

Senate File 451 - Introduced

SENATE FILE 451

BY CELSI

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 85.16, subsection 2, paragraph b, Code
2 2019, is amended by striking the paragraph.

3 Sec. 2. Section 85.18, Code 2019, is amended to read as
4 follows:

5 **85.18 Contract to relieve not operative.**

6 No contract, rule, or device whatsoever shall operate to
7 relieve the employer, in whole or in part, from any liability
8 created by [this chapter](#) except as herein provided. ~~This~~
9 ~~section does not create a private cause of action.~~

10 Sec. 3. Section 85.23, Code 2019, is amended to read as
11 follows:

12 **85.23 Notice of injury — failure to give.**

13 Unless the employer or the employer's representative shall
14 have actual knowledge of the occurrence of an injury received
15 within ninety days from the date of the occurrence of the
16 injury, or unless the employee or someone on the employee's
17 behalf or a dependent or someone on the dependent's behalf
18 shall give notice thereof to the employer within ninety days
19 from the date of the occurrence of the injury, no compensation
20 shall be allowed. ~~For the purposes of [this section](#), "date of~~
21 ~~the occurrence of the injury" means the date that the employee~~
22 ~~knew or should have known that the injury was work-related.~~

23 Sec. 4. Section 85.26, subsection 1, Code 2019, is amended
24 to read as follows:

25 1. An original proceeding for benefits under [this chapter](#)
26 or [chapter 85A](#), [85B](#), or [86](#), shall not be maintained in any
27 contested case unless the proceeding is commenced within two
28 years from the date of the occurrence of the injury for which
29 benefits are claimed or, if weekly compensation benefits are
30 paid under [section 86.13](#), within three years from the date of
31 the last payment of weekly compensation benefits. ~~For the~~
32 ~~purposes of [this section](#), "date of the occurrence of the injury"~~
33 ~~means the date that the employee knew or should have known that~~
34 ~~the injury was work-related.~~

35 Sec. 5. Section 85.33, subsection 3, Code 2019, is amended

1 to read as follows:

2 3. ~~a.~~ If an employee is temporarily, partially disabled and
3 the employer for whom the employee was working at the time of
4 injury offers to the employee suitable work consistent with the
5 employee's disability the employee shall accept the suitable
6 work, and be compensated with temporary partial benefits.
7 ~~If the employer offers the employee suitable work and the~~
8 ~~employee refuses to accept the suitable work offered by the~~
9 with the same employer, the employee shall not be compensated
10 with temporary partial, temporary total, or healing period
11 benefits during the period of the refusal. ~~Work offered at~~
12 ~~the employer's principal place of business or established~~
13 ~~place of operation where the employee has previously worked is~~
14 ~~presumed to be geographically suitable for an employee whose~~
15 ~~duties involve travel away from the employer's principal place~~
16 ~~of business or established place of operation more than fifty~~
17 ~~percent of the time.~~ If suitable work is not offered by the
18 employer for whom the employee was working at the time of the
19 injury and the employee who is temporarily, partially disabled
20 elects to perform work with a different employer, the employee
21 shall be compensated with temporary partial benefits.

22 ~~b.~~ ~~The employer shall communicate an offer of temporary~~
23 ~~work to the employee in writing, including details of lodging,~~
24 ~~meals, and transportation, and shall communicate to the~~
25 ~~employee that if the employee refuses the offer of temporary~~
26 ~~work, the employee shall communicate the refusal and the reason~~
27 ~~for the refusal to the employer in writing and that during the~~
28 ~~period of the refusal the employee will not be compensated with~~
29 ~~temporary partial, temporary total, or healing period benefits,~~
30 ~~unless the work refused is not suitable.~~ If the employee
31 ~~refuses the offer of temporary work on the grounds that the~~
32 ~~work is not suitable, the employee shall communicate the~~
33 ~~refusal, along with the reason for the refusal, to the employer~~
34 ~~in writing at the time the offer of work is refused.~~ Failure to
35 ~~communicate the reason for the refusal in this manner precludes~~

~~1 the employee from raising suitability of the work as the reason
2 for the refusal until such time as the reason for the refusal
3 is communicated in writing to the employer.~~

4 Sec. 6. Section 85.34, subsection 2, unnumbered paragraph
5 1, Code 2019, is amended to read as follows:

6 Compensation for permanent partial disability shall begin
7 ~~when it is medically indicated that maximum medical improvement~~
8 ~~from the injury has been reached and that the extent of loss or~~
9 ~~percentage of permanent impairment can be determined by use of~~
10 ~~the guides to the evaluation of permanent impairment, published~~
11 ~~by the American medical association, as adopted by the workers'~~
12 ~~compensation commissioner by rule pursuant to chapter 17A at~~
13 the termination of the healing period provided in subsection 1.
14 The compensation shall be in addition to the benefits provided
15 by sections 85.27 and 85.28. The compensation shall be based
16 upon the extent of the disability and upon the basis of eighty
17 percent per week of the employee's average spendable weekly
18 earnings, but not more than a weekly benefit amount, rounded to
19 the nearest dollar, equal to one hundred eighty-four percent of
20 the statewide average weekly wage paid employees as determined
21 by the department of workforce development under section 96.19,
22 subsection 36, and in effect at the time of the injury. The
23 minimum weekly benefit amount shall be equal to the weekly
24 benefit amount of a person whose gross weekly earnings are
25 thirty-five percent of the statewide average weekly wage. For
26 all cases of permanent partial disability compensation shall
27 be paid as follows:

28 Sec. 7. Section 85.34, subsection 2, paragraph n, Code 2019,
29 is amended by striking the paragraph.

30 Sec. 8. Section 85.34, subsection 2, paragraph v, Code 2019,
31 is amended to read as follows:

32 v. In all cases of permanent partial disability other than
33 those hereinabove described or referred to in paragraphs "a"
34 through "u" hereof, the compensation shall be paid during
35 the number of weeks in relation to five hundred weeks as the

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

26 Sec. 9. Section 85.34, subsection 2, paragraphs x and y,
27 Code 2019, are amended by striking the paragraphs.

28 Sec. 10. Section 85.34, subsection 3, Code 2019, is amended
29 to read as follows:

30 3. *Permanent total disability.*

31 a. Compensation for an injury causing permanent total
32 disability shall be upon the basis of eighty percent per week
33 of the employee's average spendable weekly earnings, but not
34 more than a weekly benefit amount, rounded to the nearest
35 dollar, equal to two hundred percent of the statewide average

1 weekly wage paid employees as determined by the department
2 of workforce development under [section 96.19, subsection 36,](#)
3 and in effect at the time of the injury. The minimum weekly
4 benefit amount is equal to the weekly benefit amount of a
5 person whose gross weekly earnings are thirty-five percent of
6 the statewide average weekly wage. The weekly compensation is
7 payable until ~~the employee is no longer permanently and totally~~
8 disabled during the period of the employee's disability.

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

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

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

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

28 ~~**d.** An employee is not entitled to compensation for a~~
29 ~~permanent total disability under [this subsection](#) while the~~
30 ~~employee is receiving unemployment compensation under chapter~~
31 ~~96.~~

32 Sec. 11. Section 85.34, subsections 4, 5, and 7, Code 2019,
33 are amended to read as follows:

34 4. *Credits for excess payments.* If an employee is paid
35 weekly compensation benefits for temporary total disability

1 under [section 85.33, subsection 1](#), for a healing period
 2 under [section 85.34, subsection 1](#), or for temporary partial
 3 disability under [section 85.33, subsection 2](#), in excess of
 4 that required by [this chapter](#) and [chapters 85A, 85B, and 86](#),
 5 the excess ~~paid by the employer~~ shall be credited against the
 6 liability of the employer for ~~any future weekly benefits due~~
 7 ~~for an injury to that employee~~ permanent partial disability
 8 under section 85.34, subsection 2, provided that the employer
 9 or the employer's representative has acted in good faith in
 10 determining and notifying an employee when the temporary total
 11 disability, healing period, or temporary partial disability
 12 benefits are terminated.

13 5. *Recovery of employee overpayment.* If an employee is paid
 14 any weekly benefits in excess of that required by [this chapter](#)
 15 and [chapters 85A, 85B, and 86](#), the excess paid by the employer
 16 shall be credited against the liability of the employer for
 17 any future weekly benefits due pursuant to [subsection 2](#), for
 18 ~~any current or a~~ subsequent injury to the same employee. An
 19 overpayment can be established only when the overpayment is
 20 recognized in a settlement agreement approved under section
 21 86.13, pursuant to final agency action in a contested case
 22 which was commenced within three years from the date that
 23 weekly benefits were last paid for the claim for which the
 24 benefits were overpaid, or pursuant to final agency action
 25 in a contested case for a prior injury to the same employee.
 26 The credit shall remain available for eight years after the
 27 date the overpayment was established. If an overpayment
 28 is established pursuant to this subsection, the employee
 29 and employer may enter into a written settlement agreement
 30 providing for the repayment by the employee of the overpayment.
 31 The agreement is subject to the approval of the workers'
 32 compensation commissioner. The employer shall not take any
 33 adverse action against the employee for failing to agree to
 34 such a written settlement agreement.

35 7. *Successive disabilities.*

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

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

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

1 that the employee's earnings are less at the time of the
2 present injury than if the prior injury had not occurred.

3 c. A successor employer shall be considered to be the
4 same employer if the employee became part of the successor
5 employer's workforce through a merger, purchase, or other
6 transaction that assumes the employee into the successor
7 employer's workforce without substantially changing the nature
8 of the employee's employment.

9 Sec. 12. Section 85.39, Code 2019, is amended to read as
10 follows:

11 **85.39 Examination of injured employees.**

12 1. After an injury, the employee, if requested by the
13 employer, shall submit for examination at some reasonable
14 time and place and as often as reasonably requested, to a
15 physician or physicians authorized to practice under the laws
16 of this state or another state, without cost to the employee;
17 but if the employee requests, the employee, at the employee's
18 own cost, is entitled to have a physician or physicians
19 of the employee's own selection present to participate in
20 the examination. If an employee is required to leave work
21 for which the employee is being paid wages to attend the
22 requested examination, the employee shall be compensated at
23 the employee's regular rate for the time the employee is
24 required to leave work, and the employee shall be furnished
25 transportation to and from the place of examination, or the
26 employer may elect to pay the employee the reasonable cost of
27 the transportation. The refusal of the employee to submit to
28 the examination shall ~~forfeit~~ suspend the employee's right to
29 any compensation for the period of the refusal. Compensation
30 shall not be payable for the period of ~~refusal~~ suspension.

31 2. If an evaluation of permanent disability has been made by
32 a physician retained by the employer and the employee believes
33 this evaluation to be too low, the employee shall, upon
34 application to the commissioner and upon delivery of a copy of
35 the application to the employer and its insurance carrier, be

1 reimbursed by the employer the reasonable fee for a subsequent
2 examination by a physician of the employee's own choice, and
3 reasonably necessary transportation expenses incurred for the
4 examination. The physician chosen by the employee has the
5 right to confer with and obtain from the employer-retained
6 physician sufficient history of the injury to make a proper
7 examination. ~~An employer is only liable to reimburse an~~
8 ~~employee for the cost of an examination conducted pursuant to~~
9 ~~this subsection~~ if the injury for which the employee is being
10 examined is determined to be compensable under ~~this chapter~~ or
11 chapter 85A or 85B. ~~An employer is not liable for the cost of~~
12 ~~such an examination if the injury for which the employee is~~
13 ~~being examined is determined not to be a compensable injury. A~~
14 ~~determination of the reasonableness of a fee for an examination~~
15 ~~made pursuant to this subsection, shall be based on the typical~~
16 ~~fee charged by a medical provider to perform an impairment~~
17 ~~rating in the local area where the examination is conducted.~~

18 Sec. 13. Section 85.45, subsection 1, unnumbered paragraph
19 1, Code 2019, is amended to read as follows:

20 Future payments of compensation may be commuted to a present
21 worth lump sum payment ~~only upon application of a party to~~
22 ~~the commissioner and upon written consent of all parties to~~
23 ~~the proposed commutation or partial commutation, and on the~~
24 following conditions:

25 Sec. 14. Section 85.45, subsection 3, Code 2019, is amended
26 by striking the subsection.

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

29 1. An employee who has sustained an injury resulting in
30 permanent partial or permanent total disability, for which
31 compensation is payable under ~~this chapter~~ other than an
32 ~~injury to the shoulder compensable pursuant to section 85.34,~~
33 ~~subsection 2, paragraph "n",~~ and who cannot return to gainful
34 employment because of such disability, shall upon application
35 to and approval by the workers' compensation commissioner

1 be entitled to a one hundred dollar weekly payment from the
2 employer in addition to any other benefit payments, during each
3 full week in which the employee is actively participating in a
4 vocational rehabilitation program recognized by the vocational
5 rehabilitation services division of the department of
6 education. The workers' compensation commissioner's approval
7 of such application for payment may be given only after a
8 careful evaluation of available facts, and after consultation
9 with the employer or the employer's representative.

10 Judicial review of the decision of the workers' compensation
11 commissioner may be obtained in accordance with the terms of
12 the Iowa administrative procedure Act, [chapter 17A](#), and in
13 section 86.26. Such additional benefit payment shall be paid
14 for a period not to exceed thirteen consecutive weeks except
15 that the workers' compensation commissioner may extend the
16 period of payment not to exceed an additional thirteen weeks if
17 the circumstances indicate that a continuation of training will
18 in fact accomplish rehabilitation.

19 Sec. 16. Section 85.70, subsection 2, Code 2019, is amended
20 by striking the subsection.

21 Sec. 17. Section 85.71, subsection 1, paragraph a, Code
22 2019, is amended to read as follows:

23 *a.* The employer has a place of business in this state and
24 the employee regularly works at or from that place of business,
25 or the employer has a place of business in this state and the
26 employee is domiciled in this state.

27 Sec. 18. Section 86.26, subsection 2, Code 2019, is amended
28 by striking the subsection.

29 Sec. 19. Section 86.39, subsection 2, Code 2019, is amended
30 by striking the subsection.

31 Sec. 20. Section 86.42, Code 2019, is amended to read as
32 follows:

33 **86.42 Judgment by district court on award.**

34 Any party in interest may present a file-stamped copy
35 of an order or decision of the commissioner, from which a

1 timely petition for judicial review has not been filed or if
2 judicial review has been filed, which has not had execution or
3 enforcement stayed as provided in section 17A.19, subsection
4 5, ~~or section 86.26, subsection 2,~~ or an order or decision
5 of a deputy commissioner from which a timely appeal has not
6 been taken within the agency and which has become final by
7 the passage of time as provided by rule and [section 17A.15](#),
8 or an agreement for settlement approved by the commissioner,
9 and all papers in connection therewith, to the district court
10 where judicial review of the agency action may be commenced.
11 The court shall render a decree or judgment and cause the
12 clerk to notify the parties. The decree or judgment, in the
13 absence of a petition for judicial review or if judicial review
14 has been commenced, in the absence of a stay of execution
15 or enforcement of the decision or order of the workers'
16 compensation commissioner ~~as provided in section 17A.19,~~
17 ~~subsection 5, or section 86.26, subsection 2,~~ or in the absence
18 of an act of any party which prevents a decision of a deputy
19 workers' compensation commissioner from becoming final, has the
20 same effect and in all proceedings in relation thereto is the
21 same as though rendered in a suit duly heard and determined by
22 the court.

23 Sec. 21. Section 535.3, subsection 1, Code 2019, is amended
24 to read as follows:

25 1. ~~a.~~ Interest shall be allowed on all money due on
26 judgments and decrees of courts at a rate calculated according
27 to [section 668.13](#), except for interest due pursuant to section
28 85.30 for which the rate shall be ten percent per year.

29 ~~b.~~ ~~Notwithstanding paragraph "a", interest due pursuant~~
30 ~~to [section 85.30](#) shall accrue from the date each compensation~~
31 ~~payment is due at an annual rate equal to the one-year treasury~~
32 ~~constant maturity published by the federal reserve in the most~~
33 ~~recent H15 report settled as of the date of injury, plus two~~
34 ~~percent.~~

35

EXPLANATION

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

3 This bill relates to workers' compensation.

4 The bill amends Code section 85.16(2)(b), concerning
5 intoxication, by striking the paragraph. Current law provides
6 that no compensation under Code chapter 85 shall be allowed for
7 an injury caused by Code section 85.16(1), which is willful
8 injury, or Code section 85.16(2), which is an employee's
9 intoxication. By striking Code section 85.16(2)(b), a
10 presumption regarding intoxication is removed. The presumption
11 provides that if the employer shows that, at the time of the
12 injury or immediately following the injury, the employee had
13 positive test results reflecting the presence of alcohol,
14 or another narcotic, depressant, stimulant, hallucinogenic,
15 or hypnotic drug which drug either was not prescribed by an
16 authorized medical practitioner or was not used in accordance
17 with the prescribed use of the drug, it shall be presumed that
18 the employee was intoxicated at the time of the injury and that
19 intoxication was a substantial factor in causing the injury.
20 Code section 85.16(2)(b) also provides that once the employer
21 has made a showing of presumed intoxication, the burden of
22 proof shall be on the employee to overcome the presumption
23 by establishing that the employee was not intoxicated at the
24 time of the injury, or that intoxication was not a substantial
25 factor in causing the injury.

26 The bill amends Code section 85.18, concerning the ability
27 of a contract to relieve an employer of liability, to eliminate
28 a provision which stated that the Code section does not create
29 a private cause of action.

30 The bill amends Code section 85.23, requiring notice of
31 injury, and Code section 85.26(1), concerning limitations of
32 actions, to remove definitions of "date of the occurrence of
33 the injury" to mean the date the employee knew or should have
34 known that the injury was work-related.

35 The bill removes a presumption in Code section 85.33(3) that

1 work offered at the employer's principal place of business
2 or established place of operation where the employee has
3 previously worked is presumed to be geographically suitable
4 for an employee whose duties involve travel away from the
5 employer's principal place of business or established place
6 of operation more than 50 percent of the time. The bill also
7 strikes provisions concerning offers of temporary work and
8 what occurs if employees turn down offers of temporary work,
9 including the procedures to follow.

10 The bill amends Code section 85.34(2), concerning permanent
11 partial disabilities, to provide that compensation for
12 permanent partial disability shall begin at the termination of
13 a healing period provided in Code section 85.34(1), rather than
14 when it is medically indicated that maximum medical improvement
15 from the injury has been reached and that the extent of loss or
16 percentage of permanent impairment can be determined by use of
17 the guides to the evaluation of permanent impairment, published
18 by the American medical association, as adopted by the workers'
19 compensation commissioner by rule pursuant to Code chapter 17A.

20 The bill removes a shoulder injury from the scheduled injury
21 list for permanent partial disability in Code section 85.34(2)
22 by striking paragraph "n", which states: "For the loss of a
23 shoulder, weekly compensation during four hundred weeks".

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

1 bill also removes a provision that notwithstanding Code section
2 85.26(2), regarding limitations of actions.

3 The bill strikes Code section 85.34(2)(x), concerning
4 permanent partial disability. The paragraph provides that in
5 all cases of permanent partial disability described in Code
6 section 85.34(2)(a)-(u), or Code section 85.34(2)(v), when
7 determining functional disability and not loss of earning
8 capacity, the extent of loss or percentage of permanent
9 impairment shall be determined solely by utilizing the guides
10 to the evaluation of permanent impairment, published by the
11 American medical association, as adopted by the workers'
12 compensation commissioner by rule pursuant to Code chapter 17A.
13 The Code section prohibits lay testimony or agency expertise
14 from being utilized in making this determination.

15 The bill strikes Code section 85.34(2)(y), concerning
16 permanent partial disability. The paragraph provides that
17 compensation for permanent partial disability for an injury
18 shall terminate on the date when compensation for permanent
19 total disability for any injury begins. The Code section
20 prohibits an employee from receiving compensation for permanent
21 partial disability if the employee is receiving compensation
22 for permanent total disability.

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

28 The bill amends Code section 85.34(3)(b) to provide that in
29 the event compensation has been paid to any person under any
30 provision of Code chapter 85, 85A, or 85B for the same injury,
31 rather than an injury, producing a permanent disability, any
32 such amount so paid shall be deducted from the total amount of
33 compensation payable for permanent total disability. The bill
34 also amends the paragraph to remove a provision which provided
35 that "an employee shall not receive compensation for permanent

1 partial disability if the employee is receiving compensation
2 for permanent total disability”.

3 The bill strikes Code section 85.34(3)(c), which provides
4 that an employee forfeits the employee’s weekly compensation
5 for a permanent total disability under this subsection for a
6 week in which the employee is receiving a payment equal to or
7 greater than 50 percent of the statewide average weekly wage
8 from any of the following sources: gross earnings from any
9 employer or payment for current services from any source.

10 The bill strikes Code section 85.34(3)(d), which provides
11 that an employee is not entitled to compensation for a
12 permanent total disability under Code section 85.34(3) while
13 the employee is receiving unemployment compensation under Code
14 chapter 96.

15 The bill amends Code section 85.34(4), concerning credit for
16 excess payments, to provide that the excess payment shall be
17 credited against the liability of the employer for permanent
18 partial disability under Code section 85.34(2), rather than
19 against the liability of the employer for any future weekly
20 benefits due for an injury to that employee.

21 The bill amends Code section 85.34(5), concerning recovery
22 for employee overpayment, by providing that if an employee is
23 paid any weekly benefits in excess of that required by Code
24 chapter 85, 85A, 85B, or 86, the excess paid by the employer
25 shall be credited against the liability of the employer for any
26 future weekly benefits due pursuant to Code section 85.34(2),
27 for any subsequent, rather than current or subsequent injury,
28 to the same employee. Furthermore, the bill provides that
29 the overpayment can be established only when the overpayment
30 is recognized in a settlement agreement approved under Code
31 section 86.13. The bill provides additional detail about the
32 settlement agreement process.

33 The bill amends Code section 85.34(7), concerning successive
34 disabilities, to provide that an employer is fully liable for
35 compensating all of an employee’s disability that arises out

1 of and in the course of the employee's employment with the
2 employer and removes the requirement that it relate to the
3 injury that serves as the basis for the employee's claim for
4 compensation under Code chapter 85, 85A, 85B, or 86. The bill
5 also removes a provision that an employer is not liable for
6 compensating an employee's preexisting disability that arose
7 out of and in the course of employment from a prior injury with
8 the employer, to the extent that the employee's preexisting
9 disability has already been compensated under Code chapter
10 85, 85A, 85B, or 86. The bill provides that if an injured
11 employee has a preexisting disability that was caused by a
12 prior injury arising out of and in the course of employment
13 with the same employer, and the preexisting disability was
14 compensable under Code section 85.34(2) as the employee's
15 present injury, the employer is liable for the combined
16 disability that is caused by the injuries, measured in relation
17 to the employee's condition immediately prior to the first
18 injury. In this instance, the employer's liability for the
19 combined disability shall be considered to be already partially
20 satisfied to the extent of the percentage of disability for
21 which the employee was previously compensated by the employer.
22 The bill provides, however, that if an employer is liable to
23 an employee for a combined disability that is payable under
24 Code section 85.34(2)(v) and the employee has a preexisting
25 disability that causes the employee's earnings to be less at
26 the time of the present injury than if the prior injury had not
27 occurred, the employer's liability for the combined disability
28 shall be considered to be already partially satisfied to the
29 extent of the percentage of disability for which the employee
30 was previously compensated by the employer minus the percentage
31 that the employee's earnings are less at the time of the
32 present injury than if the prior injury had not occurred.
33 Additionally, the bill provides that a successor employer shall
34 be considered to be the same employer if the employee became
35 part of the successor employer's workforce through a merger,

1 purchase, or other transaction that assumes the employee into
2 the successor employer's workforce without substantially
3 changing the nature of the employee's employment.

4 The bill amends Code section 85.39 concerning examination
5 of injured employees. The bill provides that if an employee
6 refuses to submit to an examination, the employee's right to
7 compensation shall be suspended for the period of refusal,
8 rather than forfeited. The bill maintains a similar provision
9 in the Code that compensation shall not be payable for the
10 period of suspension. The bill eliminates a provision that an
11 employer is only liable to reimburse an employee for the cost
12 of an examination if the injury for which the employee is being
13 examined is determined to be compensable under Code chapter
14 85, 85A, or 85B, and an employer is not liable for the cost of
15 such an examination if the injury for which the employee is
16 being examined is determined not to be a compensable injury.
17 The bill also eliminates a provision which provides for the
18 reasonableness measure of a medical provider's fee for an
19 impairment rating.

20 The bill amends Code section 85.45(1), concerning
21 commutation, by removing the requirement that commutation
22 of future payments of compensation shall take place only
23 upon application by a party to the commissioner and the
24 written consent of all parties to the commutation or partial
25 commutation.

26 The bill strikes Code section 85.45(3), which provides that
27 the parties to any commutation or partial commutation of future
28 payments agreed to and ordered pursuant to Code section 85.45
29 may agree that the employee has the right to benefits pursuant
30 to Code section 85.27 for a specified period of time under such
31 terms and conditions as agreed to by the workers' compensation
32 commissioner. The stricken Code section also provides that
33 during the specified period of time, the commissioner shall
34 have jurisdiction of the commutation or partial commutation
35 agreement for the purpose of adjudicating the employee's

1 entitlement to benefits provided for in Code section 85.27 as
2 provided in the agreement.

3 Under current law pursuant to Code section 85.70, an
4 employee who has sustained an injury resulting in permanent
5 partial or permanent total disability that is compensable under
6 Code chapter 85 (other than a shoulder injury compensable
7 pursuant to Code section 85.34(2)(n)) and who cannot return
8 to gainful employment because of such disability and who
9 applies and receives approval from the workers' compensation
10 commissioner shall be entitled to a weekly payment of \$100
11 in addition to any other weekly benefit payment, during each
12 full week that the employee is actively participating in a
13 vocational rehabilitation program, which has been recognized
14 by the vocational rehabilitation services division of the
15 department of education. The bill removes the reference to
16 a shoulder injury. The bill strikes a provision relating to
17 the vocational training and education program for shoulder
18 injuries.

19 The bill amends Code section 85.71, concerning compensation
20 for injuries that occur outside of the state, to provide that
21 the statute is applicable not only if the employer has a place
22 of business in this state and the employee regularly works at
23 or from that place of business, but also if the employer has a
24 place of business in this state and the employee is domiciled
25 in this state.

26 The bill strikes Code section 86.26(2) which provides that a
27 timely petition for judicial review shall stay the execution or
28 enforcement of a decision or order of the workers' compensation
29 commissioner if the party seeking judicial review posts a bond
30 securing any compensation awarded pursuant to the decision or
31 order.

32 The bill strikes Code section 86.39(2) which provides that
33 an attorney shall not recover fees for legal services based on
34 the amount of compensation voluntarily paid or agreed to be
35 paid to an employee for temporary or permanent disability under

1 Code chapter 85, 85A, 85B, or 86. Also stricken is a provision
2 that an attorney shall only recover a fee based on the amount
3 of compensation that the attorney demonstrates would not have
4 been paid to the employee but for the efforts of the attorney.
5 Finally, the bill strikes a provision that any disputes over
6 the recovery of attorney fees under this subsection shall be
7 resolved by the workers' compensation commissioner.

8 The bill amends Code section 86.42, concerning judgment by
9 district court award, to conform to the section of the bill
10 which strikes Code section 86.26(2).

11 The bill amends Code section 535.3(1)(a), concerning
12 interest due on unpaid weekly workers' compensation payments,
13 to provide that interest shall be allowed on all money due on
14 judgments and decrees of courts at a rate calculated according
15 to Code section 668.13, except for interest due pursuant to
16 Code section 85.30 for which the rate shall be 10 percent
17 per year. The bill eliminates paragraph "b" of Code section
18 535.3(1) which provides that interest due pursuant to Code
19 section 85.30 shall accrue from the date each compensation
20 payment is due at an annual rate equal to the one-year treasury
21 constant maturity published by the federal reserve in the most
22 recent H15 report settled as of the date of injury, plus 2
23 percent.