

CHAPTER 160**WORKERS' COMPENSATION SELF-INSURANCE AND OTHER PROVISIONS***S.F. 441*

AN ACT relating to workers' compensation self-insurance, imposing civil and criminal penalties, and providing an appropriation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. The commissioner of insurance shall adopt by rule pursuant to chapter 17A amendments to the insurance division's existing rules governing relief of employers from mandatory workers' compensation insurance pursuant to section 87.11. The amendments shall generally provide for the following:

1. The commissioner of insurance shall require more timely and higher quality financial information as the basis for risk assessment and determination of minimum security requirements, including, but not limited to:

a. Required annual, quarterly, and material change in circumstances financial filings. Federal securities and exchange commission forms may be accepted for publicly held companies by the commissioner in lieu of the division's forms to avoid unnecessary duplication.

b. Financial statements filed with the division shall be certified by a certified public accountant. Loss reserves and claims history of an employer's self-insurance program shall be certified by an independent actuary.

2. Reasonable protection for confidential proprietary information in financial filings.

3. Eligibility for relief from insurance shall be conditioned upon an employer receiving a minimum score of one on the point system established in 191 IAC 57.3. A self-insurer with an accredited safety program shall receive at least one point. The commissioner of insurance may determine by rule, order, or other agency action what will be accepted by the commissioner of insurance as an accredited safety program.

4. The required security shall be increased to reflect inflation since 1984, and may be increased in the future as necessary to reflect inflation or other changes generally affecting the adequacy of posted security.

5. Terms of acceptable surety bond or alternative forms of financial security shall provide for payment of the division's administrative expenses, up to a maximum of ten percent of the bond or other security.

6. A financial security mechanism other than a surety bond may be accepted by the commissioner if the alternative mechanism provides security of timely payment upon the commissioner's demand equal to a surety bond and is otherwise satisfactory to the commissioner.

Sec. 2. Section 25A.14, subsection 11, Code 1991, is amended to read as follows:

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, audits, or other financial oversight responsibilities, pursuant to Titles XIX through XXIII, and chapter 87 of Title V.

Subsection 11 applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

Sec. 3. Section 87.11, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

Sec. 4. Section 87.11, Code 1991, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990, this paragraph applies. The commissioner of insurance may request of the industrial commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to chapter 85, 85A, 85B,

86, or 87 be commuted to a present lump sum. The industrial commissioner shall fix the lump sum of probable future medical expenses and weekly compensation benefits, or other benefits payable pursuant to chapter 85, 85A, 85B, 86, or 87, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

NEW UNNUMBERED PARAGRAPH. The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

NEW UNNUMBERED PARAGRAPH. Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to chapter 85, 85A, 85B, 86, or 87, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

NEW UNNUMBERED PARAGRAPH. Financial statements provided to the commissioner pursuant to this section may be held as confidential, proprietary trade secrets, pursuant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner, and are not subject to disclosure or examination under chapter 22.

Sec. 5. NEW SECTION. 87.11A EXAMINATION REQUIRED.

The commissioner may at any time examine or inquire into the affairs of any self-insured employer. A domestic self-insured employer, or a self-insured employer not subject to periodic examination in its state of origin, shall be examined at least once during each three-year period.

Sec. 6. NEW SECTION. 87.11B OBLIGATION TO ASSIST AN EXAMINATION — OATHS.

If a self-insured employer is being examined, the officers, employees, or agents of the employer, shall produce for inspection all books, documents, papers, and other information concerning the affairs of the employer and shall otherwise assist in such examination to the extent possible. The commissioner, or the commissioner's legally authorized representative in charge of the examination, may administer oaths and take testimony bearing upon the affairs of any employer under examination.

Sec. 7. NEW SECTION. 87.11C SELF-INSURANCE EXAMINERS.

The commissioner of insurance shall appoint one or more self-insurance examiners. An examiner while conducting an examination, possesses all the powers conferred upon the commissioner for such purposes. A self-insurance examiner is subject to the same powers and conditions as imposed under sections 507.4 through 507.7.

Sec. 8. NEW SECTION. 87.11D PAYMENT OF EXAMINATION EXPENSES BY THE SELF-INSURED EMPLOYER.

The commissioner of insurance, upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, shall prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the self-insured employer examined, and upon failure or refusal of any self-insured employer to pay such a charge, the amount of the charge may be recovered in an action brought in the name of the state, and the commissioner may also revoke the employer's exemption under section 87.11. All fees collected in connection with an examination shall be paid into the insurance division revolving fund.

Sec. 9. NEW SECTION. 87.11E PENALTIES FOR FILING FALSE FINANCIAL STATEMENTS.

1. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner of insurance under this chapter, any statement of material fact which is,

at the time and in the light of circumstances under which it is made, false or misleading, or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

2. The following persons shall not commit any of the acts or omissions prohibited by subsection 3:

- a. An employer.
- b. A person administering a self-insurance program, in whole or in part, on behalf of an employer.
- c. A partner of the employer or administrator.
- d. An officer of the employer or administrator.
- e. A director of the employer or administrator.
- f. A person occupying a similar status or performing similar functions as persons described in paragraphs "a" through "e".
- g. A person directly or indirectly controlling the employer or administrator.

3. A person listed under subsection 2 shall not do any of the following:

- a. File an application for relief under section 87.11 which as of its effective date, or as of any date after filing in the case of an order denying relief, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.
- b. Willfully violate or willfully fail to comply with any provision of sections 87.11 through 87.11B, or any rule or order adopted or issued pursuant to such sections.

4. The commissioner of insurance may deny, suspend or revoke a certificate of relief issued pursuant to section 87.11, or may impose a civil penalty for a violation of this section.

5. A civil penalty levied under subsection 4 shall not exceed one thousand dollars per violation per person, and shall not exceed ten thousand dollars in a single proceeding against any one person. All civil penalties shall be deposited in the general fund of the state pursuant to section 505.7.

6. A person who willfully and knowingly violates this section, or a rule or order adopted or issued pursuant to this section, is guilty of a class "D" felony. The commissioner of insurance may refer such evidence as is available concerning violations of this section to the attorney general or the proper county attorney who may, with or without such reference, institute appropriate criminal proceedings under this section. This section does not limit the power of the state to punish a person for conduct which constitutes a crime under any other statute.

Sec. 10. There is appropriated from the general fund of the state from examination assessment revenues of the insurance division of the department of commerce collected pursuant to section 87.11D, for the fiscal year beginning July 1, 1991, and ending June 30, 1992, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For salaries, support, maintenance, miscellaneous purposes, and for not more than the following full-time equivalent positions:

.....	\$	50,000
.....	FTEs	1.0

Of the amount appropriated in this section, the insurance division shall expended* a sufficient amount to employ one full-time self-insurance examiner.

Sec. 11. Section 347.14, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 9A. Certify levies for a tax in excess of any tax levy limit to meet its obligations to pay the premium costs on tort liability insurance, property insurance, workers' compensation insurance, and any other insurance that may be necessary for the prudent management and operation of the county public hospital, the costs of a self-insurance program, the costs of a local government risk pool, and amounts payable under any insurance agreements to provide or procure such insurance, self-insurance program, or local government risk pool.

Approved May 10, 1991

*"Expend" probably intended