

Senate File 349 - Introduced

SENATE FILE 349

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A BILL FOR

1 An Act relating to workers' compensation.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.23, Code 2019, is amended to read as
2 follows:

3 **85.23 Notice of injury — failure to give.**

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

14 Sec. 2. Section 85.26, subsection 1, Code 2019, is amended
15 to read as follows:

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

26 Sec. 3. Section 85.34, subsection 2, paragraph n, Code 2019,
27 is amended by striking the paragraph.

28 Sec. 4. Section 85.34, subsection 2, paragraph v, Code 2019,
29 is amended to read as follows:

30 v. In all cases of permanent partial disability other than
31 those hereinabove described or referred to in paragraphs "a"
32 through "u" hereof, the compensation shall be paid during
33 the number of weeks in relation to five hundred weeks as the
34 reduction in the employee's earning capacity caused by the
35 disability bears in relation to the earning capacity that the

1 employee possessed when the injury occurred. ~~A determination~~
2 ~~of the reduction in the employee's earning capacity caused~~
3 ~~by the disability shall take into account the permanent~~
4 ~~partial disability of the employee and the number of years in~~
5 ~~the future it was reasonably anticipated that the employee~~
6 ~~would work at the time of the injury. If an employee who~~
7 ~~is eligible for compensation under this paragraph returns to~~
8 ~~work or is offered work for which the employee receives or~~
9 ~~would receive the same or greater salary, wages, or earnings~~
10 ~~than the employee received at the time of the injury, the~~
11 ~~employee shall be compensated based only upon the employee's~~
12 ~~functional impairment resulting from the injury, and not in~~
13 ~~relation to the employee's earning capacity. Notwithstanding~~
14 ~~section 85.26, subsection 2,~~ if an employee who is eligible
15 for compensation under this paragraph returns to work with the
16 same employer and is compensated based only upon the employee's
17 functional impairment resulting from the injury as provided
18 in this paragraph and is terminated from employment by that
19 employer, the award or agreement for settlement for benefits
20 under ~~this chapter~~ shall be reviewed upon commencement of
21 reopening proceedings by the employee for a determination of
22 any reduction in the employee's earning capacity caused by the
23 employee's permanent partial disability.

24 Sec. 5. Section 85.34, subsection 2, paragraphs x and y,
25 Code 2019, are amended by striking the paragraphs.

26 Sec. 6. Section 85.34, subsection 3, Code 2019, is amended
27 to read as follows:

28 3. *Permanent total disability.*

29 a. Compensation for an injury causing permanent total
30 disability shall be upon the basis of eighty percent per week
31 of the employee's average spendable weekly earnings, but not
32 more than a weekly benefit amount, rounded to the nearest
33 dollar, equal to two hundred percent of the statewide average
34 weekly wage paid employees as determined by the department
35 of workforce development under [section 96.19, subsection 36,](#)

1 and in effect at the time of the injury. The minimum weekly
2 benefit amount is equal to the weekly benefit amount of a
3 person whose gross weekly earnings are thirty-five percent of
4 the statewide average weekly wage. The weekly compensation is
5 payable until the employee is no longer permanently and totally
6 disabled during the period of the employee's disability.

7 **b.** Such compensation shall be in addition to the benefits
8 provided in sections 85.27 and 85.28. No compensation shall
9 be payable under this subsection for any injury for which
10 compensation is payable under subsection 2 of this section.
11 In the event compensation has been paid to any person under
12 any provision of this chapter, chapter 85A, or chapter 85B
13 for ~~an~~ the same injury producing a permanent disability, any
14 such amounts so paid shall be deducted from the total amount
15 of compensation payable for permanent total disability. An
16 employee shall not receive compensation for permanent partial
17 disability if the employee is receiving compensation for
18 permanent total disability.

19 ~~c.~~ An employee forfeits the employee's weekly compensation
20 for a permanent total disability under this subsection for a
21 week in which the employee is receiving a payment equal to or
22 greater than fifty percent of the statewide average weekly wage
23 from any of the following sources:

24 ~~(1) Gross earnings from any employer.~~

25 ~~(2) Payment for current services from any source.~~

26 ~~d.~~ c. An employee is not entitled to compensation for a
27 permanent total disability under this subsection while the
28 employee is receiving unemployment compensation under chapter
29 96.

30 Sec. 7. Section 85.34, subsection 7, Code 2019, is amended
31 to read as follows:

32 7. *Successive disabilities.*

33 a. An employer is fully liable for compensating ~~only that~~
34 ~~portion~~ all of an employee's disability that arises out of and
35 in the course of the employee's employment with the employer

1 ~~and that relates to the injury that serves as the basis for~~
2 ~~the employee's claim for compensation under this chapter,~~
3 ~~or chapter 85A, 85B, or 86. An employer is not liable for~~
4 ~~compensating an employee's preexisting disability that arose~~
5 ~~out of and in the course of employment from a prior injury with~~
6 ~~the employer, to the extent that the employee's preexisting~~
7 ~~disability has already been compensated under this chapter,~~
8 ~~or chapter 85A, 85B, or 86. An employer is not liable for~~
9 ~~compensating an employee's preexisting disability that arose~~
10 ~~out of and in the course of employment with a different~~
11 ~~employer or from causes unrelated to employment.~~

12 b. (1) If an injured employee has a preexisting disability
13 that was caused by a prior injury arising out of and in
14 the course of employment with the same employer, and the
15 preexisting disability was compensable under the same paragraph
16 of subsection 2 as the employee's present injury, the employer
17 is liable for the combined disability that is caused by the
18 injuries, measured in relation to the employee's condition
19 immediately prior to the first injury. In this instance, the
20 employer's liability for the combined disability shall be
21 considered to be already partially satisfied to the extent
22 of the percentage of disability for which the employee was
23 previously compensated by the employer.

24 (2) If, however, an employer is liable to an employee for
25 a combined disability that is payable under subsection 2,
26 paragraph "v", and the employee has a preexisting disability
27 that causes the employee's earnings to be less at the time of
28 the present injury than if the prior injury had not occurred,
29 the employer's liability for the combined disability shall be
30 considered to be already partially satisfied to the extent
31 of the percentage of disability for which the employee was
32 previously compensated by the employer minus the percentage
33 that the employee's earnings are less at the time of the
34 present injury than if the prior injury had not occurred.

35 c. A successor employer shall be considered to be the

1 same employer if the employee became part of the successor
2 employer's workforce through a merger, purchase, or other
3 transaction that assumes the employee into the successor
4 employer's workforce without substantially changing the nature
5 of the employee's employment.

6 Sec. 8. Section 85.45, subsection 1, unnumbered paragraph
7 1, Code 2019, is amended to read as follows:

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

13 Sec. 9. Section 85.45, subsection 3, Code 2019, is amended
14 by striking the subsection.

15 Sec. 10. Section 85.70, subsection 1, Code 2019, is amended
16 to read as follows:

17 1. An employee who has sustained an injury resulting in
18 permanent partial or permanent total disability, for which
19 compensation is payable under **this chapter** ~~other than an~~
20 ~~injury to the shoulder compensable pursuant to section 85.34,~~
21 ~~subsection 2, paragraph "n",~~ and who cannot return to gainful
22 employment because of such disability, shall upon application
23 to and approval by the workers' compensation commissioner
24 be entitled to a one hundred dollar weekly payment from the
25 employer in addition to any other benefit payments, during each
26 full week in which the employee is actively participating in a
27 vocational rehabilitation program recognized by the vocational
28 rehabilitation services division of the department of
29 education. The workers' compensation commissioner's approval
30 of such application for payment may be given only after a
31 careful evaluation of available facts, and after consultation
32 with the employer or the employer's representative.

33 Judicial review of the decision of the workers' compensation
34 commissioner may be obtained in accordance with the terms of
35 the Iowa administrative procedure Act, **chapter 17A**, and in

1 section 86.26. Such additional benefit payment shall be paid
2 for a period not to exceed thirteen consecutive weeks except
3 that the workers' compensation commissioner may extend the
4 period of payment not to exceed an additional thirteen weeks if
5 the circumstances indicate that a continuation of training will
6 in fact accomplish rehabilitation.

7 Sec. 11. Section 85.70, subsection 2, Code 2019, is amended
8 by striking the subsection.

9 Sec. 12. Section 85.71, subsection 1, paragraph a, Code
10 2019, is amended to read as follows:

11 a. The employer has a place of business in this state and
12 the employee regularly works at or from that place of business,
13 or the employer has a place of business in this state and the
14 employee is domiciled in this state.

15 Sec. 13. Section 535.3, subsection 1, Code 2019, is amended
16 to read as follows:

17 1. ~~a.~~ Interest shall be allowed on all money due on
18 judgments and decrees of courts at a rate calculated according
19 to section 668.13, except for interest due pursuant to section
20 85.30 for which the rate shall be ten percent per year.

21 ~~b.~~ Notwithstanding paragraph "a", interest due pursuant
22 to ~~section 85.30~~ shall accrue from the date each compensation
23 payment is due at an annual rate equal to the one-year treasury
24 constant maturity published by the federal reserve in the most
25 recent H15 report settled as of the date of injury, plus two
26 percent.

27 EXPLANATION

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

30 This bill relates to workers' compensation by reversing some
31 of the changes to the Code that were made with the passage of
32 House File 518 in 2017.

33 The bill amends Code section 85.23, requiring notice of
34 injury, and Code section 85.26(1), concerning limitations of
35 actions, to remove definitions of "date of the occurrence of

1 the injury" to mean the date the employee knew or should have
2 known that the injury was work-related.

3 The bill removes a shoulder injury from the scheduled injury
4 list for permanent partial disability in Code section 85.34(2)
5 by striking paragraph "n", which stated: "For the loss of a
6 shoulder, weekly compensation during four hundred weeks".

7 The bill amends Code section 85.34(2)(v), concerning
8 compensation for permanent partial disability for
9 injuries other than scheduled injuries under Code section
10 85.34(2)(a)-(u), to remove a provision that a reduction in the
11 employee's earning capacity caused by a disability must take
12 into account the employee's permanent partial disability and
13 the number of years in the future it was reasonably anticipated
14 the employee would work at the time of the injury. The bill
15 removes a provision that an employee who returns to work or
16 is offered work for the same or more money than the employee
17 received when injured shall be compensated only for functional
18 disability, and not in relation to earning capacity. The
19 bill also removes a provision that notwithstanding Code section
20 85.26(2), regarding limitations of actions.

21 The bill strikes Code section 85.34(2)(x), concerning
22 permanent partial disability. The paragraph provides that in
23 all cases of permanent partial disability described in Code
24 section 85.34(2)(a)-(u), or Code section 85.34(2)(v), when
25 determining functional disability and not loss of earning
26 capacity, the extent of loss or percentage of permanent
27 impairment shall be determined solely by utilizing the guides
28 to the evaluation of permanent impairment, published by the
29 American medical association, as adopted by the workers'
30 compensation commissioner by rule pursuant to Code chapter 17A.
31 The Code section prohibits lay testimony or agency expertise
32 from being utilized in making this determination.

33 The bill strikes Code section 85.34(2)(y), concerning
34 permanent partial disability. The paragraph provides that
35 compensation for permanent partial disability for an injury

1 shall terminate on the date when compensation for permanent
2 total disability for any injury begins. The Code section
3 prohibits an employee from receiving compensation for permanent
4 partial disability if the employee is receiving compensation
5 for permanent total disability.

6 The bill amends Code section 85.34(3)(a), concerning
7 permanent total disability, to provide that the weekly
8 compensation is payable "during the period of the employee's
9 disability", rather than "until the employee is no longer
10 permanently and totally disabled".

11 The bill amends Code section 85.34(3)(b) to provide that in
12 the event compensation has been paid to any person under any
13 provision of Code chapter 85, 85A, or 85B for the same injury,
14 rather than an injury, producing a permanent disability, any
15 such amount so paid shall be deducted from the total amount of
16 compensation payable for permanent total disability. The bill
17 also amends the paragraph to remove a provision which provided
18 that "an employee shall not receive compensation for permanent
19 partial disability if the employee is receiving compensation
20 for permanent total disability".

21 The bill strikes Code section 85.34(3)(c), which provides
22 that an employee forfeits the employee's weekly compensation
23 for a permanent total disability under this subsection for a
24 week in which the employee is receiving a payment equal to or
25 greater than 50 percent of the statewide average weekly wage
26 from any of the following sources: gross earnings from any
27 employer or payment for current services from any source.

28 The bill amends Code section 85.34(7), concerning successive
29 disabilities, to provide that an employer is fully liable for
30 compensating all of an employee's disability that arises out
31 of and in the course of the employee's employment with the
32 employer and removes the requirement that it relate to the
33 injury that serves as the basis for the employee's claim for
34 compensation under Code chapter 85, 85A, 85B, or 86. The bill
35 also removes a provision that an employer is not liable for

1 compensating an employee's preexisting disability that arose
2 out of and in the course of employment from a prior injury with
3 the employer, to the extent that the employee's preexisting
4 disability has already been compensated under Code chapter
5 85, 85A, 85B, or 86. The bill provides that if an injured
6 employee has a preexisting disability that was caused by a
7 prior injury arising out of and in the course of employment
8 with the same employer, and the preexisting disability was
9 compensable under Code section 85.34(2) as the employee's
10 present injury, the employer is liable for the combined
11 disability that is caused by the injuries, measured in relation
12 to the employee's condition immediately prior to the first
13 injury. In this instance, the employer's liability for the
14 combined disability shall be considered to be already partially
15 satisfied to the extent of the percentage of disability for
16 which the employee was previously compensated by the employer.
17 The bill provides, however, that if an employer is liable to
18 an employee for a combined disability that is payable under
19 Code section 85.34(2)(v) and the employee has a preexisting
20 disability that causes the employee's earnings to be less at
21 the time of the present injury than if the prior injury had not
22 occurred, the employer's liability for the combined disability
23 shall be considered to be already partially satisfied to the
24 extent of the percentage of disability for which the employee
25 was previously compensated by the employer minus the percentage
26 that the employee's earnings are less at the time of the
27 present injury than if the prior injury had not occurred.
28 Additionally, the bill provides that a successor employer shall
29 be considered to be the same employer if the employee became
30 part of the successor employer's workforce through a merger,
31 purchase, or other transaction that assumes the employee into
32 the successor employer's workforce without substantially
33 changing the nature of the employee's employment.
34 The bill amends Code section 85.45(1), concerning
35 commutation, by removing the requirement that commutation

1 of future payments of compensation shall take place only
2 upon application by a party to the commissioner and the
3 written consent of all parties to the commutation or partial
4 commutation.

5 The bill strikes Code section 85.45(3), which provides that
6 the parties to any commutation or partial commutation of future
7 payments agreed to and ordered pursuant to Code section 85.45
8 may agree that the employee has the right to benefits pursuant
9 to Code section 85.27 for a specified period of time under such
10 terms and conditions as agreed to by the workers' compensation
11 commissioner. The stricken Code section also provides that
12 during the specified period of time, the commissioner shall
13 have jurisdiction of the commutation or partial commutation
14 agreement for the purpose of adjudicating the employee's
15 entitlement to benefits provided for in Code section 85.27 as
16 provided in the agreement.

17 Under current law pursuant to Code section 85.70, an
18 employee who has sustained an injury resulting in permanent
19 partial or permanent total disability that is compensable under
20 Code chapter 85 (other than a shoulder injury compensable
21 pursuant to Code section 85.34(2)(n)) and who cannot return
22 to gainful employment because of such disability and who
23 applies and receives approval from the workers' compensation
24 commissioner shall be entitled to a weekly payment of \$100
25 in addition to any other weekly benefit payment, during each
26 full week that the employee is actively participating in a
27 vocational rehabilitation program, which has been recognized
28 by the vocational rehabilitation services division of the
29 department of education. The bill removes the reference to
30 a shoulder injury. The bill strikes a provision relating to
31 the vocational training and education program for shoulder
32 injuries.

33 The bill amends Code section 85.71, concerning compensation
34 for injuries that occur outside of the state. The bill amends
35 the Code section to provide that the statute is applicable not

1 only if the employer has a place of business in this state and
2 the employee regularly works at or from that place of business,
3 but also if the employer has a place of business in this state
4 and the employee is domiciled in this state.

5 The bill amends Code section 535.3(1)(a), concerning
6 interest due on unpaid weekly workers' compensation payments,
7 to provide that interest shall be allowed on all money due on
8 judgments and decrees of courts at a rate calculated according
9 to Code section 668.13, except for interest due pursuant to
10 Code section 85.30 for which the rate shall be 10 percent
11 per year. The bill eliminates paragraph "b" of Code section
12 535.3(1) which provides that interest due pursuant to Code
13 section 85.30 shall accrue from the date each compensation
14 payment is due at an annual rate equal to the one-year treasury
15 constant maturity published by the federal reserve in the most
16 recent H15 report settled as of the date of injury, plus 2
17 percent.