



HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	House File 518 (Formerly HSB 169)	House Committee:	PASSED 3/2/17 (14-9)
Committee:	Commerce	House Floor:	
Floor Manager:	Rep. Carlson	Senate Floor:	
Date:	March 16, 2017	Governor:	
Staff:	Brittany L. Telk (1-3452)		

Workers' Compensation Reform

- This bill addresses the Workers' Compensation Act in Iowa, and makes various changes throughout the chapter.

Section by Section Analysis

Section 1 - Willful injury - intoxication

This section adds a rebuttable presumption; if an employee tests positive to drugs (not prescribed by a doctor) or alcohol, after an injury at work, it is presumed the employee was intoxicated at the time of the injury and the employee cannot receive workers; compensation benefits. The burden then shifts to the employee to prove he was not intoxicated during the injury, or the intoxication did not cause his injury.

Section 2 - Contract to relieve not operative

This section adds a statement this chapter does not create a private cause of action outside of the statute.

Sections 3 and 4 - Notice of injury

The bill defines "date of occurrence of the injury" as the date the employee knew or should have known the injury was work-related. It still requires the employee to report injuries within 90 days of the injury, and the statute of limitations remains 2 years.

Section 5 - Temporary total and temporary partial disability - temporary work

This section allows an employer to offer suitable work for an employee receiving temporary partial disability benefits either with the employer or elsewhere and compensate the employee with the appropriate benefits, so long as the work offered accommodates the employees disability. And if the employee refuses this work, he is unable to receive workers compensation indemnity benefits during the refusal period. This section also adds a presumption for employees whose work regularly requires travel (more than 50% of the time): the employer's principal place of business or a location where the employee had previously worked is considered geographically suitable. It requires the employer to cover the employee's expenses for the employee to temporarily travel to the employer's principal place of business to work. Further, it requires the employee to raise the issue of geographical suitability in writing to the employer or he is precluded from raising it as a reason for refusing the offered light duty work.

Section 6 - Permanent partial disabilities - MMI

This section strikes mention to the healing period and requires employers pay an employee's permanent partial disability benefits once a doctor has indicated the employee is at maximum medical improvement.

Section 7 - Permanent partial disabilities - Shoulder - Age for PPD

This section codifies the shoulder as a scheduled member (arm), so an employee will be compensated for injury based on functional disability in relation to 250 weeks, not earning capacity. It requires permanent partial disability award payments take into consideration the injured employee's age/reasonable number of years he had left to work in determining the employee's reduced earning capacity. It also makes a change to accommodate an injured employee who returns to work; if the employee returns to work, at the same or higher pay grade, his permanent partial disability payments will be adjusted/based on his functional disability at the time of the injury, not the earning capacity. If an employee suffers a body as a whole claim after age 67, he will be compensated based on the loss of earning capacity in relation to 150 weeks (not 500 weeks).

Section 8 - Permanent partial disabilities - AMA guidelines - PTD/PPD double payments

This section requires the commissioner to make impairment ratings based on scheduled member functional disability determinations based solely on AMA guidelines. This section reverses the *Swift* decision, and codifies it. Once an employee is determined to be permanently and totally disabled, he is no longer able to also claim/receive permanent partial disability payments.

Section 9 - Permanent total disabilities - Age for PTD - PTD/PPD double payments

This section changes the benefit payments for those receiving permanent total disability benefits. These payments will cease once a person is no longer permanently and totally disabled or hits age 67. If an employee suffers a PTD claim at or after the age 67, he will be paid until he is no longer permanently and totally disabled or in relation to 150 weeks. It also makes the same changes regarding the double benefit awards of permanent partial and permanent total disability payments for PERMANENT TOTAL DISABILITY code sections; once an employee is determined to be permanently and totally disabled, he is no longer eligible to claim/receive permanent partial disability payments.

Section 10 - Permanent total disabilities - PTD wages - unemployment compensation

This section states an injured employee is not entitled to permanent total disability payments for the weeks he is receiving wages from an employer or payment for services of any kind, if those payments are more than 50% of the statewide average weekly wage. It also precludes a person from receiving unemployment compensation if he is already receiving permanent total disability workers' compensation benefits.

Section 11 - Credits for excess payments - recovery of employee overpayment

This section requires any excess payments made by the employer be credited against any future weekly benefits owed to an injured employee, but does not allow for employer claw-back. It applies to current and future injuries to an employee. It also removes the process for establishing an overpayment

Sections 12 and 13 - Permanent disabilities - successive injuries - apportionment

Section 12 undoes the fresh start rule and allows for an employer to apportion liability for employee permanent disability benefits; an employer is only responsible for the portion of liability that is born from a work-related injury an employee suffers at the employer's workplace. An employer is not liable for an employee's pre-existing injury. Section 13 strikes code provisions that speak to apportionment, as they are now redundant and incorporated through section 12.

Section 14 - Examination of injured employees - refusal period - compensable injuries

This section clarifies the employer is not responsible for back payment of benefits during the period of time an employee has refused treatment. Once the employee complies with the employer's request, he will begin receiving his benefits again. This section states the employer is only liable to compensate an employee-chosen doctor if the employee's injury is found to be compensable under this chapter. Additionally, the payment to be made by the employer will be based on the typical fee charged by a doctor in the same area for the same impairment rating work.

Sections 15 and 16 - Commutation

Section 15 requires all parties (both the employee and employer) to give written consent for commutation. Section 16 codifies what is current practice; all parties can agree to partial commutation while keeping open future medical payments needed.

Section 17 - Personal injury arising out of and in the course of employment

This bill adds a predominant factor definition to the existing personal injury definition. It defines predominant factor as an injury that causes at least 51% of the disability. It clarifies an injury is compensable only if that injury is the predominant factor in causing the employee's disability.

Section 18 - Injury outside of the State

The bill strikes the language that a business can have a location in Iowa, and a person can live in Iowa and work in another state, yet file workers' compensation claims in Iowa; you must be gainfully employed in Iowa to enjoy Iowa workers compensation benefits

Sections 19 and 21 - Judicial review - bond and stay

Section 19 is a conforming cross-reference change. Section 21 allows for a party to file a petition for judicial review and post a bond which will stay the commissioner's decision. The bond must secure any compensation awarded by the commissioner. It also describes the timeline and what should happen if there is an objection to the overall amount of the bond

Section 20 - Fees

This bill codifies current agency precedent. It prevents an attorney from collecting fees based on dollar amounts for disability benefits that have been volunteered by the employer or agreed to under the code. It also puts the workers compensation commissioner in charge of overseeing disputes in attorney fees for workers compensation issues.

Section 22 - Judgment by district court on award - interest

This bill gets rid of the 10% for workers' compensation claim and matches the interest for these awards to all other judgments at prime plus two percent (prime+2%). It also adds conforming changes to update cross-reference.

Section 23 - Effective upon enactment

Section 24 - Applicability

This section states the bill applies to injuries occurring on or after the effective date.

Amendment Analysis

H-1170 by Oldson: This is a strike-after amendment that establishes a Workers' Compensation Study Committee to review the workers' compensation laws of the state and report back to the legislature with recommendations.

H-1176 by Carlson: This amendment makes technical changes to the bill by updating word choices to reflect the current usage of the terms throughout the workers' compensation code.

H-1211 by Carlson:

- It increases the shoulder scheduled weeks to 400.
- It also describes a new vocational rehabilitation program for those who suffer a shoulder injury; such persons will undergo an evaluation through the Iowa Workers' Compensation Commissioner's office to determine whether or not the injured person is eligible for enrollment in a vocational rehabilitation program through a community college. If deemed eligible, the person will be enrolled in a community college for job training; in a certificate program or associate's degree program. The employer is required to pay the educational expenses not to exceed \$15,000 and can ask for status reports each semester.
- It strikes all references to age 67, for both permanent partial and permanent total disability payment calculations and pay-outs.
- It strikes section 17 and all references to predominant factor; replacing them with substantial factor throughout the bill.
- It makes changes to section 7; if an employee who has suffered an industrial disability is offered or goes back to work with his same employer at a wage equal or greater to what he was receiving and is then paid based on the functional disability of his injury, should he lose his job, he will be subject to a reopening of his case to address his earning capacity.
- It makes a clarifying change to section 10 to ensure an injured worker receiving permanent total disability benefit payments will only lose such payments in the weeks receiving a wage for payment of current services, in addition to the preclusions listed in the bill.
- It makes changes to the interest rate. It will continue to match the interest rates used by other judgments, at the one year treasury constant maturity as published by the federal reserve in the most recent H15 report, but will be set at the date of the injury, plus 2%.
- Finally, it strikes the effective upon enactment; the bill will go into effect July 1, 2017

H-1184 by Carlson: This amendment makes changes to H-1176 by Carlson, and will be withdrawn.