over
30 the recovery of attorney fees shall be resolved by the workers'
31 compensation commissioner.

32 Code section 86.42 is amended to refer to new Code section
33 86.26(2) which allows a stay of execution and enforcement of
34 an order or decision by the workers' compensation commissioner
35 when a petition for judicial review is accompanied by the

1 posting of a bond.

2 Code section 535.3(1), concerning interest due on unpaid
3 weekly workers' compensation payments, is amended to provide
4 that instead of a 10 percent per year interest rate, interest
5 shall accrue from the date each compensation payment is due at
6 an annual rate equal to the one-year treasury constant maturity
7 published by the federal reserve in the most recent H15 report
8 settled prior to the date each compensation payment is due plus
9 2 percent.

10 The bill is effective upon enactment.

11 The sections of the bill amending Code sections 85.16,
12 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.61, 85.71, 86.26,
13 86.39, and 86.42 apply to injuries occurring on or after the
14 effective date of the bill.

15 The sections of the bill amending Code section 85.45 apply
16 to commutations for which applications are filed on or after
17 the effective date of the bill.