

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 July 1 of each fiscal year, 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 subchapter](#).

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

[98 Acts, ch 1113, §2, 7](#); [2003 Acts, ch 140, §3, 6](#); [2008 Acts, ch 1137, §2, 3](#); [2014 Acts, ch 1026, §143](#); [2021 Acts, ch 80, §38](#)

Referred to in [§85.67](#), [86.12](#)