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4-8-98

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SENATE FILE  
BY IVERSON

(COMPANION TO LSB 2767YH  
BY SIEGRIST)

(P. 1055)  
Passed Senate, Date 4-6-98 Passed House, Date 4-8-98  
Vote: Ayes 47 Nays 0 Vote: Ayes 99 Nays 0  
Approved April 17, 1998

A BILL FOR

1 An Act relating to workers' compensation by repealing the second  
2 injury compensation Act, eliminating the second injury fund,  
3 providing for the resolution of claims against the fund,  
4 including the imposition of an employer surcharge, providing  
5 for employee compensation for certain subsequent injuries, and  
6 providing an effective date.

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

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S.F. 540

REPERM

1 Section 1. Section 85.31, subsection 5, Code 1997, is  
2 amended to read as follows:

3 5. Except as otherwise provided by treaty, whenever, under  
4 the provisions of this chapter and chapters 86 and 87,  
5 compensation is payable to a dependent who is an alien not  
6 residing in the United States at the time of the injury, the  
7 employer shall be required to pay fifty percent of the  
8 compensation herein otherwise provided to such dependent, ~~and~~  
9 ~~the other fifty percent shall be paid into the second injury~~  
10 ~~fund in the custody of the treasurer of state.~~ But However,  
11 if the nonresident alien dependent is a citizen of a  
12 government having a compensation law which excludes citizens  
13 of the United States, either resident or nonresident, from  
14 partaking of the benefits of such law in as favorable degree  
15 as herein extended to the nonresident alien, ~~then said the~~  
16 ~~compensation which would otherwise~~ shall not be payable to  
17 such dependent ~~shall be paid into the second injury fund in~~  
18 ~~the custody of the treasurer of state.~~

19 Sec. 2. Section 85.36, subsection 9, paragraph c,  
20 unnumbered paragraph 2, Code 1997, is amended by striking the  
21 unnumbered paragraph.

22 Sec. 3. Section 85.55, Code 1997, is amended to read as  
23 follows:

24 85.55 WAIVERS PROHIBITED -- PHYSICAL DEFECTS.

25 No employee or dependent to whom this chapter applies,  
26 shall have power to waive any of the provisions of this  
27 chapter in regard to the amount of compensation which may be  
28 payable to such employee or dependent hereunder. However, any  
29 person who has some physical defect which increases the risk  
30 of injury, may, subject to the approval of the industrial  
31 commissioner, enter into a written agreement with the  
32 employee's employer waiving compensation for injuries which  
33 may occur directly or indirectly because of such physical  
34 defect, ~~provided, however, that such waiver shall not affect~~  
35 ~~the employee's benefits to be paid from the second injury fund~~

1 ~~under the provisions of section 85.64.~~

2 Sec. 4. Section 85.63, Code 1997, is amended by striking  
3 the section and inserting in lieu thereof the following:

4 85.63 SUBSEQUENT INJURIES -- COMPENSATION.

5 1. If an employee has previously lost or lost the use of  
6 one hand, one arm, one foot, one leg, or one eye, which  
7 constitutes a functional impairment to the member of ten  
8 percent or more as determined by a physician, and the employee  
9 becomes permanently disabled by a compensable injury which has  
10 resulted in the loss of or loss of use of another such member  
11 or organ, the employer shall be liable to the employee for  
12 compensation for the degree of impairment which resulted from  
13 the latter injury as if there had been no pre-existing  
14 disability, and such additional compensation, if applicable,  
15 as provided in subsection 2.

16 2. If the difference in the number of weeks of  
17 compensation that would otherwise be payable for the degree of  
18 permanent industrial disability involved for the prior and  
19 latter injuries combined exceeds the total of the number of  
20 weeks of compensation that would have been payable for the  
21 previous loss of use of a member or organ and the number of  
22 weeks of compensation payable for the latter injury by fifty  
23 or more weeks, then the employee shall also be entitled to  
24 compensation from the employer for the number of weeks  
25 representing this difference after the expiration of the full  
26 period provided by law for compensation for the latter injury.

27 Sec. 5. Section 85A.7, subsection 3, Code 1997, is amended  
28 to read as follows:

29 3. When such occupational disease causes the death of an  
30 employee and there are no dependents entitled to compensation,  
31 then the employer shall pay the medical, hospital and burial  
32 expenses as is provided by the workers' compensation law, ~~and~~  
33 ~~shall also pay to the treasurer of the state for the use and~~  
34 ~~benefit of the second injury compensation fund such amount as~~  
35 ~~is required by the second injury compensation law.~~

1     Sec. 6. Section 86.12, unnumbered paragraph 1, Code 1997,  
2 is amended to read as follows:

3     The industrial commissioner may require any employer to  
4 supply the information required by section 86.10 or to file a  
5 report required by section 86.11, by written demand sent to  
6 the employer's last known address. Upon failure to supply  
7 such information or file such report within twenty days, the  
8 employer may be ordered to appear and show cause why the  
9 employer should not be subject to civil penalty of one hundred  
10 dollars for each occurrence. Upon such hearing, the  
11 industrial commissioner shall enter a finding of fact and may  
12 enter an order requiring such penalty to be paid into the  
13 second-injury general fund created by sections 85.63 to 85.69  
14 of the state. In the event the civil penalty assessed is not  
15 voluntarily paid the industrial commissioner may file a  
16 certified copy of such finding and order with the clerk of the  
17 court for the district in which the employer maintains a place  
18 of business. If the employer maintains no place of business  
19 in this state service shall be made as provided in chapter 85  
20 for nonresident employers. In such case the finding and order  
21 may be filed in any court of competent jurisdiction within  
22 this state.

23     Sec. 7. 1996 Iowa Acts, chapter 1211, section 25,  
24 subsections 3 and 4, are amended to read as follows:

25     3. The surcharges collected pursuant to this section shall  
26 be deposited in the second injury compensation claims fund  
27 established in section 9 of this Act.

28     4. The administrative costs and expenses incurred by the  
29 treasurer of state, the attorney general, the second injury  
30 compensation claims fund, or the department of revenue and  
31 finance, in connection with the second injury compensation  
32 claims fund, may be paid from the fund to the extent  
33 authorized by ~~1995-Iowa-Acts, chapter 219, section 25, and~~  
34 this section. However, the payment of administrative costs  
35 and expenses incurred by the treasurer of state, the attorney

1 general, the second injury compensation claims fund, and the  
2 department of revenue and finance, as authorized in this  
3 subsection, shall only be permitted for administrative costs  
4 and expenses incurred in the fiscal year commencing July 1,  
5 1996, and ending June 30, 1997, and shall not exceed \$170,000.

6 Sec. 8. 1996 Iowa Acts, chapter 1211, section 25,  
7 subsection 6, paragraph a, is amended to read as follows:

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

18 Sec. 9. DISPOSITION OF SECOND INJURY FUND CLAIMS --  
19 SURCHARGE.

20 1. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A  
21 second injury compensation claims fund is created within the  
22 office of the treasurer of state. The second injury  
23 compensation claims fund is to be used to pay claims involving  
24 the second injury compensation Act. The treasurer of state  
25 shall be charged with the conservation of the assets of the  
26 second injury compensation claims fund and the collection of  
27 contributions to the fund. The attorney general shall appoint  
28 a staff member to represent the treasurer of state and the  
29 fund in all proceedings and matters pertaining to the fund.  
30 Upon the effective date of this Act, moneys in the second  
31 injury fund shall be transferred to the second injury  
32 compensation claims fund.

33 2. SECOND INJURY FUND LIABILITY -- SURCHARGE ON EMPLOYERS.

34 a. Prior to each fiscal year commencing on or after the  
35 effective date of this Act, the commissioner of insurance

1 shall examine claims in which there has been an agreement for  
2 settlement or an award has been made involving the second  
3 injury compensation Act and shall determine the outstanding  
4 liability of such claims. The commissioner of insurance shall  
5 continue to examine claims as required by this section until  
6 all outstanding liabilities involving the second injury  
7 compensation Act are retired.

8     b. For each fiscal year commencing on or after the  
9 effective date of this Act and for subsequent fiscal years,  
10 the commissioner of insurance may adopt by rule, pursuant to  
11 chapter 17A, a surcharge on employers pursuant to the  
12 requirements of this section and payable to the second injury  
13 compensation claims fund if, pursuant to its annual  
14 examination of claims, the commissioner of insurance  
15 determines that insufficient funds are available in the second  
16 injury compensation claims fund to pay claims involving the  
17 second injury compensation Act. The surcharge shall apply to  
18 all workers' compensation insurance policies and self-  
19 insurance coverages of employers approved for self-insurance  
20 by the commissioner of insurance pursuant to section 87.4 or  
21 87.11, and to the state of Iowa, its departments, divisions,  
22 agencies, commissions, and boards, or any political  
23 subdivision coverages whether insured or self-insured. The  
24 surcharge shall not apply to any reinsurance or retrocessional  
25 transaction under section 520.4 or 520.9. The commissioner of  
26 insurance shall base the surcharge for each payor upon the  
27 payor's pro rata share of weekly benefits paid in the state  
28 during the immediately preceding fiscal year. The  
29 commissioner of insurance may use reports of weekly benefits  
30 paid derived from the last completed policy or reporting year,  
31 or other consistent allocation methodology. The surcharge is  
32 collectible by an insurer or from its policyholders if the  
33 insured employer fails to pay the insurer. An insurance  
34 carrier, its agent, or a third-party administrator shall not  
35 be entitled to any portion of the surcharge as a fee or

1 commission for its collection. The surcharge is not subject  
2 to any taxes, licenses, or fees. The surcharge is not deemed  
3 to be an assessment or tax, but shall be deemed an additional  
4 benefit paid for injuries compensable under the second injury  
5 compensation Act.

6 3. FINAL DISPOSITION OF CLAIMS. The industrial  
7 commissioner of the department of workforce development, in  
8 cooperation with the treasurer of state, shall resolve claims  
9 involving the second injury compensation Act as soon as  
10 possible through payment methods, such as, but not limited to,  
11 entering into lump sum settlements or purchasing of annuities.

12 4. ADMINISTRATIVE EXPENSES OF SPECIAL COUNSEL. For each  
13 fiscal year commencing on or after the effective date of this  
14 Act and for subsequent fiscal years, the attorney general  
15 shall not be compensated for administrative expenses incurred  
16 in connection with the second injury compensation claims fund.

17 Sec. 10. Sections 85.64, 85.65, 85.66, 85.67, 85.68, and  
18 85.69, Code 1997, are repealed.

19 Sec. 11. EFFECTIVE DATE. This Act, being deemed of  
20 immediate importance, takes effect upon enactment.

21 EXPLANATION

22 This bill repeals the second injury compensation Act. The  
23 second injury compensation Act provides that an employee who  
24 had previously lost the use of one hand, arm, foot, leg, or  
25 eye would be entitled to compensation for that loss from a  
26 separate second injury fund if the employee subsequently  
27 becomes permanently disabled by the loss of another member or  
28 organ which is compensable under workers' compensation  
29 provisions. Under current law, the employer is only liable  
30 for the degree of disability which resulted from the latter  
31 injury as if the previous injury did not occur. In lieu of  
32 compensation under the second injury compensation Act, the  
33 bill provides that if the employee who had previously lost the  
34 use of one hand, arm, foot, leg, or eye becomes permanently  
35 disabled by the loss of another member or organ, the employee

1 shall receive additional workers' compensation benefits based  
2 upon the difference between the compensation that would  
3 otherwise be payable for the degree of disability involved for  
4 both injuries combined and the compensation that would be  
5 payable for the prior and subsequent injury if determined  
6 separately.

7 The bill also establishes the process for settling unpaid  
8 claims and settlements arising out of the second injury  
9 compensation Act. The bill establishes a second injury  
10 compensation claims fund with the treasurer of state for  
11 payment of claims arising out of the second injury  
12 compensation Act and provides that any moneys in the second  
13 injury fund shall be transferred to this new fund.

14 The bill also directs the commissioner of insurance to  
15 examine the claims involving the second injury compensation  
16 Act and determine the outstanding liability for such claims.  
17 The bill provides that if the commissioner of insurance  
18 determines that there are insufficient funds in the second  
19 injury compensation claims fund to pay claims, the  
20 commissioner of insurance may impose, by rule, a surcharge on  
21 employers. The surcharge shall apply to all workers'  
22 compensation insurance policies and self-insurance coverages  
23 of employers approved for self-insurance by the commissioner  
24 of insurance and to the state of Iowa, its departments,  
25 divisions, agencies, commissions, and boards, or any political  
26 subdivision coverages whether insured or self-insured. The  
27 bill provides that this examination and surcharge process  
28 shall continue until the outstanding debt arising out of the  
29 second injury compensation Act is retired.

30 The bill also directs the industrial commissioner, in  
31 cooperation with the treasurer of state, to resolve to final  
32 disposition claims involving the second injury compensation  
33 Act as soon as possible through payment methods, such as, but  
34 not limited to, entering into lump sum settlements or  
35 purchasing of annuities. In addition, the attorney general

1 shall not be compensated from the second injury compensation  
2 claims fund for administrative expenses incurred in connection  
3 with the fund.

4     The bill takes effect upon enactment.

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## SENATE FILE 540

S-3648

- 1 Amend Senate File 540 as follows:  
 2 1. Page 2, line 15, by inserting after the figure  
 3 "2." the following: "However, if the prior injury was  
 4 related to the employee's military service, the  
 5 provisions of this subsection requiring a ten percent  
 6 or more functional impairment for that injury shall  
 7 not apply."

By DICK L. DEARDEN  
 JOHN P. KIBBIE

S-3648 FILED APRIL 21, 1997

ADOPTED (p. 1314) MTR by Dearden 4/6/98 - Motion prevailed 4/6/98

*Now O/Order 4/6/98*

SENATE FILE 540

S-3649

- 1 Amend Senate File 540 as follows:  
 2 1. Page 2, line 7, by striking the word "ten" and  
 3 inserting the following: "five".

By DICK L. DEARDEN

S-3649 FILED APRIL 21, 1997

LOST (p. 1314)

## SENATE FILE 540

S-3651

- 1 Amend Senate File 540 as follows:  
 2 1. Page 2, by inserting after line 26 the  
 3 following:  
 4 "3. If an employee who has previously lost, or  
 5 lost the use of, one hand, one arm, one foot, one leg,  
 6 or one eye becomes permanently disabled by a  
 7 compensable injury resulting in the loss or loss of  
 8 use of another such member or organ, and the  
 9 combination of the losses results in the employee  
 10 being permanently and totally disabled, the provisions  
 11 of this section requiring a ten percent or more  
 12 functional impairment for the first loss and a  
 13 difference in the number of weeks as calculated by  
 14 subsection 2 of fifty or more weeks shall not apply."  
 15 2. By renumbering as necessary.

By WILLIAM D. PALMER

S-3651 FILED APRIL 21, 1997

ADOPTED MTR; Rife 4/22/97 (p. 1346) - Motion to R/C prevailed 4/6/98

*Now O/Order 4/6/98*

SENATE FILE 540

S-3657

- 1 Amend Senate File 540 as follows:  
 2 1. Page 5, line 10, by striking the word "may"  
 3 and inserting the following: "shall".

By DICK L. DEARDEN

S-3657 FILED APRIL 21, 1997

LOST (p. 1315)

*(p. 1054)*

S-3647

- 1 Amend Senate File 540 as follows:
- 2 1. Page 1, by striking lines 28 through 33 and
- 3 inserting the following: "payable to such employee or
- 4 dependent hereunder. ~~However, any person who has some~~
- 5 ~~physical defect which increases the risk of injury,~~
- 6 ~~may, subject to the approval of the industrial~~
- 7 ~~commissioner, enter into a written agreement with the~~
- 8 ~~employee's employer waiving compensation for injuries~~
- 9 ~~which may occur directly or indirectly because of such~~
- 10 ~~physical".~~
- 11 2. Page 1, line 34, by striking the word "defect"
- 12 and inserting the following: "defect".
- 13 3. Page 2, line 1, by inserting after the figure
- 14 "85-64" the following: ". In addition, a person
- 15 shall not be denied employment by an employer for the
- 16 reason that the person has some physical defect or
- 17 disability which may increase the person's risk of
- 18 injury or may affect the amount of compensation which
- 19 may be payable to such person under this chapter. An
- 20 employer who violates this section shall be guilty of
- 21 a simple misdemeanor".

By WILLIAM D. PALMER

S-3647 FILED APRIL 21, 1997  
LOST (p. 1313)

SENATE FILE 540

S-5014

- 1 Amend Senate File 540 as follows:
- 2 1. Page 1, line 20, by inserting after the word
- 3 "Code" the following: "Supplement".
- 4 2. By striking page 3, line 23, through page 4,
- 5 line 17.
- 6 3. By renumbering as necessary.

By COMMITTEE ON BUSINESS AND LABOR  
JACK RIFE, Chairperson

*O/Order 4/6/98 (p. 1055)*

S-5014 FILED FEBRUARY 3, 1998

## SENATE FILE 540

S-5498

1 Amend Senate File 540 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. Section 85.65, Code 1997, is amended  
5 to read as follows:

6 85.65 PAYMENTS TO SECOND INJURY FUND.

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

23 Sec. 2. NEW SECTION. 85.65A PAYMENTS TO SECOND  
24 INJURY FUND -- SURCHARGE ON EMPLOYERS.

25 1. For purposes of this section, unless the  
26 context otherwise requires:

27 a. "Insured employers" means employers who are  
28 commercially insured for purposes of workers'  
29 compensation coverage or who have been self-insured  
30 for less than twenty-four months as of the first day  
31 of the fiscal year in which a surcharge is imposed  
32 pursuant to this section.

33 b. "Self-insured employers" means employers who  
34 have been self-insured for purposes of workers'  
35 compensation coverage for at least twenty-four months  
36 as of the first day of the fiscal year in which a  
37 surcharge is imposed pursuant to this section.

38 2. Prior to each fiscal year commencing on or  
39 after July 1, 1999, the commissioner of insurance  
40 shall conduct an examination of the outstanding  
41 liabilities of the second injury fund and shall make a  
42 determination as to whether sufficient funds will be  
43 available in the second injury fund to pay the  
44 liabilities of the fund for each of the next two  
45 fiscal years. If the commissioner of insurance  
46 determines sufficient funds will be available, the  
47 commissioner shall not impose a surcharge on employers  
48 during the next succeeding fiscal year. If the  
49 commissioner determines sufficient funds will not be  
50 available, the commissioner shall impose by rule,

S-5498

S-5498

Page 2

1 pursuant to chapter 17A, a surcharge on employers  
2 during the next succeeding fiscal year for payment to  
3 the treasurer of state for the second injury fund  
4 pursuant to the requirements of this section.

5 3. If the commissioner of insurance determines  
6 that a surcharge on employers shall be imposed during  
7 any applicable fiscal year, the surcharge imposed  
8 shall comply with and be subject to all of the  
9 following requirements:

10 a. The surcharge shall apply to all workers'  
11 compensation insurance policies and self-insurance  
12 coverages of employers approved for self-insurance by  
13 the commissioner of insurance pursuant to section 87.4  
14 or 87.11, and to the state of Iowa, its departments,  
15 divisions, agencies, commissions, and boards, or any  
16 political subdivision coverages whether insured or  
17 self-insured. The surcharge shall not apply to any  
18 reinsurance or retrocessional transaction under  
19 section 520.4 or 520.9.

20 b. In determining the surcharge for any applicable  
21 fiscal year, the commissioner of insurance shall  
22 provide that all insured and self-insured employers be  
23 assessed, in total, an amount the commissioner  
24 determines is sufficient, together with the moneys in  
25 the second injury fund, to meet the outstanding  
26 liabilities of the second injury fund.

27 c. The total assessment amount used in calculating  
28 the surcharge shall be allocated between self-insured  
29 employers and insured employers based on paid losses  
30 for the preceding calendar year. The portion of the  
31 total aggregate assessment that shall be collected  
32 from self-insured employers shall be equal to that  
33 proportion of total paid losses during the preceding  
34 calendar year, which the total compensation payments  
35 of all self-insured employers bore to the total  
36 compensation payments made by all self-insured  
37 employers and insurers on behalf of all insured  
38 employers during the preceding calendar year. The  
39 portion of the total aggregate assessment that is not  
40 to be collected from self-insured employers shall be  
41 collected from insured employers.

42 d. The method of assessing self-insured employers  
43 a surcharge shall be based on paid losses. The method  
44 of assessing insured employers a surcharge shall be by  
45 insurers collecting assessments from insured employers  
46 through a surcharge based on premium.

47 e. Assessments collected through imposition of a  
48 surcharge pursuant to this section shall not  
49 constitute an element of loss for the purpose of  
50 establishing rates for workers' compensation insurance

S-5498

-2-

S-5498

Page 3

1 but shall for the purpose of collection be treated as  
2 separate costs by insurers. The surcharge is  
3 collectible by an insurer and nonpayment of the  
4 surcharge shall be treated as nonpayment of premium  
5 and the insurer shall retain all cancellation rights  
6 inuring to it for nonpayment of premium. An insurance  
7 carrier, its agent, or a third-party administrator  
8 shall not be entitled to any portion of the surcharge  
9 as a fee or commission for its collection. The  
10 surcharge is not subject to any taxes, licenses, or  
11 fees. The surcharge is not deemed to be an assessment  
12 or tax, but shall be deemed an additional benefit paid  
13 for injuries compensable under this division.

14 4. The commissioner of insurance shall adopt  
15 rules, pursuant to chapter 17A, concerning the  
16 requirements of this section.

17 5. This section is repealed July 1, 2003.

18 Sec. 3. Section 85.66, Code 1997, is amended to  
19 read as follows:

20 85.66 SECOND INJURY FUND -- PAYMENTS CREATION --  
21 CUSTODIAN.

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

36 The "Second Injury Fund" is hereby established  
37 under the custody of the treasurer of state and shall  
38 consist of payments to the fund as provided by this  
39 division and any accumulated interest and earnings on  
40 moneys in the second injury fund. The treasurer of  
41 state is charged with the conservation of the assets  
42 of the second injury fund. Moneys so collected shall  
43 ~~constitute a~~ in the "Second Injury Fund", in the  
44 ~~custody of the treasurer of state, to shall be~~  
45 disbursed only for the purposes stated in this  
46 division, and shall not at any time be appropriated or  
47 diverted to any other use or purpose. The treasurer  
48 of state shall invest any surplus moneys of the fund  
49 in securities which constitute legal investments for  
50 state funds under the laws of this state, and may sell

S-5498

S-5498

Page 4

1 any of the securities in which the fund is invested,  
2 if necessary, for the proper administration or in the  
3 best interests of the fund. Disbursements from the  
4 fund shall be paid by the treasurer of state only upon  
5 the written order of the industrial commissioner. The  
6 treasurer of state shall quarterly prepare a statement  
7 of the fund, setting forth the balance of moneys in  
8 the fund, the income of the fund, specifying the  
9 source of all income, the payments out of the fund,  
10 specifying the various items of payments, and setting  
11 forth the balance of the fund remaining to its credit.  
12 The statement shall be open to public inspection in  
13 the office of the treasurer of state.

14 Sec. 4. Section 85.67, Code 1997, is amended to  
15 read as follows:

16 85.67 ADMINISTRATION OF FUND -- SPECIAL COUNSEL --  
17 PAYMENT OF AWARD.

18 ~~The treasurer of state shall be charged with the~~  
19 ~~conservation of the assets of the second injury fund,~~  
20 ~~and the collection of contributions to the fund.~~ The  
21 attorney general shall appoint a staff member to  
22 represent the treasurer of state and the fund in all  
23 proceedings and matters arising under this division.  
24 In making an award under this division, the industrial  
25 commissioner shall specifically find the amount the  
26 injured employee shall be paid weekly, the number of  
27 weeks of compensation which shall be paid by the  
28 employer, the date upon which payments out of the fund  
29 shall begin, and, if possible, the length of time the  
30 payments shall continue.

31 Sec. 5. Section 85.68, Code 1997, is amended to  
32 read as follows:

33 85.68 ACTIONS -- COLLECTION OF PAYMENTS --  
34 SUBROGATION.

35 ~~The treasurer of state~~ The labor commissioner shall  
36 be charged with the collection of contributions and  
37 payments to the second injury fund required to be made  
38 pursuant to section 85.65. In addition, the labor  
39 commissioner, on behalf of the second injury fund  
40 created under this division, shall have a cause of  
41 action under section 85.22 to the same extent as an  
42 employer against any person not in the same employment  
43 by reason of whose negligence or wrong the subsequent  
44 injury of the person with the previous disability was  
45 caused. The action shall be brought by the treasurer  
46 ~~of state~~ labor commissioner on behalf of the fund, and  
47 any recovery, less the necessary and reasonable  
48 expenses incurred by the ~~treasurer of state~~ labor  
49 commissioner, shall be paid to the treasurer of state  
50 and credited to the second injury fund.

S-5498

-4-

S-5498

Page 5

1 Sec. 6. SECOND INJURY FUND LIABILITY -- SURCHARGE  
2 ON EMPLOYERS.

3 1. For purposes of this section, unless the  
4 context otherwise requires:

5 a. "Insured employers" means employers who are  
6 commercially insured for purposes of workers'  
7 compensation coverage or who have been self-insured  
8 for less than twenty-four months as of the first day  
9 of the fiscal year in which a surcharge is imposed  
10 pursuant to this section.

11 b. "Self-insured employers" means employers who  
12 have been self-insured for purposes of workers'  
13 compensation coverage for at least twenty-four months  
14 as of the first day of the fiscal year in which a  
15 surcharge is imposed pursuant to this section.

16 2. Prior to the fiscal year commencing July 1,  
17 1998, the commissioner of insurance shall examine  
18 claims in which there has been an agreement for  
19 settlement or an award has been made involving the  
20 second injury compensation Act and shall determine the  
21 outstanding liability of such claims.

22 3. For the fiscal year commencing July 1, 1998,  
23 the commissioner of insurance may adopt by rule,  
24 pursuant to chapter 17A, a surcharge on employers  
25 pursuant to the requirements of this section and  
26 payable to the second injury fund if, pursuant to its  
27 examination of claims, the commissioner of insurance  
28 determines that insufficient funds are available in  
29 the second injury fund to pay claims involving the  
30 second injury compensation Act. The surcharge shall  
31 apply to all workers' compensation insurance policies  
32 and self-insurance coverages of employers approved for  
33 self-insurance by the commissioner of insurance  
34 pursuant to section 87.4 or 87.11, and to the state of  
35 Iowa, its departments, divisions, agencies,  
36 commissions, and boards, or any political subdivision  
37 coverages whether insured or self-insured. The  
38 surcharge shall not apply to any reinsurance or  
39 retrocessional transaction under section 520.4 or  
40 520.9. In determining the surcharge for each  
41 applicable fiscal year, the commissioner of insurance  
42 shall provide that all insured and self-insured  
43 employers be assessed for the outstanding liabilities  
44 arising out of claims involving the second injury  
45 compensation Act as determined pursuant to subsection  
46 2. The total assessment amount used in calculating  
47 the surcharge for each applicable fiscal year shall be  
48 allocated between self-insured employers and insured  
49 employers, based on paid losses for the preceding  
50 calendar year as provided in this subsection. The

S-5498

-5-

1 method of assessing self-insured employers shall be  
2 based on paid losses. The method of assessing insured  
3 employers shall be a surcharge based on premium, as  
4 set forth in this subsection. The portion of the  
5 total aggregate assessment that shall be collected  
6 from self-insured employers shall be equal to that  
7 proportion of total paid losses during the preceding  
8 calendar year, which the total compensation payments  
9 of all self-insured employers bore to the total  
10 compensation payments made by all self-insured  
11 employers and insurers on behalf of all insured  
12 employers during the preceding calendar year. The  
13 portion of the total aggregate assessment that shall  
14 be collected from insured employers shall be equal to  
15 that proportion of total paid losses during the  
16 preceding calendar year, which the total compensation  
17 payments on behalf of all insured employers bore to  
18 the total compensation payments made by all self-  
19 insured employers and insurers on behalf of all  
20 insured employers during the preceding calendar year.  
21 Insurers shall collect assessments from insured  
22 employers through a surcharge based on premium. Such  
23 assessments when collected shall not constitute an  
24 element of loss for the purpose of establishing rates  
25 for workers' compensation insurance but shall for the  
26 purpose of collection be treated as separate costs by  
27 insurers. The surcharge is collectible by an insurer  
28 and nonpayment of the surcharge shall be treated as  
29 nonpayment of premium and the insurer shall retain all  
30 cancellation rights inuring to it for nonpayment of  
31 premium. An insurance carrier, its agent, or a third-  
32 party administrator shall not be entitled to any  
33 portion of the surcharge as a fee or commission for  
34 its collection. The surcharge is not subject to any  
35 taxes, licenses, or fees. The surcharge is not deemed  
36 to be an assessment or tax, but shall be deemed an  
37 additional benefit paid for injuries compensable under  
38 the second injury compensation Act.

39 Sec. 7. EFFECTIVE DATE -- APPLICABILITY.

40 1. This Act, being deemed of immediate importance,  
41 takes effect upon enactment.

42 2. Section 1 of this Act, amending section 85.65,  
43 applies to deaths occurring on or after the effective  
44 date of this Act."

45 2. Title page, by striking lines 1 through 6 and  
46 inserting the following: "An Act relating to the  
47 second injury compensation Act, by providing for  
48 payments to the second injury fund including the  
49 imposition of an employer surcharge and a sunset of  
50 the ability to impose an employer surcharge, providing

S-5498

-6-

S-5498

Page 7

1 for the collection of payments to the second injury  
2 fund, and providing an effective date and  
3 applicability provision."

4 3. By renumbering as necessary.

By JACK RIFE  
DICK L. DEARDEN

S-5498 FILED APRIL 2, 1998

*adopted*  
*4-6-98 (P.1055)*

Substituted for HF 2515  
4-8-98 (P. 1381)

SENATE FILE 540  
BY IVERSON

(COMPANION TO LSB 2767YH  
BY SIEGRIST)

(AS AMENDED AND PASSED BY THE SENATE APRIL 6, 1998)

ALL New Language by the Senate

Passed Senate, Date \_\_\_\_\_ Passed House, Date <sup>(P. 1381)</sup> 4-8-98  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 99 Nays 0  
Approved April 17, 1998

A BILL FOR

1 An Act relating to the second injury compensation Act, by  
2 providing for payments to the second injury fund including the  
3 imposition of an employer surcharge and a sunset of the  
4 ability to impose an employer surcharge, providing for the  
5 collection of payments to the second injury fund, and  
6 providing an effective date and applicability provision.

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

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S.F. 540

1 Section 1. Section 85.65, Code 1997, is amended to read as  
2 follows:

3 85.65 PAYMENTS TO SECOND INJURY FUND.

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

18 Sec. 2. NEW SECTION. 85.65A PAYMENTS TO SECOND INJURY  
19 FUND -- SURCHARGE ON EMPLOYERS.

20 1. For purposes of this section, unless the context  
21 otherwise requires:

22 a. "Insured employers" means employers who are  
23 commercially insured for purposes of workers' compensation  
24 coverage or who have been self-insured for less than twenty-  
25 four months as of the first day of the fiscal year in which a  
26 surcharge is imposed pursuant to this section.

27 b. "Self-insured employers" means employers who have been  
28 self-insured for purposes of workers' compensation coverage  
29 for at least twenty-four months as of the first day of the  
30 fiscal year in which a surcharge is imposed pursuant to this  
31 section.

32 2. Prior to each fiscal year commencing on or after July  
33 1, 1999, the commissioner of insurance shall conduct an  
34 examination of the outstanding liabilities of the second  
35 injury fund and shall make a determination as to whether

1 sufficient funds will be available in the second injury fund  
2 to pay the liabilities of the fund for each of the next two  
3 fiscal years. If the commissioner of insurance determines  
4 sufficient funds will be available, the commissioner shall not  
5 impose a surcharge on employers during the next succeeding  
6 fiscal year. If the commissioner determines sufficient funds  
7 will not be available, the commissioner shall impose by rule,  
8 pursuant to chapter 17A, a surcharge on employers during the  
9 next succeeding fiscal year for payment to the treasurer of  
10 state for the second injury fund pursuant to the requirements  
11 of this section.

12 3. If the commissioner of insurance determines that a  
13 surcharge on employers shall be imposed during any applicable  
14 fiscal year, the surcharge imposed shall comply with and be  
15 subject to all of the following requirements:

16 a. The surcharge shall apply to all workers' compensation  
17 insurance policies and self-insurance coverages of employers  
18 approved for self-insurance by the commissioner of insurance  
19 pursuant to section 87.4 or 87.11, and to the state of Iowa,  
20 its departments, divisions, agencies, commissions, and boards,  
21 or any political subdivision coverages whether insured or  
22 self-insured. The surcharge shall not apply to any  
23 reinsurance or retrocessional transaction under section 520.4  
24 or 520.9.

25 b. In determining the surcharge for any applicable fiscal  
26 year, the commissioner of insurance shall provide that all  
27 insured and self-insured employers be assessed, in total, an  
28 amount the commissioner determines is sufficient, together  
29 with the moneys in the second injury fund, to meet the  
30 outstanding liabilities of the second injury fund.

31 c. The total assessment amount used in calculating the  
32 surcharge shall be allocated between self-insured employers  
33 and insured employers based on paid losses for the preceding  
34 calendar year. The portion of the total aggregate assessment  
35 that shall be collected from self-insured employers shall be

1 equal to that proportion of total paid losses during the  
2 preceding calendar year, which the total compensation payments  
3 of all self-insured employers bore to the total compensation  
4 payments made by all self-insured employers and insurers on  
5 behalf of all insured employers during the preceding calendar  
6 year. The portion of the total aggregate assessment that is  
7 not to be collected from self-insured employers shall be  
8 collected from insured employers.

9 d. The method of assessing self-insured employers a  
10 surcharge shall be based on paid losses. The method of  
11 assessing insured employers a surcharge shall be by insurers  
12 collecting assessments from insured employers through a  
13 surcharge based on premium.

14 e. Assessments collected through imposition of a surcharge  
15 pursuant to this section shall not constitute an element of  
16 loss for the purpose of establishing rates for workers'  
17 compensation insurance but shall for the purpose of collection  
18 be treated as separate costs by insurers. The surcharge is  
19 collectible by an insurer and nonpayment of the surcharge  
20 shall be treated as nonpayment of premium and the insurer  
21 shall retain all cancellation rights inuring to it for  
22 nonpayment of premium. An insurance carrier, its agent, or a  
23 third-party administrator shall not be entitled to any portion  
24 of the surcharge as a fee or commission for its collection.  
25 The surcharge is not subject to any taxes, licenses, or fees.  
26 The surcharge is not deemed to be an assessment or tax, but  
27 shall be deemed an additional benefit paid for injuries  
28 compensable under this division.

29 4. The commissioner of insurance shall adopt rules,  
30 pursuant to chapter 17A, concerning the requirements of this  
31 section.

32 5. This section is repealed July 1, 2003.

33 Sec. 3. Section 85.66, Code 1997, is amended to read as  
34 follows:

35 85.66 SECOND INJURY FUND -- PAYMENTS CREATION --

1 CUSTODIAN.

2 ~~When the total amount of the payments provided for in the~~  
3 ~~preceding section, together with accumulated interest and~~  
4 ~~earnings, equals or exceeds one million dollars no further~~  
5 ~~contributions to the fund shall be required, but when,~~  
6 ~~thereafter, the amount of the sum is reduced below five~~  
7 ~~hundred thousand dollars by reason of payments made to~~  
8 ~~employees pursuant to this division, contributions shall be~~  
9 ~~resumed and shall continue until the sum, together with~~  
10 ~~accumulated interest and earnings, again amounts to one~~  
11 ~~million dollars. The treasurer of state shall determine when~~  
12 ~~contributions shall be made to the fund and when they shall be~~  
13 ~~suspended and may enforce the collection of contributions.~~

14 The "Second Injury Fund" is hereby established under the  
15 custody of the treasurer of state and shall consist of  
16 payments to the fund as provided by this division and any  
17 accumulated interest and earnings on moneys in the second  
18 injury fund. The treasurer of state is charged with the  
19 conservation of the assets of the second injury fund. Moneys  
20 so collected shall constitute a in the "Second Injury Fund",  
21 in the custody of the treasurer of state, to shall be  
22 disbursed only for the purposes stated in this division, and  
23 shall not at any time be appropriated or diverted to any other  
24 use or purpose. The treasurer of state shall invest any  
25 surplus moneys of the fund in securities which constitute  
26 legal investments for state funds under the laws of this  
27 state, and may sell any of the securities in which the fund is  
28 invested, if necessary, for the proper administration or in  
29 the best interests of the fund. Disbursements from the fund  
30 shall be paid by the treasurer of state only upon the written  
31 order of the industrial commissioner. The treasurer of state  
32 shall quarterly prepare a statement of the fund, setting forth  
33 the balance of moneys in the fund, the income of the fund,  
34 specifying the source of all income, the payments out of the  
35 fund, specifying the various items of payments, and setting

1 forth the balance of the fund remaining to its credit. The  
2 statement shall be open to public inspection in the office of  
3 the treasurer of state.

4 Sec. 4. Section 85.67, Code 1997, is amended to read as  
5 follows:

6 85.67 ADMINISTRATION OF FUND -- SPECIAL COUNSEL -- PAYMENT  
7 OF AWARD.

8 ~~The treasurer of state shall be charged with the~~  
9 ~~conservation of the assets of the second injury fund, and the~~  
10 ~~collection of contributions to the fund.~~ The attorney general  
11 shall appoint a staff member to represent the treasurer of  
12 state and the fund in all proceedings and matters arising  
13 under this division. In making an award under this division,  
14 the industrial commissioner shall specifically find the amount  
15 the injured employee shall be paid weekly, the number of weeks  
16 of compensation which shall be paid by the employer, the date  
17 upon which payments out of the fund shall begin, and, if  
18 possible, the length of time the payments shall continue.

19 Sec. 5. Section 85.68, Code 1997, is amended to read as  
20 follows:

21 85.68 ACTIONS -- COLLECTION OF PAYMENTS -- SUBROGATION.

22 ~~The treasurer of state~~ The labor commissioner shall be  
23 charged with the collection of contributions and payments to  
24 the second injury fund required to be made pursuant to section  
25 85.65. In addition, the labor commissioner, on behalf of the  
26 second injury fund created under this division, shall have a  
27 cause of action under section 85.22 to the same extent as an  
28 employer against any person not in the same employment by  
29 reason of whose negligence or wrong the subsequent injury of  
30 the person with the previous disability was caused. The  
31 action shall be brought by the ~~treasurer of state~~ labor  
32 commissioner on behalf of the fund, and any recovery, less the  
33 necessary and reasonable expenses incurred by the ~~treasurer of~~  
34 ~~state~~ labor commissioner, shall be paid to the treasurer of  
35 state and credited to the second injury fund.

1     Sec. 6.   SECOND INJURY FUND LIABILITY -- SURCHARGE ON  
2 EMPLOYERS.

3     1.   For purposes of this section, unless the context  
4 otherwise requires:

5     a.   "Insured employers" means employers who are  
6 commercially insured for purposes of workers' compensation  
7 coverage or who have been self-insured for less than twenty-  
8 four months as of the first day of the fiscal year in which a  
9 surcharge is imposed pursuant to this section.

10    b.   "Self-insured employers" means employers who have been  
11 self-insured for purposes of workers' compensation coverage  
12 for at least twenty-four months as of the first day of the  
13 fiscal year in which a surcharge is imposed pursuant to this  
14 section.

15    2.   Prior to the fiscal year commencing July 1, 1998, the  
16 commissioner of insurance shall examine claims in which there  
17 has been an agreement for settlement or an award has been made  
18 involving the second injury compensation Act and shall  
19 determine the outstanding liability of such claims.

20    3.   For the fiscal year commencing July 1, 1998, the  
21 commissioner of insurance may adopt by rule, pursuant to  
22 chapter 17A, a surcharge on employers pursuant to the  
23 requirements of this section and payable to the second injury  
24 fund if, pursuant to its examination of claims, the  
25 commissioner of insurance determines that insufficient funds  
26 are available in the second injury fund to pay claims  
27 involving the second injury compensation Act. The surcharge  
28 shall apply to all workers' compensation insurance policies  
29 and self-insurance coverages of employers approved for self-  
30 insurance by the commissioner of insurance pursuant to section  
31 87.4 or 87.11, and to the state of Iowa, its departments,  
32 divisions, agencies, commissions, and boards, or any political  
33 subdivision coverages whether insured or self-insured. The  
34 surcharge shall not apply to any reinsurance or retrocessional  
35 transaction under section 520.4 or 520.9. In determining the

1 surcharge for each applicable fiscal year, the commissioner of  
2 insurance shall provide that all insured and self-insured  
3 employers be assessed for the outstanding liabilities arising  
4 out of claims involving the second injury compensation Act as  
5 determined pursuant to subsection 2. The total assessment  
6 amount used in calculating the surcharge for each applicable  
7 fiscal year shall be allocated between self-insured employers  
8 and insured employers, based on paid losses for the preceding  
9 calendar year as provided in this subsection. The method of  
10 assessing self-insured employers shall be based on paid  
11 losses. The method of assessing insured employers shall be a  
12 surcharge based on premium, as set forth in this subsection.  
13 The portion of the total aggregate assessment that shall be  
14 collected from self-insured employers shall be equal to that  
15 proportion of total paid losses during the preceding calendar  
16 year, which the total compensation payments of all self-  
17 insured employers bore to the total compensation payments made  
18 by all self-insured employers and insurers on behalf of all  
19 insured employers during the preceding calendar year. The  
20 portion of the total aggregate assessment that shall be  
21 collected from insured employers shall be equal to that  
22 proportion of total paid losses during the preceding calendar  
23 year, which the total compensation payments on behalf of all  
24 insured employers bore to the total compensation payments made  
25 by all self-insured employers and insurers on behalf of all  
26 insured employers during the preceding calendar year.  
27 Insurers shall collect assessments from insured employers  
28 through a surcharge based on premium. Such assessments when  
29 collected shall not constitute an element of loss for the  
30 purpose of establishing rates for workers' compensation  
31 insurance but shall for the purpose of collection be treated  
32 as separate costs by insurers. The surcharge is collectible  
33 by an insurer and nonpayment of the surcharge shall be treated  
34 as nonpayment of premium and the insurer shall retain all  
35 cancellation rights inuring to it for nonpayment of premium.

1 An insurance carrier, its agent, or a third-party  
2 administrator shall not be entitled to any portion of the  
3 surcharge as a fee or commission for its collection. The  
4 surcharge is not subject to any taxes, licenses, or fees. The  
5 surcharge is not deemed to be an assessment or tax, but shall  
6 be deemed an additional benefit paid for injuries compensable  
7 under the second injury compensation Act.

8 Sec. 7. EFFECTIVE DATE -- APPLICABILITY.

9 1. This Act, being deemed of immediate importance, takes  
10 effect upon enactment.

11 2. Section 1 of this Act, amending section 85.65, applies  
12 to deaths occurring on or after the effective date of this  
13 Act.

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SENATE FILE 540

AN ACT

RELATING TO THE SECOND INJURY COMPENSATION ACT, BY PROVIDING FOR PAYMENTS TO THE SECOND INJURY FUND INCLUDING THE IMPOSITION OF AN EMPLOYER SURCHARGE AND A SUNSET OF THE ABILITY TO IMPOSE AN EMPLOYER SURCHARGE, PROVIDING FOR THE COLLECTION OF PAYMENTS TO THE SECOND INJURY FUND, AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY PROVISION.

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

Section 1. Section 85.65, Code 1997, is amended to read as follows:

85.65 PAYMENTS TO SECOND INJURY FUND.

The employer, or, if insured, the insurance carrier in each case of compensable injury causing death, shall pay to the treasurer of state for the second injury fund the sum of four twelve thousand dollars in a case where there are dependents and fifteen forty-five thousand dollars in a case where there are no dependents. The payment shall be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents. However, the payments shall be required only in cases of

injury resulting in death coming within the purview of this chapter and occurring after July 1, 1978. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter.

Sec. 2. NEW SECTION. 85.65A PAYMENTS TO SECOND INJURY FUND -- SURCHARGE ON EMPLOYERS.

1. For purposes of this section, unless the context otherwise requires:

a. "Insured employers" means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. "Self-insured employers" means employers who have been self-insured for purposes of workers' compensation coverage for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to each fiscal year commencing on or after July 1, 1999, the commissioner of insurance shall conduct an examination of the outstanding liabilities of the second injury fund and shall make a determination as to whether sufficient funds will be available in the second injury fund to pay the liabilities of the fund for each of the next two fiscal years. If the commissioner of insurance determines sufficient funds will be available, the commissioner shall not impose a surcharge on employers during the next succeeding fiscal year. If the commissioner determines sufficient funds will not be available, the commissioner shall impose by rule, pursuant to chapter 17A, a surcharge on employers during the next succeeding fiscal year for payment to the treasurer of state for the second injury fund pursuant to the requirements of this section.

3. If the commissioner of insurance determines that a surcharge on employers shall be imposed during any applicable fiscal year, the surcharge imposed shall comply with and be subject to all of the following requirements:

a. The surcharge shall apply 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.

b. In determining the surcharge for any applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed, in total, an amount the commissioner determines is sufficient, together with the moneys in the second injury fund, to meet the outstanding liabilities of the second injury fund.

c. The total assessment amount used in calculating the surcharge shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that is not to be collected from self-insured employers shall be collected from insured employers.

d. The method of assessing self-insured employers a surcharge shall be based on paid losses. The method of assessing insured employers a surcharge shall be by insurers

collecting assessments from insured employers through a surcharge based on premium.

e. Assessments collected through imposition of a surcharge pursuant to this section shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. 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 this division.

4. The commissioner of insurance shall adopt rules, pursuant to chapter 17A, concerning the requirements of this section.

5. This section is repealed July 1, 2003.

Sec. 3. Section 85.66, Code 1997, is amended to read as follows:

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

~~When the total amount of the payments provided for in the preceding section, together with accumulated interest and earnings, equals or exceeds one million dollars, no further contributions to the fund shall be required; but when thereafter, the amount of the sum is reduced below five hundred thousand dollars by reason of payments made to employees pursuant to this division, contributions shall be resumed and shall continue until the sum, together with accumulated interest and earnings, again amounts to one million dollars. -- The treasurer of state shall determine when~~

~~contributions shall be made to the fund and when they shall be suspended and may enforce the collection of contributions.~~

The "Second Injury Fund" is hereby established under the custody of the treasurer of state and shall consist of payments to the fund as provided by this division and any accumulated interest and earnings on moneys in the second injury fund. The treasurer of state is charged with the conservation of the assets of the second injury fund. Moneys so collected shall constitute a in the "Second Injury Fund" in the custody of the treasurer of state, to shall be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys of the fund in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which the fund is invested, if necessary, for the proper administration or in the best interests of the fund. Disbursements from the fund shall be paid by the treasurer of state only upon the written order of the industrial commissioner. The treasurer of state shall quarterly prepare a statement of the fund, setting forth the balance of moneys in the fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of payments, and setting forth the balance of the fund remaining to its credit. The statement shall be open to public inspection in the office of the treasurer of state.

Sec. 4. Section 85.67, Code 1997, is amended to read as follows:

85.67 ADMINISTRATION OF FUND -- SPECIAL COUNSEL -- PAYMENT OF AWARD.

~~The treasurer of state shall be charged with the conservation of the assets of the second injury fund, and the collection of contributions to the fund.~~ The attorney general shall appoint a staff member to represent the treasurer of

state and the fund in all proceedings and matters arising under this division. In making an award under this division, the industrial commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks of compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time the payments shall continue.

Sec. 5. Section 85.68, Code 1997, is amended to read as follows:

85.68 ACTIONS -- COLLECTION OF PAYMENTS -- SUBROGATION.

~~The treasurer of state~~ The labor commissioner shall be charged with the collection of contributions and payments to the second injury fund required to be made pursuant to section 85.65. In addition, the labor commissioner, on behalf of the second injury fund created under this division, shall have a cause of action under section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of the person with the previous disability was caused. The action shall be brought by the ~~treasurer of state~~ labor commissioner on behalf of the fund, and any recovery, less the necessary and reasonable expenses incurred by the ~~treasurer of state~~ labor commissioner, shall be paid to the treasurer of state and credited to the second injury fund.

Sec. 6. SECOND INJURY FUND LIABILITY -- SURCHARGE ON EMPLOYERS.

1. For purposes of this section, unless the context otherwise requires:

a. "Insured employers" means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. "Self-insured employers" means employers who have been self-insured for purposes of workers' compensation coverage

for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to the fiscal year commencing July 1, 1998, the commissioner of insurance shall examine claims in which there has been an agreement for settlement or an award has been made involving the second injury compensation Act and shall determine the outstanding liability of such claims.

3. For the fiscal year commencing July 1, 1998, the commissioner of insurance may adopt by rule, pursuant to chapter 17A, a surcharge on employers pursuant to the requirements of this section and payable to the second injury fund if, pursuant to its examination of claims, the commissioner of insurance determines that insufficient funds are available in the second injury fund to pay claims involving the second injury compensation Act. The surcharge shall apply 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. In determining the surcharge for each applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed for the outstanding liabilities arising out of claims involving the second injury compensation Act as determined pursuant to subsection 2. The total assessment amount used in calculating the surcharge for each applicable fiscal year shall be allocated between self-insured employers and insured employers, based on paid losses for the preceding calendar year as provided in this subsection. The method of assessing self-insured employers shall be based on paid losses. The method of assessing insured employers shall be a

surcharge based on premium, as set forth in this subsection. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments on behalf of all insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. Insurers shall collect assessments from insured employers through a surcharge based on premium. Such assessments when collected shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. 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 compensation Act.

Sec. 7. EFFECTIVE DATE -- APPLICABILITY.

1. This Act, being deemed of immediate importance, takes effect upon enactment.

2. Section 1 of this Act, amending section 85.65, applies to deaths occurring on or after the effective date of this Act.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 540, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved April 17, 1998

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TERRY E. BRANSTAD  
Governor

SF 540