

2004 First Extraordinary Session
of the
Eightieth General Assembly
of the
State of Iowa

HELD AT DES MOINES, THE CAPITAL OF THE STATE

FIRST EXTRAORDINARY SESSION HELD THE SEVENTH DAY OF SEPTEMBER, A.D. 2004
IN THE ONE HUNDRED FIFTY-EIGHTH YEAR OF THE STATE

CHAPTER 1001

MISCELLANEOUS ECONOMIC DEVELOPMENT, TAXATION,
REGULATORY, AND EMPLOYMENT-RELATED CHANGES

H.F. 2581

AN ACT concerning regulatory, taxation, and statutory requirements affecting individuals and business relating to economic development, workers' compensation, financial services, unemployment compensation employer surcharges, income taxation bonus depreciation and expensing allowances, and civil action appeal bonds, and including effective date, applicability, and retroactive applicability provisions.

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

DIVISION I
LEGISLATIVE FINDINGS

Section 1. LEGISLATIVE FINDINGS. It is the finding of the general assembly that the recent Iowa supreme court decision of *Rants and Iverson v. Vilsack*, No. 60/03-1948, June 16, 2004, has invalidated the proper enactment of provisions contained in 2003 Iowa Acts, First Extraordinary Session, chapter 1 (House File 692). It is the intent of the general assembly to reenact and reaffirm certain provisions of House File 692 that were published in the 2003 Iowa Code Supplement, including provisions that were subsequently amended in the 2004 regular session of the Eightieth General Assembly and validate contracts entered into in reliance on the enactment of provisions published in the 2003 Code Supplement.

Sec. 2. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II
ENDOW IOWA GRANTS

Sec. 3. The following provisions, as published in Iowa Code Supplement 2003, pertaining to endow Iowa grants, are reaffirmed and reenacted:

1. Section 15E.301.
2. Section 15E.302.
3. Section 15E.303.
4. Section 15E.304.
5. Section 15E.306.

Sec. 4. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. This division of this Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to January 1, 2003, for tax years beginning on or after that date.

DIVISION III
CIVIL ACTION APPEAL BONDS

Sec. 5. Section 625A.9, as published in Iowa Code Supplement 2003, pertaining to supersedeas bonds, is reaffirmed and reenacted.

Sec. 6. Section 625A.9, subsection 2, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, is amended to read as follows:

2. a. If Except as provided in paragraph "b", if the judgment or order appealed from is for money, such bond shall not exceed one hundred ten percent of the amount of the money judgment.

The court may set a bond in an amount in excess of one hundred ten percent of the amount of the money judgment upon making specific findings justifying such an amount, and in doing so, shall consider, but shall not be limited to consideration of, the following criteria:

- (1) The availability and cost of the bond or other form of adequate security.
 - (2) The assets of the judgment debtor and of the judgment debtor's insurer or indemnitor, if any.
 - (3) The potential adverse effects of the bond on the judgment debtor, including, but not limited to, the potential adverse effects on the judgment debtor's employees, financial stability, and business operations.
 - (4) The potential adverse effects of the bond on the judgment creditor and third parties, including public entities.
 - (5) In a class action suit, the adequacy of the bond to compensate all members of the class.
- b. Notwithstanding paragraph "a", in no case shall a bond exceed one hundred million dollars, regardless of the value of the money judgment. This limitation shall not apply in cases where the court finds that the defendant intentionally dissipated the defendant's assets outside the ordinary course of business for the purpose of evading payment of the judgment.

Sec. 7. 2004 Iowa Acts, Senate File 2306,¹ is repealed.

Sec. 8. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS.

1. The section of this division of this Act reaffirming and reenacting section 625A.9, being deemed of immediate importance, takes effect upon enactment, and applies retroactively to July 1, 2003.

2. The section of this division of this Act amending section 625A.9, as reaffirmed and reenacted by this division of this Act, being deemed of immediate importance, takes effect upon enactment of this Act, and applies retroactively to cases pending and filed on or after April 20, 2004, and through June 15, 2004, and to cases pending or filed on or after June 16, 2004.

3. The section of this division of this Act repealing 2004 Iowa Acts, Senate File 2306,² being deemed of immediate importance, takes effect upon enactment.

¹ 2004 Iowa Acts, Regular Session, chapter 1093 herein

² 2004 Iowa Acts, Regular Session, chapter 1093 herein

4. This section of this division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION IV
WORKERS' COMPENSATION

Sec. 9. Section 85.27, subsection 4, Code 2003, is amended to read as follows:

4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization. An employer is not liable for the cost of care that the employer arranges in response to a sudden emergency if the employee's condition, for which care was arranged, is not related to the employment. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose the employee's care at the employer's expense, provided the employer or the employer's agent cannot be reached immediately. An application made under this subsection shall be considered an original proceeding for purposes of commencement and contested case proceedings under section 85.26. The hearing shall be conducted pursuant to chapter 17A. Before a hearing is scheduled, the parties may choose a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The workers' compensation commissioner shall issue a decision within ten working days of receipt of an application for alternate care made pursuant to a telephone hearing or within fourteen working days of receipt of an application for alternate care made pursuant to an in-person hearing. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

Sec. 10. Section 85.34, subsection 2, paragraph u, Code 2003, is amended to read as follows:

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the body of the injured earning capacity that the employee as a whole possessed when the injury occurred.

Sec. 11. Section 85.34, Code 2003, is amended by adding the following new subsection:
NEW SUBSECTION. 7. SUCCESSIVE DISABILITIES.

a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

b. If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of section 85.34, subsection 2, as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be

already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.

If, however, an employer is liable to an employee for a combined disability that is payable under section 85.34, subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

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

Sec. 12. Section 85.36, subsection 9, paragraph c, Code 2003, is amended by striking the paragraph.

Sec. 13. Section 85.70, Code 2003, is amended to read as follows:

85.70 ADDITIONAL PAYMENT FOR ATTENDANCE.

An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter, and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a ~~twenty-dollar~~ one hundred dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative. Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

Sec. 14. Section 86.12, as published in Iowa Code Supplement 2003, is reaffirmed and reenacted.

Sec. 15. Section 86.13A, as published in Iowa Code Supplement 2003, is reaffirmed and reenacted.

Sec. 16. Section 86.13A, unnumbered paragraph 2, Code Supplement 2003, as reaffirmed and reenacted by this Act, is amended to read as follows:

If during any fiscal year commencing after June 30, ~~2005~~ 2006, the general business practices of an employer or insurer result in the delay of the commencement of voluntary weekly compensation payments after the date specified in section 85.30 more frequently and for a longer number of days than the average number of days for the entire group of employers or insurers, the commissioner may impose an assessment on the employer or insurer payable to the second injury fund created in section 85.66. The amount of the assessment shall be ten dollars, multiplied by the average number of days that weekly compensation payments were delayed after the date specified in section 85.30, and multiplied by the number of injuries the employer or insurer reported during the fiscal year. Notwithstanding the foregoing, an assessment shall not be imposed if the employer or insurer commenced voluntary weekly compensa-

tion benefits within the time specified in section 85.30 for more than seventy-five percent of the injuries reported by the employer or insurer.

Sec. 17. Section 85.55, Code 2003, is repealed.

Sec. 18. EFFECTIVE DATE AND APPLICABILITY PROVISIONS. The sections of this division of this Act amending sections 85.27, 85.34, 85.36, and 85.70, and repealing section 85.55, being deemed of immediate importance, take effect upon enactment and apply to injuries occurring on or after that date.

Sec. 19. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. The sections of this division of this Act reaffirming and reenacting sections 86.12 and 86.13A and the section of this division of this Act amending section 86.13A as reaffirmed and reenacted, being deemed of immediate importance, take effect upon enactment and are retroactively applicable to injuries occurring on or after July 1, 2003.

Sec. 20. LEGISLATIVE INTENT. It is the intent of the general assembly that this division of this Act will prevent all double recoveries and all double reductions in workers' compensation benefits for permanent partial disability. This division modifies the fresh start and full responsibility rules of law announced by the Iowa supreme court in a series of judicial precedents.

The general assembly recognizes that the amount of compensation a person receives for disability is directly related to the person's earnings at the time of injury. The competitive labor market determines the value of a person's earning capacity through a strong correlation with the level of earnings a person can achieve in the competitive labor market. The market reevaluates a person as a working unit each time the person competes in the competitive labor market, causing a fresh start with each change of employment. The market's determination effectively apportions any disability through a reduced level of earnings. The market does not reevaluate an employee's earning capacity while the employee remains employed by the same employer.

The general assembly intends that an employer shall fully compensate all of an injured employee's disability that is caused by work-related injuries with the employer without compensating the same disability more than once. This division of this Act creates a formula that applies disability payments made toward satisfaction of the combined disability that the employer is liable for compensating, while taking into account the impact of the employee's earnings on the amount of compensation to be ultimately paid for the disability.

The general assembly does not intend this division of this Act to change the character of any disability from scheduled to unscheduled or vice versa or to combine disabilities that are not otherwise combined under law existing on the effective date of this section of this division of this Act. Combination of successive scheduled disabilities in section 85.34, subsection 7, as enacted in this division of this Act, is limited to disabilities affecting the same member, such as successive disabilities to the right arm. A disability to the left arm that is followed by a disability to the right arm is governed by section 85.64 and is not a successive disability under this division. This division does not alter benefits under the second injury fund, benefits for permanent total disability under section 85.34, subsection 3, the method of determining the degree of unscheduled permanent partial disability, the compensable character of aggravation injuries, or an employer's right to choose the care an injured employee receives, expand the fresh start rule to scheduled disabilities, or change existing law in any way that is not expressly provided in this division.

The general assembly intends that changes in the identity of the employer that do not require the employee to reenter the competitive labor market will be treated as if the employee remained employed by the same employer.

Sec. 21. EFFECTIVE DATE. Unless otherwise provided, this division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION V
FINANCIAL SERVICES

Sec. 22. The following provisions, as published in Iowa Code Supplement 2003, pertaining to financial services, are reaffirmed and reenacted:

1. Section 537.2502, subsections 3 and 6.
2. Section 537.2601, subsection 1.

Sec. 23. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. This division of this Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to July 1, 2003.

DIVISION VI
LOAN AND CREDIT GUARANTEE PROGRAM

Sec. 24. The following provisions, as published in Iowa Code Supplement 2003, pertaining to the economic development loan and credit guarantee program, are reaffirmed and reenacted:

1. Section 15E.221.
2. Section 15E.222.
3. Section 15E.223.
4. Section 15E.224.
5. Section 15E.225.

Sec. 25. Section 15E.223, subsection 4, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, is amended to read as follows:

4. "Targeted industry business" means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the ~~loan and credit guarantee advisory board~~ department.

Sec. 26. Section 15E.224, subsections 1, 3, 5, and 7, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended to read as follows:

1. The department shall, ~~with the advice of the loan and credit guarantee advisory board~~, establish and administer a loan and credit guarantee program. The department, pursuant to agreements with financial institutions, shall provide loan and credit guarantees, or other forms of credit guarantees for qualified businesses and targeted industry businesses for eligible project costs. A loan or credit guarantee provided under the program may stand alone or may be used in conjunction with or to enhance other loans or credit guarantees offered by private, state, or federal entities. The department may purchase insurance to cover defaulted loans meeting the requirements of the program. However, the department shall not in any manner directly or indirectly pledge the credit of the state. Eligible project costs include expenditures for productive equipment and machinery, working capital for operations and export transactions, research and development, marketing, and such other costs as the department may so designate.

3. In administering the program, the department shall consult and cooperate with financial institutions in this state ~~and with the loan and credit guarantee advisory board~~. Administrative procedures and application procedures, as practicable, shall be responsive to the needs of qualified businesses, targeted industry businesses, and financial institutions, and shall be consistent with prudent investment and lending practices and criteria.

5. The department, ~~with the advice of the loan and credit guarantee advisory board~~, shall adopt a loan or credit guarantee application procedure for a financial institution on behalf of a qualified business or targeted industry business.

7. The department, ~~with the advice of the loan and credit guarantee advisory board,~~ may adopt loan and credit guarantee application procedures that allow a qualified business or targeted industry business to apply directly to the department for a preliminary guarantee commitment. A preliminary guarantee commitment may be issued by the department subject to the qualified business or targeted industry business securing a commitment for financing from a financial institution. The application procedures shall specify the process by which a financial institution may obtain a final loan and credit guarantee.

Sec. 27. Section 15E.225, subsections 1 and 2, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended to read as follows:

1. When entering into a loan or credit guarantee agreement, the department, ~~with the advice of the loan and credit guarantee advisory board,~~ shall establish fees and other terms for participation in the program by qualified businesses and targeted industry businesses.

2. The department, with due regard for the possibility of losses and administrative costs ~~and with the advice of the loan and credit guarantee advisory board,~~ shall set fees and other terms at levels sufficient to assure that the program is self-financing.

Sec. 28. Section 15E.227, subsection 2, paragraph c, Code Supplement 2003, is amended by striking the paragraph.

Sec. 29. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS. This division of this Act, being deemed of immediate importance, takes effect upon enactment, and is retroactively applicable to July 1, 2003.

DIVISION VII ADMINISTRATIVE CONTRIBUTION SURCHARGE

Sec. 30. Section 96.9, subsection 8, paragraph e, Code Supplement 2003, is amended to read as follows:

e. Moneys from interest earned on the unemployment compensation reserve fund shall be used by the department only upon appropriation by the general assembly ~~and only for purposes contained in section 96.7, subsection 12, for department of workforce development rural satellite offices,~~ and for administrative costs to collect the reserve contributions.

Sec. 31. CODE EDITOR'S REMOVAL OF SECTION 96.7, SUBSECTION 12, FROM CODE. Consistent with the Iowa supreme court decision of Rants and Iverson v. Vilsack, No. 60/03-1948, June 16, 2004, the general assembly acknowledges the Code editor's removal of section 96.7, subsection 12, relating to the administrative contribution surcharge and fund, from the Code, due to the subsection's repeal effective July 1, 2003.

Sec. 32. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to July 1, 2003.

DIVISION VIII MARKETING

Sec. 33. Section 15G.109, as published in Iowa Code Supplement 2003, pertaining to the economic development marketing board, is reaffirmed and reenacted.

Sec. 34. Section 15G.109, subsections 1, 2, and 5, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended by striking the subsections.

Sec. 35. Section 15G.109, subsections 3 and 4, Code Supplement 2003, as reaffirmed and reenacted by this division of this Act, are amended to read as follows:

3. The department of economic development ~~marketing board~~ shall accept proposals for

marketing strategies for purposes of selecting a strategy for the department to administer. The marketing strategies shall be designed to market Iowa as a lifestyle, increase the population of the state, increase the wealth of Iowans, and expand and stimulate the state economy. ~~The economic development marketing board shall submit a recommendation regarding the proposal to the grow Iowa values board. In selecting a marketing strategy for recommendation, the economic development marketing board shall base the selection on the goals and performance measures provided in section 15G.107. The grow Iowa values board shall either approve or deny the recommendation. The department shall select and approve a proposal that meets the requirements of this subsection.~~

4. The department shall implement and administer the approved marketing strategy approved by the grow Iowa values board as provided in subsection 3. ~~The department shall provide the economic development marketing board with assistance in implementing administrative functions of the board and provide technical assistance to the board.~~

Sec. 36. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This division of this Act, being deemed of immediate importance, takes effect upon enactment. The section of this division of this Act reaffirming and reenacting Code section 15G.109 is retroactively applicable to July 1, 2003.

DIVISION IX
INCOME TAXATION
BONUS DEPRECIATION AND EXPENSING ALLOWANCE

Sec. 37. Section 422.3, subsection 5, Code Supplement 2003, is amended to read as follows:

5. "Internal Revenue Code" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2003, and as amended by Pub. L. No. 108-27, section 202, whichever is applicable.

Sec. 38. Section 422.7, subsection 39, Code Supplement 2003, is amended to read as follows:

39. a. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing federal adjusted gross income, the following adjustments shall be made:

a. (1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

b. (2) Subtract an amount equal to depreciation ~~taken~~ allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

c. (3) Any other adjustments to gains or losses to reflect the adjustments made in paragraphs "a" and "b" subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. The additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, shall apply in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005.

Sec. 39. Section 422.32, subsection 7, Code Supplement 2003, is amended to read as follows:

7. "Internal Revenue Code" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2003, and as amended by Pub. L. No. 108-27, section 202, whichever is applicable.

Sec. 40. Section 422.35, subsection 19, Code Supplement 2003, is amended to read as follows:

19. a. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing taxable income, the following adjustments shall be made:

a. (1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

b. (2) Subtract an amount equal to depreciation ~~taken~~ allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

c. (3) Any other adjustments to gains or losses to reflect the adjustments made in paragraphs "a" and "b" subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. ~~The additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, shall apply in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005.~~

Sec. 41. RETROACTIVE APPLICABILITY.

1. The sections of this division of this Act amending section 422.7, subsection 39, and section 422.35, subsection 19, apply retroactively to tax years ending after May 5, 2003.

2. The sections of this division of this Act amending sections 422.3, subsection 5, and 422.32, subsection 7, apply retroactively to January 1, 2003, for tax years beginning on or after that date.

Sec. 42. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION X ADVISORY CAPACITY OF BOARDS

Sec. 43. ADVISORY CAPACITY OF BOARDS. For only the fiscal year beginning July 1, 2004, and ending June 30, 2005, the establishment and existence of the grow Iowa values board, the economic development marketing board, and the loan and credit guarantee advisory board, as provided for in 2003 Iowa Acts, First Extraordinary Session, chapter 1 (House File 692), are validated. However, the boards shall serve only in an advisory capacity to the department of economic development. The composition of the boards shall consist of the membership in existence on June 15, 2004.

Sec. 44. EFFECTIVE DATE PROVISION. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved September 7, 2004