

Reprinted

SENATE FILE 502
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 330)

Passed Senate, Date 4/4/91 (p.1039) Passed House, Date 4/18/91 ^{P.1356}
Vote: Ayes 48 Nays 0 Vote: Ayes 74 Nays 18
Approved May 10, 1991

A BILL FOR

1 An Act relating to workers' health, safety, and welfare, by
2 providing funding for the second injury fund and providing
3 applicability and effective dates.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 502

2078 amended bill

1 Section 1. Section 85.65, Code 1991, is amended to read as
2 follows:

3 85.65 PAYMENTS TO SECOND INJURY FUND.

4 1. The employer, or, if insured, the insurance carrier in
5 each case of compensable injury causing death, shall pay to
6 the ~~treasurer-of-state~~ second injury fund board for the second
7 injury fund the sum of four thousand dollars in a case where
8 there are dependents and fifteen thousand dollars in a case
9 where there are no dependents. The payment shall be made at
10 the time compensation payments are begun, or at the time the
11 burial expenses are paid in a case where there are no
12 dependents. However, the payments shall be required only in
13 cases of injury resulting in death coming within the purview
14 of this chapter and occurring after July 1, 1978. These
15 payments shall be in addition to any payments of compensation
16 to injured employees or their dependents, or of burial
17 expenses as provided in this chapter.

18 2. For the purpose of providing for revenue for the second
19 injury fund, every authorized self-insurer approved by the
20 commissioner of insurance pursuant to section 87.1, every
21 policyholder of an authorized self-insurance group approved by
22 the commissioner pursuant to section 87.4, and every workers'
23 compensation policyholder of a plan or policy insured pursuant
24 to this chapter or rules adopted pursuant to this chapter,
25 shall be liable for payment of an annual surcharge in
26 accordance with this section.

27 3. The annual surcharge shall apply to all workers'
28 compensation insurance policies and self-insurance coverages
29 which are written or renewed on or after July 1, 1992,
30 including the state of Iowa coverages, including any coverages
31 for its departments, divisions, agencies, commissions, and
32 boards, or any political subdivision coverages which are self-
33 insured or held out to be in any part self-insured. The
34 surcharge shall not apply to any reinsurance or retrocessional
35 transaction under section 520.4 or 520.9.

1 4. On June 1, 1992, and each year thereafter, the second
2 injury fund board shall estimate the amount of benefits and
3 administrative expenses payable from the second injury fund
4 during the ensuing calendar year, and shall calculate the
5 total amount of the annual surcharge to be imposed during the
6 ensuing calendar year upon all workers' compensation
7 policyholders and authorized self-insurers based upon premiums
8 paid or deposits required in the previous year as reported by
9 the commissioner of insurance. The amount of the annual
10 surcharge to be imposed upon all policyholders and self-
11 insurers shall equal the moneys estimated by the board to be
12 payable from the second injury fund during the calendar year
13 for which the annual surcharge is to be imposed, except that
14 the surcharge shall not exceed three percent of the
15 policyholder's or authorized self-insurer's workers'
16 compensation required deposits, premiums paid or due, or
17 assessments paid or due a self-insurance group, and provided
18 that a minimum annual surcharge of ten dollars per
19 policyholder or authorized self-insurer shall be paid. The
20 surcharge shall be collected from policyholders by each
21 insurer at the same time and in the same manner that a premium
22 is collected, but an insurance carrier or its agent shall not
23 be entitled to any portion of the surcharge as a fee or
24 commission for its collection. The surcharge is not subject
25 to any taxes, licenses, or fees.

26 5. All surcharge amounts imposed by this section shall be
27 paid to the second injury fund board and shall be deposited to
28 the credit of the second injury fund.

29 6. Such surcharge amounts shall be paid annually by
30 insurers and self-insurers. Insurers shall pay the amounts
31 not later than the thirtieth day of the month following the
32 end of the year in which the amount is received from
33 policyholders. For purposes of the second injury fund
34 surcharge, "insurer" includes a self-insurance group approved
35 by the commissioner of insurance pursuant to section 87.4. An

1 authorized self-insurer approved by the commissioner of
2 insurance pursuant to section 87.11 shall pay the surcharge
3 not later than July 30 of the year in which the surcharge is
4 imposed.

5 7. If a policyholder or self-insurer fails to make payment
6 of the surcharge or an insurer fails to make timely transfer
7 to the second injury fund board of surcharges actually
8 collected from policyholders, as required by this section, a
9 penalty of fifteen percent of the surcharge unpaid, or
10 untransferred, shall be assessed against the liable
11 policyholder, self-insurer, or insurer. Penalties assessed
12 under this subsection shall be collected in a civil action by
13 a summary proceeding brought by the board on behalf of the
14 fund.

15 Sec. 2. NEW SECTION. 85.65A CARRIERS WITHDRAWING FROM
16 STATE LIABLE FOR SURCHARGE IMPOSED -- SECOND INJURY FUND
17 EMPOWERED TO COLLECT.

18 If an insurance carrier withdraws from doing business in
19 this state before the tax becomes due according to section
20 85.65, or fails or neglects to pay the surcharge imposed, the
21 second injury fund board shall at once proceed to collect the
22 surcharge, and the board may employ such legal process as may
23 be necessary for that purpose and when so collected the board
24 shall pay the surcharge into the second injury fund. The suit
25 may be brought by the board, in any court of this state having
26 jurisdiction, and reasonable attorney's fees may be taxed as
27 costs in the suit.

28 Sec. 3. NEW SECTION. 85.65B DELINQUENT SURCHARGE,
29 INTEREST, RATE -- OVERPAYMENT OF SURCHARGE, CREDIT.

30 1. If the surcharge imposed by section 85.65 is not paid
31 or transferred when due, the policyholder, self-insurer, or
32 insurer responsible for the failure shall be required to pay,
33 as part of the surcharge, interest on the surcharge at the
34 rate of one and one-half percent per month for each month or
35 fraction of a month delinquent. If the second injury fund

1 board prevails in any dispute concerning an assessment of
2 surcharge which has not been paid or transferred, interest
3 shall be paid upon the amount found due to the state at the
4 rate of one and one-half percent per month for each month or
5 fraction of a month delinquent.

6 2. An insurer is not liable for a surcharge which is not
7 paid to the insurer by the policyholder provided the insurer
8 has made good faith efforts to collect the surcharge from the
9 policyholder. An insurer shall report a policyholder who
10 fails to pay a surcharge within thirty days of its due date to
11 the second injury fund board.

12 3. In any legal contest concerning the amount of the
13 surcharge imposed under section 85.65 for a calendar year, the
14 quarterly installments for the following year shall continue
15 to be made based upon the amount assessed by the second injury
16 fund board. If after the end of any year, the amount of the
17 actual surcharge due is less than the total amount of the
18 installments actually paid, the excess amount paid shall be
19 credited against the tax for the following year and deducted
20 from the quarterly installment otherwise due on June 1.

21 Sec. 4. Section 85.66, Code 1991, is amended to read as
22 follows:

23 85.66 SECOND INJURY FUND -- PAYMENTS -- CUSTODIAN.

24 When the total amount of the payments provided for in the
25 preceding section, together with accumulated interest and
26 earnings, equals or exceeds ~~one~~ two million dollars ~~no-further~~
27 contributions to and surcharge assessments for the fund shall
28 be ~~required~~ suspended commencing with the next quarter; but
29 when, thereafter, the amount of the sum is reduced below ~~five~~
30 ~~hundred-thousand~~ one million dollars by reason of payments
31 made to employees pursuant to this division, contributions and
32 surcharge assessments shall be resumed commencing with the
33 next quarter and shall continue until the sum, together with
34 accumulated interest and earnings, again amounts to ~~one~~ two
35 million dollars. The ~~treasurer-of-state~~ second injury fund

1 board shall determine when contributions and surcharge
2 assessments shall be made to for the fund and when they shall
3 be suspended and the board may enforce the collection of
4 contributions and surcharge assessments.

5 Moneys so collected shall constitute a "Second Injury
6 Fund", in the custody of the treasurer of state, to be
7 disbursed only for the purposes stated in this division, and
8 shall not at any time be appropriated or diverted to any other
9 use or purpose. The treasurer of state shall invest any
10 surplus moneys of the fund in securities which constitute
11 legal investments for state funds under the laws of this
12 state, and may sell any of the securities in which the fund is
13 invested, if necessary, for the proper administration or in
14 the best interests of the fund. Disbursements from the fund
15 shall be paid approved by the treasurer-of-state second injury
16 fund board only upon the written order of the industrial
17 commissioner. The treasurer-of-state board shall quarterly
18 prepare a statement of the fund, setting forth the balance of
19 moneys in the fund, the income of the fund, specifying the
20 source of all income, the payments out of the fund, specifying
21 the various items of payments, and setting forth the balance
22 of the fund remaining to its credit. The statement shall be
23 open to public inspection in the office of the treasurer-of
24 state board.

25 Sec. 5. Section 85.67, Code 1991, is amended to read as
26 follows:

27 85.67 ADMINISTRATION OF FUND -- BOARD ESTABLISHED --
28 SPECIAL COUNSEL.

29 1. A second injury fund board is established. The board
30 shall consist of five members, appointed or designated as
31 follows:

32 a. The director of the department of employment services,
33 or the director's designee.

34 b. An attorney practicing in the area of workers'
35 compensation, appointed by the governor.

1 c. The commissioner of insurance, or the commissioner's
2 designee.

3 d. A representative of a labor union, organization, or
4 association, appointed by the governor.

5 e. A representative of a workers' compensation liability
6 insurance carrier, appointed by the governor.

7 2. Members of the board shall serve staggered terms of
8 four years beginning on July 1 and ending on June 30.
9 Vacancies on the board shall be filled in the same manner as
10 original appointments or designations.

11 3. Members of the board shall qualify by taking the oath
12 of office prescribed by law for state officers. At its first
13 meeting of each year, the board shall organize by electing a
14 chairperson and vice chairperson for terms of one year. The
15 board shall meet at least four times each year and shall hold
16 special meetings when called by the chairperson or, in the
17 absence of the chairperson, by the vice chairperson, or by the
18 chairperson upon written request of three members of the
19 board.

20 4. The treasurer of state shall be charged with the
21 conservation, investment, and custody of the assets of the
22 second injury fund, and the board is responsible for the
23 administration and collection of contributions payments and
24 assessments to the fund as well as the approval of settlements
25 and claims based upon the awards by the industrial
26 commissioner. The attorney general shall appoint a staff
27 member to represent the treasurer-of-state board and the fund
28 in all proceedings and matters arising under this division.

29 5. In making an award under this division, the industrial
30 commissioner shall specifically find the amount the injured
31 employee shall be paid weekly, the number of weeks of
32 compensation which shall be paid by the employer, the date
33 upon which payments out of the fund shall begin, and, if
34 possible, the length of time the payments shall continue.

35 6. The board may contract for services from professionals

1 in order to fulfill its duties. The board shall contract with
2 an actuary to serve as its technical advisor. The board shall
3 cause an annual actuarial valuation to be made of the assets
4 and liabilities of the fund and shall prepare an annual
5 statement of the surcharge amounts to be assessed to the fund
6 pursuant to the funding mechanisms established under this
7 division. The board shall publish the valuation of assets and
8 liabilities and the statement of receipts and disbursements of
9 the fund, and shall include this information in a report to
10 the general assembly on an annual basis covering each fiscal
11 year.

12 7. The members of the board shall be paid actual and
13 necessary expenses incurred in the performance of their duties
14 and, in addition, members who are not state employees shall
15 receive per diem compensation at the rate specified in section
16 7E.6. The per diem and expenses, as well as the
17 administrative costs of the board, including, but not limited
18 to, the compensation and expenses of an actuary, shall be
19 assessed against and may be paid from the fund.

20 Sec. 6. Section 85.68, Code 1991, is amended to read as
21 follows:

22 85.68 ACTIONS.

23 The treasurer-of-state second injury fund board, on behalf
24 of the second injury fund created under this division, shall
25 have a cause of action under section 85.22 to the same extent
26 as an employer against any person not in the same employment
27 by reason of whose negligence or wrong the subsequent injury
28 of the previously disabled person was caused. The action
29 shall be brought by the treasurer-of-state board on behalf of
30 the fund, and any recovery, less the necessary and reasonable
31 expenses incurred by the treasurer-of-state board, shall be
32 paid to the treasurer-of-state board and credited to the fund.

33 Sec. 7. NEW SECTION. 85.68A EXPENSES OF ADMINISTRATION
34 PAYABLE FROM FUND.

35 The expenses incurred by the treasurer of state, second

1 injury fund board, the attorney general, or the department of
2 revenue and finance, in connection with the second injury
3 fund, are chargeable to the second injury fund and may be made
4 paid from the fund. The second injury fund board may enter
5 into one or more agreements authorized under chapter 28E with
6 the treasurer of state, department of revenue and finance, and
7 the attorney general to provide compensation for the
8 administrative functions provided by those departments or
9 officers in connection with the fund.

10 Sec. 8. NEW SECTION. 85.68B RULES.

11 The second injury fund board, in cooperation with the
12 treasurer of state, shall adopt rules, pursuant to chapter
13 17A, as necessary to administer the second injury fund and
14 enforce the second injury fund surcharge assessments.

15 Sec. 9. FUND OPERATION STUDY COMMITTEE. The legislative
16 council is requested to establish an interim study committee
17 to examine the operation of the second injury fund. The study
18 committee shall consider whether current mechanisms are
19 sufficient to adequately finance the fund. The study
20 committee shall submit a report of its findings and
21 recommendations to the legislative council and the general
22 assembly by January 15, 1992.

23 Sec. 10. ASSESSMENT FOR 1991 AND 1992 FISCAL YEARS.

24 1. For the fiscal year commencing July 1, 1990, the
25 treasurer of state may assess a surcharge that applies to all
26 workers' compensation liability insurance carriers. The
27 surcharge shall be based upon a standard rate applied to the
28 total dollar volume of premiums received by the carrier
29 pursuant to compensation liability policies issued for a
30 fiscal period. However, the treasurer of state shall not
31 collect over four hundred thousand dollars in assessing the
32 surcharge.

33 2. For the fiscal year commencing July 1, 1991, the second
34 injury fund board may assess a surcharge that applies to all
35 workers' compensation liability insurance carriers. The

1 surcharge shall be based upon a standard rate applied to the
2 total dollar volume of premiums received by the carrier
3 pursuant to compensation liability policies issued for a
4 fiscal period. However, the board shall not collect over
5 seven hundred thousand dollars in assessing the surcharge,
6 unless the general assembly authorizes a greater amount to be
7 assessed.

8 3. The surcharges collected pursuant to this section shall
9 be deposited in the second injury fund, and may be used for
10 the payment of claims, settlements, administrative and legal
11 costs of the second injury fund board, and expenses and per
12 diem compensation for board members. The surcharges imposed
13 under this section are in addition to, and not in lieu of,
14 other assessments authorized pursuant to this Act.

15 Sec. 11. EFFECTIVE DATE AND RETROACTIVITY PROVISIONS.
16 Subsections 1 and 3 of section 10 of this Act, being deemed of
17 immediate importance, take effect upon enactment, and apply
18 retroactively to the fiscal year beginning July 1, 1990.

19 EXPLANATION

20 Sections 1 through 3 modify the funding mechanism for the
21 workers' compensation second injury fund and provide
22 procedural and enforcement authority for collecting the newly
23 imposed surcharge. Currently the second injury fund is
24 financed by a payment to the fund from each death benefit paid
25 under the workers' compensation system. The bill adds to the
26 assessment upon death benefit payments a surcharge based upon
27 premium dollars or self-insurance costs.

28 Section 4 increases the minimum and maximum cap for the
29 fund's balance and makes conforming changes with sections 1
30 through 3.

31 Sections 5 through 8 establish a five-member second injury
32 fund board to administer the second injury fund, to assess and
33 collect payments to the fund, and to approve settlements and
34 claims from the fund. The board is required to compile an
35 annual actuarial report of the fund. The treasurer of state

1 would remain the custodian of the assets of the fund. Section
2 7 provides that administrative expenses related to the fund
3 would be payable from the fund.

4 Section 9 requests the legislative council to establish an
5 interim study committee to examine and report on the operation
6 and financial adequacy of the second injury fund.

7 Sections 10 and 11 establish workers' compensation
8 insurance or self-insurance surcharges for the fiscal years
9 beginning July 1, 1990, and July 1, 1991.

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**SENATE FILE 502
FISCAL NOTE**

A fiscal note for Senate File 502 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 502 modifies the funding for the workers' compensation Second Injury Fund by allowing for a surcharge assessment against all workers' compensation insurance carriers and self-insureds. The total amount charged to companies is to be based on an estimate of the amount necessary to pay the claims of the Fund and is to be limited to \$400,000 for FY 1991 and \$700,000 for FY 1992.

A five-member Second Injury Fund Board is established to make assessments and administer the Fund. Administrative costs are to be paid from the Fund. The Legislative Council is to establish an interim study committee to examine and report on the operation and financial adequacy of the Second Injury Fund.

Senate File 502 becomes effective upon enactment and the surcharge is retroactive to July 1, 1990.

ASSUMPTIONS:

1. Surcharge assessments will equal the maximum allowable for FY 1991 and FY 1992.
2. Collections for work-related deaths per current law will be \$325,000 for FY 1991 and \$250,000 for FY 1992.
3. All collections will be expended to pay claims in the same fiscal year.
4. Administrative expenses associated with the Fund are currently charged to the General Fund, but would be transferred to the Second Injury Fund. The cost estimate for FY 1992 is as follows:
 - a. \$97,000 for 2 attorneys in the Attorney General's (AG) Office.
 - b. \$20,717 for 1 secretary in the AG's Office.
 - c. \$28,686 for 1 investigator in the AG's Office.
 - d. \$17,375 support for the AG's Office.
 - e. \$6,385 for 0.2 FTE in the State Treasurer's Office.

FISCAL IMPACT:

Senate File 502 will increase revenues to the Second Injury Fund by \$400,000 for FY 1991 and \$700,000 for FY 1992. Expenditures from the General Fund will decrease by \$170,163 for FY 1992.

Sources: State Treasurer
Attorney General
Department of Employment Services

(LSB 2706SV, MAS)

FILED APRIL 4, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

Sen Labor 4/5/91 Amend (3613) & Lt. Pass 4/12/91

SENATE FILE 502
BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS

(SUCCESSOR TO SSB 330)

(AS AMENDED AND PASSED BY THE SENATE APRIL 4, 1991)

ALL New Language by the Senate

Be Passed Senate, Date 4/24/91 (p. 1448) Passed House, Date 4/18/91 (p. 1354)

Vote: Ayes 46 Nays 3 Vote: Ayes 74 Nays 18

Approved May 10, 1991 (p. 1848)

Repassed as further amended by House
4/29/91 (p. 1872)
Ayes: 90, Nays: 2

A BILL FOR

1 An Act relating to workers' health, safety, and welfare, by
2 providing funding for the second injury fund and providing
3 applicability and effective dates.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 502

1 Section i. SECOND INJURY FUND STUDY COMMITTEE.

2 1. The legislative council is requested to establish an
3 interim study committee to examine the operation of the second
4 injury fund. The study committee shall consist of the
5 following members:

6 a. The attorney general or the attorney general's
7 designee.

8 b. The industrial commissioner or the commissioner's
9 designee.

10 c. An employer insured under a workers' compensation
11 insurance policy, from the business sector.

12 d. The director of the department of employment services,
13 or the director's designee.

14 e. Two attorneys from the Iowa workers' compensation
15 advisory committee, one of whom represents claimants in
16 workers' compensation cases, and one of whom represents
17 defendants in workers' compensation cases.

18 f. The commissioner of insurance, or the commissioner's
19 designee.

20 g. A representative of a labor union, organization, or
21 association.

22 h. A representative of a workers' compensation liability
23 insurance carrier.

24 i. A number of legislative members, as determined by the
25 legislative council.

26 2. In examining the operation of the second injury fund,
27 the interim study committee shall address the following
28 issues:

29 a. The long-term needs and goals of the fund.

30 b. Whether current funding mechanisms are sufficient to
31 adequately finance the fund, and if not, what types of
32 additional funding mechanisms would be appropriate.

33 c. Recommendations for payment of administrative costs
34 associated with the fund.

35 d. Whether a board should be established to administer the

1 fund, and if not, what entity should be responsible for
2 administering the fund.

3 e. Any other related issues concerning the operation,
4 administration, purposes, and funding of the second injury
5 fund.

6 3. The interim study committee shall have the authority to
7 contract with an actuary to serve as a technical advisor in
8 completing the charge of the committee.

9 4. The interim study committee shall submit a report of
10 its findings and recommendations to the legislative council
11 and the general assembly by January 15, 1992.

12 Sec. 2. ASSESSMENT FOR 1991 AND 1992 FISCAL YEARS.

13 1. For the fiscal year commencing July 1, 1990, the
14 treasurer of state may assess a surcharge that applies to all
15 workers' compensation insurance policies and self-insurance
16 coverages of self-insurers subject to approval under section
17 87.4 or 87.11, including the state of Iowa coverages,
18 including any coverages for its departments, divisions,
19 agencies, commissions, and boards, or any political
20 subdivision coverages which are self-insured or held out to be
21 in any part self-insured. The surcharge shall not apply to
22 any reinsurance or retrocessional transaction under section
23 520.4 or 520.9. The treasurer of state shall base the
24 surcharge upon premiums paid or deposits required in the
25 fiscal year commencing July 1, 1989, as reported by the
26 commissioner of insurance. The surcharge shall be collected
27 by insurers from policyholders or employers, but an insurance
28 carrier or its agent shall not be entitled to any portion of
29 the surcharge as a fee or commission for its collection. The
30 surcharge is not subject to any taxes, licenses, or fees.
31 However, the treasurer of state shall not collect over four
32 hundred thousand dollars in assessing the surcharge.

33 2. For the fiscal year commencing July 1, 1991, the
34 treasurer of state may assess a surcharge as provided in
35 subsection 1, except that the surcharge shall be based upon

1 premiums paid or deposits required in the fiscal year
2 commencing July 1, 1990, as reported by the commissioner of
3 insurance, and that the treasurer of state shall not collect
4 over seven hundred thousand dollars in assessing the
5 surcharge, unless the general assembly authorizes a greater
6 amount to be assessed.

7 3. The surcharges collected pursuant to this section shall
8 be deposited in the second injury fund, and may be used for
9 the payment of claims, settlements, and administrative costs.
10 The surcharges imposed in this section are in addition to, and
11 not in lieu of, any other assessments authorized by law.

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

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

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

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

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

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

17 Sec. 3. EFFECTIVE DATE AND RETROACTIVITY PROVISIONS.

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

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SENATE FILE 502

S-3245

1 Amend Senate File 502 as follows:
2 1. By striking everything after the enacting
3 clause and inserting the following:
4 "Section 1. SECOND INJURY FUND STUDY COMMITTEE.
5 1. The legislative council is requested to
6 establish an interim study committee to examine the
7 operation of the second injury fund. The study
8 committee shall consist of the following members:
9 a. The attorney general or the attorney general's
10 designee.
11 b. The industrial commissioner or the
12 commissioner's designee.
13 c. An employer insured under a workers'
14 compensation insurance policy, from the business
15 sector.
16 d. The director of the department of employment
17 services, or the director's designee.
18 e. Two attorneys from the Iowa workers'
19 compensation advisory committee, one of whom
20 represents claimants in workers' compensation cases,
21 and one of whom represents defendants in workers'
22 compensation cases.
23 f. The commissioner of insurance, or the
24 commissioner's designee.
25 g. A representative of a labor union,
26 organization, or association.
27 h. A representative of a workers' compensation
28 liability insurance carrier.
29 i. A number of legislative members, as determined
30 by the legislative council.
31 2. In examining the operation of the second injury
32 fund, the interim study committee shall address the
33 following issues:
34 a. The long-term needs and goals of the fund.
35 b. Whether current funding mechanisms are
36 sufficient to adequately finance the fund, and if not,
37 what types of additional funding mechanisms would be
38 appropriate.
39 c. Recommendations for payment of administrative
40 costs associated with the fund.
41 d. Whether a board should be established to
42 administer the fund, and if not, what entity should be
43 responsible for administering the fund.
44 e. Any other related issues concerning the
45 operation, administration, purposes, and funding of
46 the second injury fund.
47 3. The interim study committee shall have the
48 authority to contract with an actuary to serve as a
49 technical advisor in completing the charge of the
50 committee.

S-3245

Page 2

1 4. The interim study committee shall submit a
2 report of its findings and recommendations to the
3 legislative council and the general assembly by
4 January 15, 1992.

5 Sec. 2. ASSESSMENT FOR 1991 AND 1992 FISCAL YEARS.

6 1. For the fiscal year commencing July 1, 1990,
7 the treasurer of state may assess a surcharge that
8 applies to all workers' compensation insurance
9 policies and self-insurance coverages of self-insurers
10 subject to approval under section 87.4 or 87.11,
11 including the state of Iowa coverages, including any
12 coverages for its departments, divisions, agencies,
13 commissions, and boards, or any political subdivision
14 coverages which are self-insured or held out to be in
15 any part self-insured. The surcharge shall not apply
16 to any reinsurance or retrocessional transaction under
17 section 520.4 or 520.9. The treasurer of state shall
18 base the surcharge upon premiums paid or deposits
19 required in the fiscal year commencing July 1, 1989,
20 as reported by the commissioner of insurance. The
21 surcharge shall be collected by insurers from
22 policyholders or employers, but an insurance carrier
23 or its agent shall not be entitled to any portion of
24 the surcharge as a fee or commission for its
25 collection. The surcharge is not subject to any
26 taxes, licenses, or fees. However, the treasurer of
27 state shall not collect over four hundred thousand
28 dollars in assessing the surcharge.

29 2. For the fiscal year commencing July 1, 1991,
30 the treasurer of state may assess a surcharge as
31 provided in subsection 1, except that the surcharge
32 shall be based upon premiums paid or deposits required
33 in the fiscal year commencing July 1, 1990, as
34 reported by the commissioner of insurance, and that
35 the treasurer of state shall not collect over seven
36 hundred thousand dollars in assessing the surcharge,
37 unless the general assembly authorizes a greater
38 amount to be assessed.

39 3. The surcharges collected pursuant to this
40 section shall be deposited in the second injury fund,
41 and may be used for the payment of claims,
42 settlements, and administrative costs. The surcharges
43 imposed in this section are in addition to, and not in
44 lieu of, any other assessments authorized by law.

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

48 5. a. If an insurer, policyholder, or self-
49 insurer withdraws from doing business in this state
50 before the surcharges authorized by this section

S-3245

Page 3

1 become due, or fails or neglects to pay the surcharge
2 imposed, the treasurer of state shall at once proceed
3 to collect the surcharge, and may employ such legal
4 process as may be necessary for that purpose, and when
5 so collected shall deposit the surcharge into the
6 second injury fund. The treasurer may bring the suit
7 in any court of this state having jurisdiction, and
8 reasonable attorney's fees may be taxed as costs in
9 the suit.

10 b. If the surcharges imposed by this section are
11 not paid or transferred when due, the insurer,
12 policyholder, or self-insurer responsible for the
13 failure shall be required to pay, as part of the
14 surcharge, interest on the surcharge at the rate of
15 one and one-half percent per month for each month or
16 fraction of a month delinquent. If the treasurer of
17 state prevails in any dispute concerning the
18 assessment of a surcharge which has not been paid or
19 transferred, interest shall be paid upon the amount
20 found due to the state at the rate of one and one-half
21 percent per month for each month or fraction of a
22 month delinquent.

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

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

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

40 Sec. 3. EFFECTIVE DATE AND RETROACTIVITY
41 PROVISIONS.

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

46 2. By renumbering as necessary.

By AL STURGEON
LINN FUHRMAN

S-3245 FILED APRIL 1, 1991

Adopted 4/4/91

**SENATE FILE 502
FISCAL NOTE**

A fiscal note for Senate File 502 as amended by S-3245 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 502 as amended by S-3245 modifies the funding for the workers' compensation Second Injury Fund by allowing for a surcharge assessment against all workers' compensation insurance carriers and self-insureds. The total amount charged to companies is to be based on an estimate of the amount necessary to pay the claims of the Fund and is to be limited to \$400,000 for FY 1991 and \$700,000 for FY 1992.

The Legislative Council is to establish an interim study committee to examine and report on the operation and financial adequacy of the Second Injury Fund.

Senate File 502 becomes effective upon enactment and the surcharge is retroactive to July 1, 1990.

ASSUMPTIONS:

1. Surcharge assessments will equal the maximum allowable for FY 1991 and FY 1992.
2. Collections for work-related deaths per current law will be \$325,000 for FY 1991 and \$250,000 for FY 1992.
3. All collections will be expended to pay claims in the same fiscal year.
4. Administrative expenses associated with the Fund are currently charged to the General Fund, but would be transferred to the Second Injury Fund. The cost estimate for FY 1992 is as follows:
 - a. \$97,000 for 2 attorneys in the Attorney General's (AG) Office.
 - b. \$20,717 for 1 secretary in the AG's Office.
 - c. \$28,686 for 1 investigator in the AG's Office.
 - d. \$17,375 support for the AG's Office.
 - e. \$6,385 for 0.2 FTE in the State Treasurer's Office.

FISCAL IMPACT:

Senate File 502 will increase revenues to the Second Injury Fund by \$400,000 for FY 1991 and \$700,000 for FY 1992. Expenditures from the General Fund will decrease by \$170,163 for FY 1992.

Sources: State Treasurer
Attorney General
Department of Employment Services (LSB 2706SV.2, MAS)

TITLED APRIL 4, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

H-3613

Page 3

1 consistent allocation methodology. The surcharge is
2 collectable by an insurer or from its policyholders if
3 the insured employer fails to pay the insurer. An
4 insurance carrier, its agent, or a third-party
5 administrator shall not be entitled to any portion of
6 the surcharge as a fee or commission for its
7 collection. The surcharge is not subject to any
8 taxes, licenses, or fees. The surcharge is not deemed
9 to be an assessment or tax, but shall be deemed an
10 additional benefit paid for injuries compensable under
11 the second injury fund. However, the treasurer of
12 state shall not collect over four hundred thousand
13 dollars in assessing the surcharge.

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

21 3. The surcharges collected pursuant to this
22 section shall be deposited in the second injury fund,
23 and may be used for the payment of claims,
24 settlements, and administrative costs. The expenses
25 incurred by the treasurer of state, the attorney
26 general, the second injury fund, the task force, or
27 the department of revenue and finance, in connection
28 with the second injury fund and may be paid from the
29 fund."

30 2. Page 4, line 8, by striking the words "legal
31 contest" and inserting the following: "action".

32 3. Page 4, by inserting after line 13 the
33 following:

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

39 4. By renumbering as necessary.

By COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS
RENAUD of Polk, Chairperson

H-3613 FILED APRIL 12, 1991

Adopted as amended by 3695 4/18/91 (p. 1256)

SENATE FILE 502

H-3694

1 Amend the amendment, H-3613, to Senate File 502, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by inserting after line 38, the
5 following:
6 "The task force shall be exempt from the provisions
7 of section 69.16."

By SPEAR of Lee

H-3694 FILED APRIL 17, 1991

Law 4/18/91 (p 1356)

SENATE FILE 502

H-3695

1 Amend amendment, H-3613, to Senate File 502, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by inserting after line 29 the
5 following:
6 "The voting members listed in paragraphs "c", "e",
7 "g", and "h" shall be appointed by the treasurer of
8 state."

By BEATTY of Warren
SPEAR of Lee

H-3695 FILED APRIL 17, 1991

Adopted 4/18/91 (p 1355)

SENATE FILE 502

H-3613

1 Amend Senate File 502, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 1, line 1 through page 3,
4 line 11 and inserting the following:

5 "Section 1. SECOND INJURY FUND TASK FORCE
6 ESTABLISHED.

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

10 a. The attorney general or the attorney general's
11 designee.

12 b. The industrial commissioner or the
13 commissioner's designee.

14 c. An employer insured under a workers'
15 compensation insurance policy, from the business
16 sector.

17 d. The director of the department of employment
18 services, or the director's designee.

19 e. Two attorneys from the Iowa workers'
20 compensation advisory committee, one of whom
21 represents claimants in workers' compensation cases,
22 and one of whom represents defendants in workers'
23 compensation cases.

24 f. The commissioner of insurance, or the
25 commissioner's designee.

26 g. A representative of a labor union,
27 organization, or association.

28 h. A representative of a workers' compensation
29 liability insurance carrier.

30 The task force shall also consist of four ex
31 officio, nonvoting legislative members, one appointed
32 by the president of the senate, in consultation with
33 the majority leader of the senate, one appointed by
34 the minority leader of the senate, one appointed by
35 the speaker of the house of representatives, in
36 consultation with the majority leader of the house of
37 representatives, and one appointed by the minority
38 leader of the house of representatives.

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

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

45 a. The long-term needs and goals of the fund.

46 b. Whether current funding mechanisms are
47 sufficient to adequately finance the fund, and if not,
48 what types of additional funding mechanisms would be
49 appropriate.

50 c. Recommendations for payment of administrative

H-3613

Page 2

1 costs associated with the fund.
2 d. Changes in the administrative structure
3 concerning the fund or a replacement payment
4 mechanism.
5 e. The role and purpose served by the second
6 injury fund within the workers' compensation system.
7 f. Any other related issues concerning the
8 operation, administration, purposes, and funding of
9 the second injury fund.
10 4. The task force may contract for professional
11 services necessary for completion of the charge of the
12 task force.
13 5. Actual and necessary expenses of the task force
14 shall be paid from the second injury fund.
15 6. In addition to organizing and administering the
16 task force, the treasurer of state, in consultation
17 with the legislative fiscal bureau, shall examine the
18 financial condition of the fund, including, but not
19 limited to, any trends concerning the fund. The
20 treasurer, in consultation with the legislative fiscal
21 bureau, shall prepare a report of the findings of the
22 examination and transmit the report to the task force.
23 7. The task force shall submit a report of its
24 findings and recommendations to the committee on
25 business and labor relations of the senate and the
26 committee on labor and industrial relations of the
27 house of representatives by January 15, 1992.
28 Sec. 2. SURCHARGE FOR 1991 AND 1992 FISCAL YEARS.
29 1. For the fiscal year commencing July 1, 1990,
30 the treasurer of state may assess a surcharge on
31 workers' compensation weekly benefits paid in the
32 state during the immediately preceding fiscal year.
33 The surcharge is payable by all self-insured employers
34 making weekly benefit payments and all insurers making
35 weekly benefit payments on behalf of insured
36 employers. The surcharge applies to all workers'
37 compensation insurance policies and self-insurance
38 coverages of employers approved for self-insurance by
39 the commissioner of insurance pursuant to section 87.4
40 or 87.11, and to the state of Iowa, its departments,
41 divisions, agencies, commissions, and boards, or any
42 political subdivision coverages whether insured or
43 self-insured. The surcharge shall not apply to any
44 reinsurance or retrocessional transaction under
45 section 520.4 or 520.9. The treasurer of state shall
46 base the surcharge for each payor upon the payor's pro
47 rata share of weekly benefits paid in the state during
48 the immediately preceding fiscal year. The treasurer
49 may use reports of weekly benefits paid derived from
50 the last completed policy or reporting year, or other

HOUSE AMENDMENT TO
SENATE FILE 502

S-3522

1 Amend Senate File 502, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 1, line 1 through page 3,
4 line 11 and inserting the following:

5 "Section 1. SECOND INJURY FUND TASK FORCE
6 ESTABLISHED.

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

10 a. The attorney general or the attorney general's
11 designee.

12 b. The industrial commissioner or the
13 commissioner's designee.

14 c. An employer insured under a workers'
15 compensation insurance policy, from the business
16 sector.

17 d. The director of the department of employment
18 services, or the director's designee.

19 e. Two attorneys from the Iowa workers'
20 compensation advisory committee, one of whom
21 represents claimants in workers' compensation cases,
22 and one of whom represents defendants in workers'
23 compensation cases.

24 f. The commissioner of insurance, or the
25 commissioner's designee.

26 g. A representative of a labor union,
27 organization, or association.

28 h. A representative of a workers' compensation
29 liability insurance carrier.

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

33 The task force shall also consist of four ex
34 officio, nonvoting legislative members, one appointed
35 by the president of the senate, in consultation with
36 the majority leader of the senate, one appointed by
37 the minority leader of the senate, one appointed by
38 the speaker of the house of representatives, in
39 consultation with the majority leader of the house of
40 representatives, and one appointed by the minority
41 leader of the house of representatives.

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

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

48 a. The long-term needs and goals of the fund.

49 b. Whether current funding mechanisms are
50 sufficient to adequately finance the fund, and if not,

S-3522

Page 2

1 what types of additional funding mechanisms would be
2 appropriate.

3 c. Recommendations for payment of administrative
4 costs associated with the fund.

5 d. Changes in the administrative structure
6 concerning the fund or a replacement payment
7 mechanism.

8 e. The role and purpose served by the second
9 injury fund within the workers' compensation system.

10 f. Any other related issues concerning the
11 operation, administration, purposes, and funding of
12 the second injury fund.

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

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

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

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

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

32 1. For the fiscal year commencing July 1, 1990,
33 the treasurer of state may assess a surcharge on
34 workers' compensation weekly benefits paid in the
35 state during the immediately preceding fiscal year.
36 The surcharge is payable by all self-insured employers
37 making weekly benefit payments and all insurers making
38 weekly benefit payments on behalf of insured
39 employers. The surcharge applies to all workers'
40 compensation insurance policies and self-insurance
41 coverages of employers approved for self-insurance by
42 the commissioner of insurance pursuant to section 87.4
43 or 87.11, and to the state of Iowa, its departments,
44 divisions, agencies, commissions, and boards, or any
45 political subdivision coverages whether insured or
46 self-insured. The surcharge shall not apply to any
47 reinsurance or retrocessional transaction under
48 section 520.4 or 520.9. The treasurer of state shall
49 base the surcharge for each payor upon the payor's pro
50 rata share of weekly benefits paid in the state during

S-3522

Page 3

1 the immediately preceding fiscal year. The treasurer
2 may use reports of weekly benefits paid derived from
3 the last completed policy or reporting year, or other
4 consistent allocation methodology. The surcharge is
5 collectable by an insurer or from its policyholders if
6 the insured employer fails to pay the insurer. An
7 insurance carrier, its agent, or a third-party
8 administrator shall not be entitled to any portion of
9 the surcharge as a fee or commission for its
10 collection. The surcharge is not subject to any
11 taxes, licenses, or fees. The surcharge is not deemed
12 to be an assessment or tax, but shall be deemed an
13 additional benefit paid for injuries compensable under
14 the second injury fund. However, the treasurer of
15 state shall not collect over four hundred thousand
16 dollars in assessing the surcharge.

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

24 3. The surcharges collected pursuant to this
25 section shall be deposited in the second injury fund,
26 and may be used for the payment of claims,
27 settlements, and administrative costs. The expenses
28 incurred by the treasurer of state, the attorney
29 general, the second injury fund, the task force, or
30 the department of revenue and finance, in connection
31 with the second injury fund and may be paid from the
32 fund."

33 2. Page 4, line 8, by striking the words "legal
34 contest" and inserting the following: "action".

35 3. Page 4, by inserting after line 13 the
36 following:

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

42 4. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3522 FILED APRIL 22, 1991

Senate concurred 4/24/91 (p. 1448)

SENATE FILE 502

S-3553

1 Amend the amendment, S-3522, to Senate File 502, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 3, line 31, by striking the words "fund
5 and" and inserting the following: "fund,".

6 2. Page 3, line 32, by inserting after the word
7 "fund." the following: "However, the payment of
8 administrative costs and expenses incurred by the
9 treasurer of state, the attorney general, the second
10 injury fund, the task force, and the department of
11 revenue and finance, as authorized in this subsection,
12 shall only be permitted for administrative costs and
13 expenses incurred in the fiscal year commencing July
14 1, 1991, and shall not exceed one hundred seventy
15 thousand dollars, unless further action is taken by
16 the general assembly."

By AL STURGEON
LINN FUHRMAN

S-3553 FILED APRIL 24, 1991

ADOPTED (p. 498)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 502
H-3890

1 Amend the amendment, S-3522, to Senate File 502, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 3, line 31, by striking the words "fund
5 and" and inserting the following: "fund,".

6 2. Page 3, line 32, by inserting after the word
7 "fund." the following: "However, the payment of
8 administrative costs and expenses incurred by the
9 treasurer of state, the attorney general, the second
10 injury fund, the task force, and the department of
11 revenue and finance, as authorized in this subsection,
12 shall only be permitted for administrative costs and
13 expenses incurred in the fiscal year commencing July
14 1, 1991, and shall not exceed one hundred seventy
15 thousand dollars, unless further action is taken by
16 the general assembly."

RECEIVED FROM THE SENATE

H-3890 FILED APRIL 25, 1991

House concurred 4/29/91 (p 1872)

STURGEON, CH.
RUNNING
FURMAN

SSB 330
BUSINESS & LABOR RELATIONS

SENATE FILE 502
BY (PROPOSED COMMITTEE ON
BUSINESS AND LABOR
RELATIONS BILL BY
CHAIRPERSON RUNNING)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to workers' health, safety, and welfare, by
2 providing funding for the second injury fund and providing
3 applicability and effective dates.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 85.65, Code 1991, is amended to read as
2 follows:

3 85.65 PAYMENTS TO SECOND INJURY FUND.

4 1. The employer, or, if insured, the insurance carrier in
5 each case of compensable injury causing death, shall pay to
6 the treasurer-of-state second injury fund board for the second
7 injury fund the sum of four thousand dollars in a case where
8 there are dependents and fifteen thousand dollars in a case
9 where there are no dependents. The payment shall be made at
10 the time compensation payments are begun, or at the time the
11 burial expenses are paid in a case where there are no
12 dependents. However, the payments shall be required only in
13 cases of injury resulting in death coming within the purview
14 of this chapter and occurring after July 1, 1978. These
15 payments shall be in addition to any payments of compensation
16 to injured employees or their dependents, or of burial
17 expenses as provided in this chapter.

18 2. For the purpose of providing for revenue for the second
19 injury fund, every authorized self-insurer approved by the
20 commissioner of insurance pursuant to section 87.11, every
21 policyholder of an authorized self-insurance group approved by
22 the commissioner pursuant to section 87.4, and every workers'
23 compensation policyholder of a plan or policy insured pursuant
24 to this chapter or rules adopted pursuant to this chapter,
25 shall be liable for payment of an annual surcharge in
26 accordance with this section.

27 3. The annual surcharge shall apply to all workers'
28 compensation insurance policies and self-insurance coverages
29 which are written or renewed on or after July 1, 1992,
30 including the state of Iowa coverages, including any coverages
31 for its departments, divisions, agencies, commissions, and
32 boards, or any political subdivision coverages which are self-
33 insured or held out to be in any part self-insured. The
34 surcharge shall not apply to any reinsurance or retrocessional
35 transaction under section 520.4 or 520.9.

1 4. On June 1, 1992, and each year thereafter, the second
2 injury fund board shall estimate the amount of benefits and
3 administrative expenses payable from the second injury fund
4 during the ensuing calendar year, and shall calculate the
5 total amount of the annual surcharge to be imposed during the
6 ensuing calendar year upon all workers' compensation
7 policyholders and authorized self-insurers based upon premiums
8 paid or deposits required in the previous year as reported by
9 the commissioner of insurance. The amount of the annual
10 surcharge to be imposed upon all policyholders and self-
11 insurers shall equal the moneys estimated by the board to be
12 payable from the second injury fund during the calendar year
13 for which the annual surcharge is to be imposed, except that
14 the surcharge shall not exceed three percent of the
15 policyholder's or authorized self-insurer's workers'
16 compensation required deposits, premiums paid or due, or
17 assessments paid or due a self-insurance group, and provided
18 that a minimum annual surcharge of ten dollars per
19 policyholder or authorized self-insurer shall be paid. The
20 surcharge shall be collected from policyholders by each
21 insurer at the same time and in the same manner that a premium
22 is collected, but an insurance carrier or its agent shall not
23 be entitled to any portion of the surcharge as a fee or
24 commission for its collection. The surcharge is not subject
25 to any taxes, licenses, or fees.

26 5. All surcharge amounts imposed by this section shall be
27 paid to the second injury fund board and shall be deposited to
28 the credit of the second injury fund.

29 6. Such surcharge amounts shall be paid annually by
30 insurers and self-insurers. Insurers shall pay the amounts
31 not later than the thirtieth day of the month following the
32 end of the year in which the amount is received from
33 policyholders. For purposes of the second injury fund
34 surcharge, "insurer" includes a self-insurance group approved
35 by the commissioner of insurance pursuant to section 87.4. An

1 authorized self-insurer approved by the commissioner of
2 insurance pursuant to section 87.11 shall pay the surcharge
3 not later than July 30 of the year in which the surcharge is
4 imposed.

5 7. If a policyholder or self-insurer fails to make payment
6 of the surcharge or an insurer fails to make timely transfer
7 to the second injury fund board of surcharges actually
8 collected from policyholders, as required by this section, a
9 penalty of fifteen percent of the surcharge unpaid, or
10 untransferred, shall be assessed against the liable
11 policyholder, self-insurer, or insurer. Penalties assessed
12 under this subsection shall be collected in a civil action by
13 a summary proceeding brought by the board on behalf of the
14 fund.

15 Sec. 2. NEW SECTION. 85.65A CARRIERS WITHDRAWING FROM
16 STATE LIABLE FOR SURCHARGE IMPOSED -- SECOND INJURY FUND
17 EMPOWERED TO COLLECT.

18 If an insurance carrier withdraws from doing business in
19 this state before the tax becomes due according to section
20 85.65, or fails or neglects to pay the surcharge imposed, the
21 second injury fund board shall at once proceed to collect the
22 surcharge, and the board may employ such legal process as may
23 be necessary for that purpose and when so collected the board
24 shall pay the surcharge into the second injury fund. The suit
25 may be brought by the board, in any court of this state having
26 jurisdiction, and reasonable attorney's fees may be taxed as
27 costs in the suit.

28 Sec. 3. NEW SECTION. 85.65B DELINQUENT SURCHARGE,
29 INTEREST, RATE -- OVERPAYMENT OF SURCHARGE, CREDIT.

30 1. If the surcharge imposed by section 85.65 is not paid
31 or transferred when due, the policyholder, self-insurer, or
32 insurer responsible for the failure shall be required to pay,
33 as part of the surcharge, interest on the surcharge at the
34 rate of one and one-half percent per month for each month or
35 fraction of a month delinquent. If the second injury fund

1 board prevails in any dispute concerning an assessment of
2 surcharge which has not been paid or transferred, interest
3 shall be paid upon the amount found due to the state at the
4 rate of one and one-half percent per month for each month or
5 fraction of a month delinquent.

6 2. An insurer is not liable for a surcharge which is not
7 paid to the insurer by the policyholder provided the insurer
8 has made good faith efforts to collect the surcharge from the
9 policyholder. An insurer shall report a policyholder who
10 fails to pay a surcharge within thirty days of its due date to
11 the second injury fund board.

12 3. In any legal contest concerning the amount of the
13 surcharge imposed under section 85.65 for a calendar year, the
14 quarterly installments for the following year shall continue
15 to be made based upon the amount assessed by the second injury
16 fund board. If after the end of any year, the amount of the
17 actual surcharge due is less than the total amount of the
18 installments actually paid, the excess amount paid shall be
19 credited against the tax for the following year and deducted
20 from the quarterly installment otherwise due on June 1.

21 Sec. 4. Section 85.66, Code 1991, is amended to read as
22 follows:

23 85.66 SECOND INJURY FUND -- PAYMENTS -- CUSTODIAN.

24 When the total amount of the payments provided for in the
25 preceding section, together with accumulated interest and
26 earnings, equals or exceeds one two million dollars no-further
27 contributions to and surcharge assessments for the fund shall
28 be required suspended commencing with the next quarter; but
29 when, thereafter, the amount of the sum is reduced below five
30 hundred-thousand one million dollars by reason of payments
31 made to employees pursuant to this division, contributions and
32 surcharge assessments shall be resumed commencing with the
33 next quarter and shall continue until the sum, together with
34 accumulated interest and earnings, again amounts to one two
35 million dollars. The treasurer-of-state second injury fund

1 board shall determine when contributions and surcharge
2 assessments shall be made to for the fund and when they shall
3 be suspended and the board may enforce the collection of
4 contributions and surcharge assessments.

5 Moneys so collected shall constitute a "Second Injury
6 Fund", in the custody of the treasurer of state, to be
7 disbursed only for the purposes stated in this division, and
8 shall not at any time be appropriated or diverted to any other
9 use or purpose. The treasurer of state shall invest any
10 surplus moneys of the fund in securities which constitute
11 legal investments for state funds under the laws of this
12 state, and may sell any of the securities in which the fund is
13 invested, if necessary, for the proper administration or in
14 the best interests of the fund. Disbursements from the fund
15 shall be paid approved by the treasurer-of-state second injury
16 fund board only upon the written order of the industrial
17 commissioner. The treasurer-of-state board shall quarterly
18 prepare a statement of the fund, setting forth the balance of
19 moneys in the fund, the income of the fund, specifying the
20 source of all income, the payments out of the fund, specifying
21 the various items of payments, and setting forth the balance
22 of the fund remaining to its credit. The statement shall be
23 open to public inspection in the office of the treasurer-of
24 state board.

25 Sec. 5. Section 85.67, Code 1991, is amended to read as
26 follows:

27 85.67 ADMINISTRATION OF FUND -- BOARD ESTABLISHED --
28 SPECIAL COUNSEL.

29 1. A second injury fund board is established. The board
30 shall consist of five members, appointed or designated as
31 follows:

32 a. The director of the department of employment services,
33 or the director's designee.

34 b. An attorney practicing in the area of workers'
35 compensation, appointed by the governor.

1 c. The commissioner of insurance, or the commissioner's
2 designee.

3 d. A representative of a labor union, organization, or
4 association, appointed by the governor.

5 e. A representative of a workers' compensation liability
6 insurance carrier, appointed by the governor.

7 2. Members of the board shall serve staggered terms of
8 four years beginning on July 1 and ending on June 30.
9 Vacancies on the board shall be filled in the same manner as
10 original appointments or designations.

11 3. Members of the board shall qualify by taking the oath
12 of officer prescribed by law for state officers. At its first
13 meeting of each year, the board shall organize by electing a
14 chairperson and vice chairperson for terms of one year. The
15 board shall meet at least four times each year and shall hold
16 special meetings when called by the chairperson or, in the
17 absence of the chairperson, by the vice chairperson, or by the
18 chairperson upon written request of three members of the
19 board.

20 4. The treasurer of state shall be charged with the
21 conservation, investment, and custody of the assets of the
22 second injury fund, and the board is responsible for the
23 administration and collection of contributions payments and
24 assessments to the fund as well as the approval of settlements
25 and claims based upon the awards by the industrial
26 commissioner. The attorney general shall appoint a staff
27 member to represent the treasurer-of-state board and the fund
28 in all proceedings and matters arising under this division.

29 5. In making an award under this division, the industrial
30 commissioner shall specifically find the amount the injured
31 employee shall be paid weekly, the number of weeks of
32 compensation which shall be paid by the employer, the date
33 upon which payments out of the fund shall begin, and, if
34 possible, the length of time the payments shall continue.

35 6. The board may contract for services from professionals

1 in order to fulfill its duties. The board shall contract with
2 an actuary to serve as its technical advisor. The board shall
3 cause an annual actuarial valuation to be made of the assets
4 and liabilities of the fund and shall prepare an annual
5 statement of the surcharge amounts to be assessed to the fund
6 pursuant to the funding mechanisms established under this
7 division. The board shall publish the valuation of assets and
8 liabilities and the statement of receipts and disbursements of
9 the fund, and shall include this information in a report to
10 the general assembly on an annual basis covering each fiscal
11 year.

12 7. The members of the board shall be paid actual and
13 necessary expenses incurred in the performance of their duties
14 and, in addition, members who are not state employees shall
15 receive per diem compensation at the rate specified in section
16 7E.6. The per diem and expenses, as well as the
17 administrative costs of the board, including, but not limited
18 to, the compensation and expenses of an actuary, shall be
19 assessed against and may be paid from the fund.

20 Sec. 6. Section 85.68, Code 1991, is amended to read as
21 follows:

22 85.68 ACTIONS.

23 The treasurer-of-state second injury fund board, on behalf
24 of the second injury fund created under this division, shall
25 have a cause of action under section 85.22 to the same extent
26 as an employer against any person not in the same employment
27 by reason of whose negligence or wrong the subsequent injury
28 of the previously disabled person was caused. The action
29 shall be brought by the treasurer-of-state board on behalf of
30 the fund, and any recovery, less the necessary and reasonable
31 expenses incurred by the treasurer-of-state board, shall be
32 paid to the treasurer-of-state board and credited to the fund.

33 Sec. 7. NEW SECTION. 85.68A EXPENSES OF ADMINISTRATION
34 PAYABLE FROM FUND.

35 The expenses incurred by the treasurer of state, second

1 injury fund board, the attorney general, or the department of
2 revenue and finance, in connection with the second injury
3 fund, are chargeable to the second injury fund and may be made
4 paid from the fund. The second injury fund board may enter
5 into one or more agreements authorized under chapter 28E with
6 the treasurer of state, department of revenue and finance, and
7 the attorney general to provide compensation for the
8 administrative functions provided by those departments or
9 officers in connection with the fund.

10 Sec. 8. NEW SECTION. 85.68B RULES.

11 The second injury fund board, in cooperation with the
12 treasurer of state, shall adopt rules, pursuant to chapter
13 17A, as necessary to administer the second injury fund and
14 enforce the second injury fund surcharge assessments.

15 Sec. 9. FUND OPERATION STUDY COMMITTEE. The legislative
16 council is requested to establish an interim study committee
17 to examine the operation of the second injury fund. The study
18 committee shall consider whether current mechanisms are
19 sufficient to adequately finance the fund. The study
20 committee shall submit a report of its findings and
21 recommendations to the legislative council and the general
22 assembly by January 15, 1992.

23 Sec. 10. ASSESSMENT FOR 1991 AND 1992 FISCAL YEARS.

24 1. For the fiscal year commencing July 1, 1990, the
25 treasurer of state may assess a surcharge that applies to all
26 workers' compensation liability insurance carriers. The
27 surcharge shall be based upon a standard rate applied to the
28 total dollar volume of premiums received by the carrier
29 pursuant to compensation liability policies issued for a
30 fiscal period. However, the treasurer of state shall not
31 collect over four hundred thousand dollars in assessing the
32 surcharge.

33 2. For the fiscal year commencing July 1, 1991, the second
34 injury fund board may assess a surcharge that applies to all
35 workers' compensation liability insurance carriers. The

1 surcharge shall be based upon a standard rate applied to the
2 total dollar volume of premiums received by the carrier
3 pursuant to compensation liability policies issued for a
4 fiscal period. However, the board shall not collect over
5 seven hundred thousand dollars in assessing the surcharge,
6 unless the general assembly authorizes a greater amount to be
7 assessed.

8 3. The surcharges collected pursuant to this section shall
9 be deposited in the second injury fund, and may be used for
10 the payment of claims, settlements, administrative and legal
11 costs of the second injury fund board, and expenses and per
12 diem compensation for board members. The surcharges imposed
13 under this section are in addition to, and not in lieu of,
14 other assessments authorized pursuant to this Act.

15 Sec. 11. EFFECTIVE DATE AND RETROACTIVITY PROVISIONS.
16 Subsections 1 and 3 of section 10 of this Act, being deemed of
17 immediate importance, take effect upon enactment, and apply
18 retroactively to the fiscal year beginning July 1, 1990.

19 EXPLANATION

20 Sections 1 through 3 modify the funding mechanism for the
21 workers' compensation second injury fund and provide
22 procedural and enforcement authority for collecting the newly
23 imposed surcharge. Currently the second injury fund is
24 financed by a payment to the fund from each death benefit paid
25 under the workers' compensation system. The bill adds to the
26 assessment upon death benefit payments a surcharge based upon
27 premium dollars or self-insurance costs.

28 Section 4 increases the minimum and maximum cap for the
29 fund's balance and makes conforming changes with sections 1
30 through 3.

31 Sections 5 through 8 establish a five-member second injury
32 fund board to administer the second injury fund, to assess and
33 collect payments to the fund, and to approve settlements and
34 claims from the fund. The board is required to compile an
35 annual actuarial report of the fund. The treasurer of state

1 would remain the custodian of the assets of the fund. Section
2 7 provides that administrative expenses related to the fund
3 would be payable from the fund.

4 Section 9 requests the legislative council to establish an
5 interim study committee to examine and report on the operation
6 and financial adequacy of the second injury fund.

7 Sections 10 and 11 establish workers' compensation
8 insurance or self-insurance surcharges for the fiscal years
9 beginning July 1, 1990, and July 1, 1991.

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SENATE FILE 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.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 502, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 10, 1991

TERRY E. BRANSTAD
Governor