

CHAPTER 162**WORKERS' COMPENSATION SECOND INJURY FUND***S.F. 502*

AN ACT relating to workers' health, safety, and welfare, by providing funding for the second injury fund and providing applicability and effective dates.

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

Section 1. SECOND INJURY FUND TASK FORCE ESTABLISHED.

1. The second injury fund task force is established. The following persons shall serve as voting members of the task force:

- a. The attorney general or the attorney general's designee.
- b. The industrial commissioner or the commissioner's designee.
- c. An employer insured under a workers' compensation insurance policy, from the business sector.
- d. The director of the department of employment services, or the director's designee.
- e. Two attorneys from the Iowa workers' compensation advisory committee, one of whom represents claimants in workers' compensation cases, and one of whom represents defendants in workers' compensation cases.
- f. The commissioner of insurance, or the commissioner's designee.
- g. A representative of a labor union, organization, or association.
- h. A representative of a workers' compensation liability insurance carrier.

The voting members listed in paragraphs "c", "e", "g", and "h" shall be appointed by the treasurer of state.

The task force shall also consist of four ex officio, nonvoting legislative members, one appointed by the president of the senate, in consultation with the majority leader of the senate, one appointed by the minority leader of the senate, one appointed by the speaker of the house of representatives, in consultation with the majority leader of the house of representatives, and one appointed by the minority leader of the house of representatives.

2. The treasurer of state shall organize the task force and perform administrative functions for the task force.

3. The task force shall study the following issues related to the workers' compensation second injury fund:

- a. The long-term needs and goals of the fund.
- b. Whether current funding mechanisms are sufficient to adequately finance the fund, and if not, what types of additional funding mechanisms would be appropriate.
- c. Recommendations for payment of administrative costs associated with the fund.
- d. Changes in the administrative structure concerning the fund or a replacement payment mechanism.
- e. The role and purpose served by the second injury fund within the workers' compensation system.
- f. Any other related issues concerning the operation, administration, purposes, and funding of the second injury fund.

4. The task force may contract for professional services necessary for completion of the charge of the task force.

5. Actual and necessary expenses of the task force shall be paid from the second injury fund.

6. In addition to organizing and administering the task force, the treasurer of state, in consultation with the legislative fiscal bureau, shall examine the financial condition of the fund, including, but not limited to, any trends concerning the fund. The treasurer, in consultation with the legislative fiscal bureau, shall prepare a report of the findings of the examination and transmit the report to the task force.

7. The task force shall submit a report of its findings and recommendations to the committee on business and labor relations of the senate and the committee on labor and industrial relations of the house of representatives by January 15, 1992.

Sec. 2. SURCHARGE FOR 1991 AND 1992 FISCAL YEARS.

1. For the fiscal year commencing July 1, 1990, the treasurer of state may assess a surcharge on workers' compensation weekly benefits paid in the state during the immediately preceding fiscal year. The surcharge is payable by all self-insured employers making weekly benefit payments and all insurers making weekly benefit payments on behalf of insured employers. The surcharge applies to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9. The treasurer of state shall base the surcharge for each payor upon the payor's pro rata share of weekly benefits paid in the state during the immediately preceding fiscal year. The treasurer may use reports of weekly benefits paid derived from the last completed policy or reporting year, or other consistent allocation methodology. The surcharge is collectable by an insurer or from its policyholders if the insured employer fails to pay the insurer. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under the second injury fund. However, the treasurer of state shall not collect over four hundred thousand dollars in assessing the surcharge.

2. For the fiscal year commencing July 1, 1991, the treasurer of state may assess a surcharge as provided in subsection 1, except that the treasurer of state shall not collect over eight hundred seventy thousand dollars in assessing the surcharge, unless the general assembly authorizes a greater amount to be assessed.

3. The surcharges collected pursuant to this section shall be deposited in the second injury fund, and may be used for the payment of claims, settlements, and administrative costs. The expenses incurred by the treasurer of state, the attorney general, the second injury fund, the task force, or the department of revenue and finance, in connection with the second injury fund, may be paid from the fund. However, the payment of administrative costs and expenses incurred by the treasurer of state, the attorney general, the second injury fund, the task force, and the department of revenue and finance, as authorized in this subsection, shall only be permitted for administrative costs and expenses incurred in the fiscal year commencing July 1, 1991, and shall not exceed one hundred seventy thousand dollars, unless further action is taken by the general assembly.

4. An insurer or self-insurer shall pay a surcharge imposed by this section no later than thirty days following the assessment.

5. a. If an insurer, policyholder, or self-insurer withdraws from doing business in this state before the surcharges authorized by this section become due, or fails or neglects to pay the surcharge imposed, the treasurer of state shall at once proceed to collect the surcharge, and may employ such legal process as may be necessary for that purpose, and when so collected shall deposit the surcharge into the second injury fund. The treasurer may bring the suit in any court of this state having jurisdiction, and reasonable attorney's fees may be taxed as costs in the suit.

b. If the surcharges imposed by this section are not paid or transferred when due, the insurer, policyholder, or self-insurer responsible for the failure shall be required to pay, as part of the surcharge, interest on the surcharge at the rate of one and one-half percent per month for each month or fraction of a month delinquent. If the treasurer of state prevails in any dispute concerning the assessment of a surcharge which has not been paid or transferred, interest

shall be paid upon the amount found due to the state at the rate of one and one-half percent per month for each month or fraction of a month delinquent.

c. An insurer is not liable for a surcharge which is not paid to the insurer by the policyholder or employer provided the insurer has made good faith efforts to collect the surcharge from the policyholder or employer. An insurance carrier shall report a policyholder or employer who fails to pay a surcharge within thirty days of its due date to the treasurer of state.

d. In any action concerning the amount of a surcharge imposed by this section, any other surcharge shall continue to be made based upon the amount assessed by the treasurer of state. In the event of an overpayment, the excess amount paid may be credited against future payments otherwise due.

e. An employer who fails to pay the surcharges imposed under this section shall not be allowed to purchase workers' compensation insurance coverage or to renew a self-insurance authorization unless and until the surcharge has been paid.

6. For the purposes of this section, "insurer" includes a self-insurance group approved by the commissioner of insurance pursuant to section 87.4.

Sec. 3. EFFECTIVE DATE AND RETROACTIVITY PROVISIONS.

Subsections 1 and 3 through 6 of section 2 of this Act, being deemed of immediate importance, take effect upon enactment, and apply retroactively to the fiscal year beginning July 1, 1990.

Approved May 10, 1991

CHAPTER 163

HEALTH DATA COMMISSION

H.F. 575

AN ACT relating to the collection and use of patient information by the health data commission, and providing penalties.

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

Section 1. Section 145.3, subsection 4, paragraph d, Code 1991, is amended to read as follows:

d. Additional or alternative information related to the intent and purpose of this chapter as outlined in section 145.1 be submitted to the commission, except that in no event shall hospitals with fewer than one hundred licensed acute care beds be required to install computerized severity of illness systems before July 1, ~~1991~~ 1993.

Sec. 2. Section 145.3, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 6. A hospital, physician, third-party payer, or other person required to provide information to the commission pursuant to this section, is subject to a civil penalty for failure to comply with this chapter or the rules adopted pursuant to this chapter. The commission may impose a civil penalty not to exceed five hundred dollars. Each day of noncompliance constitutes a separate offense. However, a penalty shall not be imposed for a technical, nonsubstantive violation or if the person required to provide information makes a good faith effort to comply with the commission's requirements.

The commission shall notify the noncomplying party of the commission's intent to impose a civil penalty. The notice shall be sent by certified mail to the party's last known address and shall state the nature of the party's actions leading to the charge of noncompliance, the specific statute or rule involved, and the amount of the proposed penalty. The notice shall advise the party that upon failure to pay the civil penalty, the penalty may be collected by