

Senate Study Bill 3093 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SCHULTZ)

A BILL FOR

1 An Act relating to matters under the purview of the state,
2 including unemployment benefits and civil torts.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

UNEMPLOYMENT INSURANCE

1
2
3 Section 1. Section 96.2, Code 2022, is amended to read as
4 follows:

5 **96.2 Guide for interpretation.**

6 As a guide to the interpretation and application of this
7 chapter, the public policy of this state is declared to be as
8 follows: ~~Economic insecurity due to unemployment is a serious~~
9 ~~menace to~~ negatively impacts the health, morals, and welfare
10 of the people of ~~this state~~ Iowa. ~~Involuntary unemployment~~
11 ~~is therefore a subject of general interest and concern which~~
12 ~~requires appropriate action by the legislature to prevent~~
13 ~~its spread and to lighten its burden which now so often~~
14 ~~falls with crushing force upon the unemployed worker and the~~
15 ~~worker's family. The achievement of social security requires~~
16 ~~protection against this greatest hazard of our economic~~
17 ~~life. This can be provided~~ These undesirable consequences can
18 be reduced by encouraging employers to provide more stable
19 employment and by the systematic accumulation of funds during
20 periods of employment to provide benefits for periods of
21 unemployment, ~~thus maintaining purchasing power and limiting~~
22 ~~the serious social consequences of poor relief assistance.~~
23 ~~The legislature, therefore, declares that in its considered~~
24 ~~judgment the public good and the general welfare of the~~
25 ~~citizens of this state require the enactment of this measure,~~
26 ~~under the police powers of the state, for the compulsory~~
27 ~~setting aside of unemployment reserves to be used for the~~
28 ~~benefit of persons.~~ This chapter provides for payment of
29 benefits to workers unemployed through no fault of their own.
30 The policy herein is intended to encourage stabilization in
31 employment, to provide for integrated employment and training
32 services in support of state economic development programs, and
33 to provide meaningful job training and employment opportunities
34 for the unemployed, underemployed, economically disadvantaged,
35 dislocated workers, and others with substantial barriers to

1 employment. To further this public policy, the state, through
2 its department of workforce development, will maintain close
3 coordination among all federal, state, and local agencies
4 whose missions affect the employment or employability of the
5 unemployed and underemployed.

6 Sec. 2. Section 96.3, subsection 5, paragraph a, Code 2022,
7 is amended to read as follows:

8 *a. Duration of benefits.* The maximum total amount of
9 benefits payable to an eligible individual during a benefit
10 year shall not exceed the total of the wage credits accrued to
11 the individual's account during the individual's base period,
12 or ~~twenty-six~~ sixteen times the individual's weekly benefit
13 amount, whichever is the lesser. The director shall maintain
14 a separate account for each individual who earns wages in
15 insured work. The director shall compute wage credits for
16 each individual by crediting the individual's account with
17 one-third of the wages for insured work paid to the individual
18 during the individual's base period. However, the director
19 shall recompute wage credits for an individual who is laid
20 off due to the individual's employer going out of business at
21 the factory, establishment, or other premises at which the
22 individual was last employed, by crediting the individual's
23 account with one-half, instead of one-third, of the wages for
24 insured work paid to the individual during the individual's
25 base period. Benefits paid to an eligible individual shall
26 be charged against the base period wage credits in the
27 individual's account which have not been previously charged,
28 in the inverse chronological order as the wages on which the
29 wage credits are based were paid. However if the state "off"
30 indicator is in effect and if the individual is laid off due to
31 the individual's employer going out of business at the factory,
32 establishment, or other premises at which the individual was
33 last employed, the maximum benefits payable shall be extended
34 to ~~thirty-nine~~ twenty-six times the individual's weekly benefit
35 amount, but not to exceed the total of the wage credits accrued

1 to the individual's account.

2 Sec. 3. Section 96.4, Code 2022, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 8. The individual has satisfied a single
5 one-week waiting period during the individual's benefit year.
6 To satisfy the one-week waiting period, the individual, with
7 respect to the week in question, must otherwise be eligible
8 for benefits from this state, must not have received or have
9 payable benefits from this state, and must not be eligible for
10 benefits from another state.

11 Sec. 4. Section 96.5, subsection 2, Code 2022, is amended by
12 adding the following new paragraph:

13 NEW PARAGRAPH. *d.* For the purposes of this subsection,
14 "*misconduct*" means a deliberate act or omission by an
15 employee that constitutes a material breach of the duties
16 and obligations arising out of the employee's contract of
17 employment. Misconduct is limited to conduct evincing such
18 willful or wanton disregard of an employer's interest as
19 is found in deliberate violation or disregard of standards
20 of behavior which the employer has the right to expect of
21 employees, or in carelessness or negligence of such degree of
22 recurrence as to manifest equal culpability, wrongful intent
23 or evil design, or to show an intentional and substantial
24 disregard of the employer's interests or of the employee's
25 duties and obligations to the employer. Misconduct by an
26 individual includes but is not limited to all of the following:

27 (1) Falsification of the individual's employment
28 application.

29 (2) Knowing violation of a reasonable and uniformly
30 enforced rule of an employer.

31 (3) Intentional damage of an employer's property.

32 (4) Dishonesty to an employer with regard to the
33 individual's employment.

34 (5) Consumption of alcohol, illegal or nonprescribed
35 prescription drugs, or an impairing substance in a manner

1 not directed by the manufacturer, or a combination of such
2 substances, on the employer's premises in violation of the
3 employer's employment policies.

4 (6) Reporting to work under the influence of alcohol,
5 illegal or nonprescribed prescription drugs, or an impairing
6 substance in an off-label manner, or a combination of such
7 substances, on the employer's premises in violation of the
8 employer's employment policies, unless the individual is
9 compelled to work by the employer outside of scheduled or
10 on-call working hours.

11 (7) Conduct that endangers the personal safety of the
12 individual, coworkers, or the general public.

13 (8) Incarceration for an act for which one could reasonably
14 expect to be incarcerated that results in missing work.

15 (9) Incarceration as a result of a misdemeanor or felony
16 conviction by a court of competent jurisdiction.

17 (10) Excessive unexcused tardiness or absenteeism.

18 (11) Falsification of any work-related report, task, or job
19 that could expose the employer or coworkers to legal liability
20 or sanction for violation of health or safety laws.

21 (12) Failure to maintain any license, registration, or
22 certification that is reasonably required by the employer or
23 by law, or that is a functional requirement to perform the
24 individual's regular job duties, unless the failure is not
25 within the control of the individual.

26 (13) Conduct that is libelous or slanderous toward an
27 employer or an employee of the employer if such conduct is not
28 protected under state or federal law.

29 (14) Conduct creating or attempting to create dissention or
30 animus against the employer or a coworker if such conduct is
31 not protected under state or federal law.

32 (15) Theft of an employer or coworker's funds or property.

33 (16) Misrepresentation of time worked or work carried out
34 that results in the individual receiving unearned wages or
35 unearned benefits.

1 Sec. 5. Section 96.5, subsection 3, paragraph a,
2 subparagraph (1), subparagraph divisions (a), (b), (c), and
3 (d), Code 2022, are amended to read as follows:

4 (a) One hundred percent, if the work is offered during the
5 first ~~five weeks~~ week of unemployment.

6 (b) ~~Seventy-five~~ Ninety percent, if the work is offered
7 during the ~~sixth~~ second through the ~~twelfth~~ third week of
8 unemployment.

9 (c) ~~Seventy~~ Eighty percent, if the work is offered during
10 the ~~thirteenth~~ fourth through the ~~eighteenth~~ fifth week of
11 unemployment.

12 (d) ~~Sixty-five~~ Seventy percent, if the work is offered
13 ~~after~~ during the ~~eighteenth~~ sixth through the ~~eighth~~ seventh week of
14 unemployment.

15 Sec. 6. Section 96.5, subsection 3, paragraph a,
16 subparagraph (1), Code 2022, is amended by adding the following
17 new subparagraph division:

18 NEW SUBPARAGRAPH DIVISION. (e) Sixty percent, if the work
19 is offered after the eighth week of unemployment.

20 Sec. 7. Section 96.6, subsection 3, paragraph b, Code 2022,
21 is amended to read as follows:

22 *b.* Appeals from the initial determination shall be heard
23 by an administrative law judge employed by the department.
24 An administrative law judge's decision may be appealed by
25 any party to the employment appeal board created in section
26 10A.601. ~~The decision of the appeal board is final agency~~
27 ~~action and an appeal of the decision shall be made or directly~~
28 to the district court.

29 DIVISION II

30 TORT LIABILITY

31 Sec. 8. Section 147.136A, subsection 1, paragraph b, Code
32 2022, is amended to read as follows:

33 *b.* (1) "*Noneconomic damages*" means damages arising from
34 pain, suffering, inconvenience, physical impairment, mental
35 anguish, emotional pain and suffering, loss of chance, loss of

1 consortium, or any other nonpecuniary damages.

2 (2) "Noneconomic damages" does not include the loss of
3 dependent care, including the loss of child care, due to the
4 death of or severe injury to a spouse or parent who is the
5 primary caregiver of a child under the age of eighteen or a
6 disabled adult. Such damages shall be considered economic
7 damages.

8 Sec. 9. Section 147.136A, subsection 2, Code 2022, is
9 amended to read as follows:

10 2. The total amount recoverable in any civil action for
11 noneconomic damages for personal injury or death, whether in
12 tort, contract, or otherwise, against a health care provider
13 ~~shall be limited to two hundred fifty thousand dollars~~ for any
14 occurrence resulting in injury or death of a patient regardless
15 of the number of plaintiffs, derivative claims, theories of
16 liability, or defendants in the civil action, shall not exceed
17 two hundred fifty thousand dollars unless the jury determines
18 that there is a substantial or permanent loss or impairment of
19 a bodily function, substantial disfigurement, or death, which
20 warrants a finding that imposition of such a limitation would
21 deprive the plaintiff of just compensation for the injuries
22 sustained, in which case the amount recoverable shall not
23 exceed one million dollars.

24 Sec. 10. NEW SECTION. 668.12A Liability for employee
25 negligence in actions involving commercial motor vehicles.

26 1. In a civil action involving a commercial motor vehicle
27 as defined in section 321.1, if an employer who is a defendant
28 in the action complies with subsection 2, the employer's
29 liability for damages caused by the negligence of an employee
30 acting within the course and scope of employment shall be based
31 solely on respondeat superior and not on the employer's direct
32 negligence in hiring, training, supervising, or trusting the
33 employee, or other similar claim that the employer's negligence
34 enabled the employee's harmful conduct.

35 2. On motion of an employer who is the defendant in

1 a civil action involving a commercial motor vehicle, and
2 notwithstanding section 671A.2, a trial court shall dismiss
3 from the civil action any claim of the employer's direct
4 negligence in hiring, training, supervising, or trusting an
5 employee, or other claim of direct negligence on the part of
6 the employer for the employee's harmful conduct, or other
7 similar claims, if the employer stipulates that at the time
8 of the event that caused the damages that are the subject of
9 the action that the person whose negligence is alleged to have
10 caused the damages was the employer's employee and was acting
11 within the course and scope of employment with the employer.

12 3. If an employer makes the stipulations in subsection 2
13 with respect to an employee, and the employee's negligence is
14 found to have caused or contributed to causing the damages, the
15 employer shall be adjudged vicariously liable for the resulting
16 damages.

17 Sec. 11. NEW SECTION. 668.15A Noneconomic damages —
18 commercial motor vehicle owners or operators.

19 1. As used in this section:

20 a. "*Commercial motor vehicle*" means the same as defined in
21 section 321.1.

22 b. "*Noneconomic damages*" means damages arising from
23 pain, suffering, inconvenience, physical impairment, mental
24 anguish, emotional pain and suffering, loss of chance, loss of
25 consortium, or any other nonpecuniary damages.

26 c. "*Occurrence*" means the event, incident, or happening,
27 and the acts or omissions incident thereto, which proximately
28 caused injuries or damages for which recovery is claimed.

29 2. The total amount recoverable in any civil action for
30 noneconomic damages for personal injury or death, whether in
31 tort, contract, or otherwise, against the owner or operator
32 of a commercial motor vehicle shall be limited to one million
33 dollars, regardless of the number of derivative claims,
34 theories of liability, or defendants in the civil action.

35 Sec. 12. Section 668A.1, Code 2022, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 2A. A claim for punitive or exemplary
3 damages shall not be included in any initial claim for relief.
4 A claim for punitive or exemplary damages may be allowed by
5 amendment to the pleadings only after the exchange of initial
6 disclosures pursuant to the Iowa rules of civil procedure and
7 after the plaintiff establishes prima facie proof of a triable
8 issue. After the plaintiff establishes the existence of a
9 triable issue, the court may, in its discretion and subject
10 to subsection 3, allow discovery on the issue of punitive or
11 exemplary damages as the court deems appropriate.

12 EXPLANATION

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

15 This bill relates to matters under the purview of the state,
16 including unemployment benefits and civil torts.

17 DIVISION I — UNEMPLOYMENT INSURANCE. This division of the
18 bill amends the Iowa employment security law concerning state
19 unemployment insurance benefits.

20 The bill revises the language of Code section 96.2
21 concerning guidance for interpreting Code chapter 96. The bill
22 changes the default maximum benefits payable to an individual
23 eligible to receive unemployment compensation to the lesser of
24 total wage credits accrued to the individual's account during
25 the individual's base period or 16 times the individual's
26 weekly benefit amount. Under current law, the default maximum
27 is the lesser of total wage credits accrued to the individual's
28 account during the individual's base period or 26 times the
29 individual's weekly benefit amount.

30 The bill changes the maximum benefits payable to an
31 individual eligible to receive unemployment compensation, when
32 the state "off" indicator is in effect and the individual
33 was laid off due to the individual's employer going out of
34 business at the factory, establishment, or other premises at
35 which the individual was last employed, to the lesser of total

1 wage credits accrued to the individual's account or 26 times
2 the individual's weekly benefit amount. Under current law,
3 the maximum is the lesser of total wage credits accrued to
4 the individual's account or 39 times the individual's weekly
5 benefit amount.

6 The bill requires an individual to first satisfy a single
7 one-week waiting period during the individual's benefit year
8 prior to receiving unemployment compensation. To satisfy the
9 waiting period, the individual, with respect to the week in
10 question, must otherwise be eligible for unemployment benefits
11 from this state, must not have received or have payable
12 unemployment benefits from this state, and must not be eligible
13 for unemployment benefits from another state.

14 The bill defines "misconduct" for the purposes of
15 unemployment benefit determinations as a deliberate act or
16 omission by an employee that constitutes a material breach
17 of the duties and obligations arising out of the employee's
18 contract of employment. "Misconduct" is limited to conduct
19 evincing such willful or wanton disregard of an employer's
20 interest as is found in deliberate violation or disregard
21 of standards of behavior which the employer has the right
22 to expect of employees, or in carelessness or negligence of
23 such degree of recurrence as to manifest equal culpability,
24 wrongful intent or evil design, or to show an intentional and
25 substantial disregard of the employer's interests or of the
26 employee's duties and obligations to the employer. The bill
27 also provides several examples of what constitutes "misconduct"
28 by an individual.

29 The bill modifies the percentages of an individual's
30 average weekly wage for insured work paid to the individual
31 during the quarter of the individual's base period in which
32 the individual's wages were highest, which the gross weekly
33 wages for new work by the individual must equal or exceed
34 for the new work to be considered suitable. Under current
35 law, if an individual fails without good cause to apply for

1 or accept suitable work, the individual is disqualified from
2 eligibility for unemployment benefits. The percentages under
3 current law are 100 percent for work offered during the first
4 five weeks of unemployment; 75 percent for work offered during
5 the sixth through the twelfth week of unemployment; 70 percent
6 for work offered during the thirteenth through the eighteenth
7 week of unemployment; and 65 percent for work offered after
8 the eighteenth week of unemployment. Under the bill, the
9 percentages are 100 percent for work offered during the first
10 week of unemployment; 90 percent for work offered during the
11 second through the third week of unemployment; 80 percent
12 for work offered during the fourth through the fifth week of
13 unemployment; 70 percent for work offered during the sixth
14 through the eighth week of unemployment; and 60 percent for
15 work offered after the eighth week of unemployment.

16 The bill provides that a decision of an administrative law
17 judge may be appealed by any party to the unemployment appeal
18 board or directly to the district court. Under current law,
19 such appeals may only be made to the employment appeal board
20 and then to the district court.

21 The bill strikes language providing that a finding of
22 fact or law, judgment, conclusion, or final order regarding
23 a determination of eligibility for unemployment benefits is
24 binding only upon the parties to proceedings and is not binding
25 upon any other proceedings or action involving the same facts
26 brought by the same or related parties before the division of
27 labor services, division of workers' compensation, other state
28 agency, arbitrator, court, or judge of this state or the United
29 States.

30 DIVISION II — TORT LIABILITY. This division of the bill
31 relates to tort liability, including noneconomic damage
32 awards against health care providers, employer liability for
33 an employee's torts involving a commercial motor vehicle,
34 noneconomic damages available against an owner or operator
35 of a commercial motor vehicle, and pleading and discovery

1 requirements related to punitive damages.

2 Current law provides that in a civil action brought by a
3 patient against a health care provider, the maximum amount of
4 noneconomic damages that the patient may recover is \$250,000,
5 unless the jury determines that there is a substantial or
6 permanent loss or impairment of a bodily function, substantial
7 disfigurement, or death, which warrants a finding that
8 imposition of such a limitation would deprive the plaintiff
9 of just compensation for the injuries sustained. In such a
10 case, there is no cap on the amount of noneconomic damages
11 that a patient may recover. The bill makes two changes to
12 current law. First, the bill establishes that the definition
13 of noneconomic damages does not include the loss of dependent
14 care due to the death of or severe injury to a spouse or parent
15 who is the primary caregiver of a child or disabled adult.
16 Instead, such damages are economic damages. Second, the bill
17 provides a \$1 million cap on noneconomic damages when the jury
18 finds that there is substantial or permanent loss or impairment
19 of a bodily function, substantial disfigurement, or death which
20 warrants exceeding the \$250,000 cap.

21 The bill provides that an employer's liability who is a
22 defendant in a civil action involving a commercial motor for
23 damages caused by negligence of an employee acting within the
24 scope and course of employment shall be based on respondeat
25 superior. Upon motion of an employer, and notwithstanding
26 Code section 671A.2 (limitations on liability protection for
27 negligent hiring), a trial court shall dismiss from the action
28 any claim of the employer's direct negligence in hiring,
29 training, supervising, or trusting an employee, or other claim
30 of direct negligence on the part of the employer for the
31 employee's harmful conduct, or other similar claims, if the
32 employer stipulates that at the time of the event that caused
33 the damages that the person whose negligence is the basis of
34 the action is the employer's employee and the employee was
35 acting within the course and scope of employment with the

1 employer. If an employer makes the stipulation with respect
2 to an employee, and the employee's negligence is found to have
3 caused or contributed to causing the damages, the employer
4 shall be adjudged vicariously liable for the resulting damages.

5 Under current law, an employer is liable for an employee's
6 negligence and may be held responsible for direct negligence
7 relating to hiring, training, supervising, trusting an
8 employee, or other claims of direct negligence on part of the
9 employee's harmful conduct, subject to certain limitations
10 contained in Code chapter 671 (negligent hiring — limitations
11 on liability).

12 The bill limits the amount of noneconomic damages available
13 against the owner or operator of a commercial motor vehicle.
14 The division defines "noneconomic damages" to mean damages
15 arising from pain, suffering, inconvenience, physical
16 impairment, mental anguish, emotional pain and suffering,
17 loss of chance, loss of consortium, or any other nonpecuniary
18 damages and "occurrence" to mean the event, incident, or
19 happening, and the acts or omissions incident thereto, which
20 proximately caused injuries or damages for which recovery is
21 claimed. The bill provides that the total amount recoverable
22 in any civil action for noneconomic damages for personal injury
23 or death against the owner or operator of a commercial motor
24 vehicle shall be limited to \$1 million for any occurrence
25 regardless of the number of plaintiffs, derivative claims,
26 theories of liability, or defendants in the civil action.
27 Under current law, noneconomic damages are unlimited except
28 for suits under Code sections 123.92 (dramshop liability) and
29 147.136A (medical malpractice).

30 The bill provides that a claim for punitive or exemplary
31 damages in an action governed by Code section 668A.1 shall
32 not be included in any initial claim for relief. A claim for
33 punitive or exemplary damages may be allowed by amendment to
34 the pleadings only after the exchange of initial disclosures
35 and after the plaintiff establishes prima facie proof of a

1 triable issue. After the plaintiff establishes the existence
2 of a triable issue of punitive or exemplary damages, the court
3 may allow additional discovery on the issue of punitive or
4 exemplary damages. Under current law and under the bill, the
5 mere allegation or assertion of a claim for punitive damages
6 cannot form the basis for discovery of the wealth or ability to
7 respond in damages on behalf of the party from whom punitive
8 damages are claimed until the claimant has established that
9 sufficient admissable evidence exists to support a prima facie
10 case establishing, by a preponderance of clear, convincing, and
11 satisfactory evidence, that the conduct of the defendant from
12 which the claim arose constituted willful and wanton disregard
13 for the rights or safety of another.