

Reprinted

MAR 6 1992

Place On Calendar

HOUSE FILE 2395

BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 705)

Passed House, Date 3/23/92 (P 746)

Passed Senate, Date 3/31/92 (P. 1128)

Vote: Ayes 54 Nays 40

Vote: Ayes 38 Nays 10

Approved April 9, 1992

A BILL FOR

1 An Act relating to workers' compensation, by establishing a
2 second injury fund task force, continuing assessment of a
3 surcharge on workers' compensation benefits paid in the state,
4 and authorizing adoption of administrative rules.

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

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HF 2395

1 Section 1. SECOND INJURY FUND TASK FORCE ESTABLISHED.

2 1. The second injury fund task force is established. The
3 number of and persons serving as members of the task force
4 shall be chosen by the industrial commissioner and the
5 commissioner of insurance.

6 2. The commissioner of insurance shall perform
7 administrative functions for the task force. Meetings shall
8 be called upon agreement by the industrial commissioner and
9 the commissioner of insurance.

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

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

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

16 c. Recommendations for payment of administrative costs
17 associated with the fund.

18 d. Changes in the administrative structure concerning the
19 fund or a replacement payment mechanism.

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

22 f. Any other related issues concerning the operation,
23 administration, purposes, and funding of the second injury
24 fund.

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

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

29 6. The treasurer of state, in consultation with the
30 legislative fiscal bureau, shall examine the financial
31 condition of the fund, including, but not limited to, any
32 trends concerning the fund. The treasurer, in consultation
33 with the legislative fiscal bureau, shall prepare a report of
34 the findings of the examination and transmit the report to the
35 task force.

1 7. The task force shall submit a report of its findings
2 and recommendations to the committee on business and labor
3 relations of the senate and the committee on labor and
4 industrial relations of the house of representatives by
5 January 15, 1993.

6 Sec. 2. SURCHARGE FOR THE 1992-1993 FISCAL YEAR.

7 1. For the fiscal year commencing July 1, 1992, the
8 treasurer of state may assess a surcharge on workers'
9 compensation weekly benefits paid in the state during the
10 immediately preceding fiscal year. The surcharge is payable
11 by all self-insured employers making weekly benefit payments
12 and all insurers making weekly benefit payments on behalf of
13 insured employers. The surcharge applies to all workers'
14 compensation insurance policies and self-insurance coverages
15 of employers approved for self-insurance by the commissioner
16 of insurance pursuant to section 87.4 or 87.11, and to the
17 state of Iowa, its departments, divisions, agencies,
18 commissions, and boards, or any political subdivision
19 coverages whether insured or self-insured. The surcharge
20 shall not apply to any reinsurance or retrocessional
21 transaction under section 520.4 or 520.9. The treasurer of
22 state shall base the surcharge for each payor upon the payor's
23 pro rata share of weekly benefits paid in the state during the
24 immediately preceding fiscal year. The treasurer may use
25 reports of weekly benefits paid derived from the last
26 completed policy or reporting year, or other consistent
27 allocation methodology. The surcharge is collectable by an
28 insurer or from its policyholders if the insured employer
29 fails to pay the insurer. An insurance carrier, its agent, or
30 a third-party administrator shall not be entitled to any
31 portion of the surcharge as a fee or commission for its
32 collection. The surcharge is not subject to any taxes,
33 licenses, or fees. The surcharge is not deemed to be an
34 assessment or tax, but shall be deemed an additional benefit
35 paid for injuries compensable under the second injury fund.

1 However, the treasurer of state shall not collect over eight
2 hundred thousand dollars in assessing the surcharge.

3 2. The surcharges collected pursuant to this section shall
4 be deposited in the second injury fund, and may be used for
5 the payment of claims, settlements, and administrative costs.
6 The expenses incurred by the treasurer of state, the attorney
7 general, the second injury fund, the task force, or the
8 department of revenue and finance, in connection with the
9 second injury fund, may be paid from the fund. However, the
10 payment of administrative costs and expenses incurred by the
11 treasurer of state, the attorney general, the second injury
12 fund, the task force, and the department of revenue and
13 finance, as authorized in this subsection, shall only be
14 permitted for administrative costs and expenses incurred in
15 the fiscal year commencing July 1, 1992, and shall not exceed
16 one hundred seventy thousand dollars.

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

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

30 b. If the surcharges imposed by this section are not paid
31 or transferred when due, the insurer, policyholder, or self-
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 treasurer of state

1 prevails in any dispute concerning the assessment of a
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 c. An insurer is not liable for a surcharge which is not
7 paid to the insurer by the policyholder or employer provided
8 the insurer has made good faith efforts to collect the
9 surcharge from the policyholder or employer. An insurance
10 carrier shall report to the treasurer of state a policyholder
11 or employer who fails to pay a surcharge within thirty days of
12 its due date.

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

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

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

25 Sec. 3. INSURANCE COMMISSIONER TO ADOPT RULES PROVIDING
26 FOR MEDIATION. The commissioner of insurance shall adopt
27 rules pursuant to chapter 17A requiring that parties who are
28 involved in a dispute regarding benefits for a second injury
29 claimed under section 85.64 enter into a mediation proceeding
30 administered by the commissioner of insurance prior to
31 entering into a contested case proceeding under section 85.26.
32 The rules shall provide that the statute of limitations in
33 section 85.26, subsection 1, shall be tolled for the duration
34 of the mediation proceedings.

35

EXPLANATION

1 Section 1 of the bill establishes a new second injury fund
2 task force to study issues related to the workers'
3 compensation second injury fund. The number of and persons
4 serving as members are to be chosen by the industrial
5 commissioner and the commissioner of insurance, under the
6 bill. Meetings are to be called by agreement by the
7 commissioners, and the commissioner of insurance shall perform
8 administrative functions for the task force. The task force
9 is instructed to submit a report to the senate and house of
10 representatives labor committees by January 15, 1993.

11 Section 2 of the bill also continues a surcharge on
12 workers' compensation weekly benefits paid in the state
13 established in chapter 162 of the 1991 Acts.

14 Section 3 of the bill requires the commissioner of
15 insurance to adopt rules requiring parties involved in a
16 dispute regarding benefits for a second injury to enter into a
17 mediation proceeding administered by the insurance
18 commissioner prior to entering into a contested case
19 proceeding. The statute of limitations for bringing an action
20 in a contested case proceeding is to be tolled during the
21 mediation proceeding.

22 The bill may establish a state mandate under chapter 25B.

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HOUSE FILE 2395

H-5291

1 Amend House File 2395 as follows:

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

4 "Section 1. NEW SECTION. 85.64A SECOND INJURY.

5 In addition to any permanent partial disability
6 benefits payable pursuant to section 85.34, subsection
7 2, paragraphs "l" through "q", or paragraph "s", an
8 injured employee shall receive such additional weekly
9 compensation as may be provided by one or both of the
10 following subsections:

11 1. Up to twenty-six weeks of compensation provided
12 all of the following applies:

13 a. The employee has not returned to work or is not
14 capable of returning to substantially similar
15 employment.

16 b. The employee has not refused employment at the
17 same rate of pay by the same employer.

18 c. The impairment suffered as a result of the
19 injury is greater than fifteen percent of the affected
20 member or organ as measured by the American medical
21 association guide to the evaluation of permanent
22 impairment.

23 d. The employee is participating in a qualified
24 vocational rehabilitation program as provided in
25 section 85.70A.

26 2. An employee, who has previously lost more than
27 fifteen percent use of one hand, one arm, one foot,
28 one leg, or one eye, and who suffers permanent partial
29 impairment as a result of a compensable injury or
30 occupational disease which is payable as provided in
31 section 85.34, subsection 2, paragraphs "l" through
32 "q", shall be paid additional compensation calculated
33 in the manner provided by section 85.34, subsection 2,
34 paragraph "s", pursuant to the following formula:

35 Combined value of	Prior	Impairment		Additional
36 two hands, arms,	-	Impairment + second	-	Compensation
37 feet, legs, or eyes		injury		payable
38 pursuant to the				
39 American medical				
40 association guide				

41 Impairment shall be determined by the American
42 medical association's guide to the evaluation of
43 permanent impairment.

44 Sec. 2. NEW SECTION. 85.70A VOCATIONAL
45 REHABILITATION EXPENSE.

46 An employee who has sustained a compensable or
47 occupational disease resulting in permanent partial or
48 permanent total disability and who has not returned to
49 work or is not capable of returning to substantially
50 similar employment shall be entitled to payment from

H-5291

H-5291

Page 2

1 the employer as follows:
 2 1. Twenty dollars per week during each full week
 3 the employee is actively participating in a qualified
 4 vocational rehabilitation program for a period not to
 5 exceed twenty-six weeks.
 6 2. Tuition, books and supplies in an amount not to
 7 exceed four thousand dollars.
 8 "Qualified vocational rehabilitation program" means
 9 a rehabilitation program recognized by the division of
 10 vocational rehabilitation of the department of
 11 education.
 12 Sec. 3. Section 85.64, Code 1991, is repealed.
 13 Sec. 4. Section 85.70, Code 1991, is repealed."
 14 2. Title page, by striking lines 1 through 4 and
 15 inserting the following: "An Act relating to workers'
 16 compensation regarding second injury fund benefits and
 17 vocational rehabilitation expenses."

By RAFFERTY of Scott

H-5291 FILED MARCH 13, 1992

w/d 3/23 (p. 745)

HOUSE FILE 2395

H-5323

1 Amend House File 2395 as follows:
 2 1. Page 3, line 2, by inserting after the word
 3 "hundred" the following: "seventy".
 4 2. Page 3, line 5, by inserting after the word
 5 "settlements," the following: "expenses for claim
 6 adjustments,".
 7 3. Page 4, line 25, by striking the word
 8 "INSURANCE" and inserting the following:
 9 "INDUSTRIAL".
 10 4. Page 4, line 26, by striking the words
 11 "commissioner of insurance" and inserting the
 12 following: "industrial commissioner".
 13 5. Page 4, line 30, by striking the words
 14 "commissioner of insurance" and inserting the
 15 following: "industrial commissioner".

By BEATTY of Warren

H-5323 FILED MARCH 16, 1992

Adopted 3/23 (p. 745)

HOUSE FILE 2395

H-5335

1 Amend the amendment, H-5291, to House File 2395 as
 2 follows:
 3 1. Page 1, by striking lines 34 through 40 and
 4 inserting the following: "paragraph "s", pursuant to
 5 the following formula: the combined value of two
 6 hands, arms, feet, legs, or eyes pursuant to the
 7 American medical association guide minus the sum of
 8 prior impairment and impairment second injury equal
 9 the additional compensation payable."

By RAFFERTY of Scott

H-5335 FILED MARCH 17, 1992

Ruled out of order 3/23 (p. 745)

HOUSE FILE 2395
FISCAL NOTE

A fiscal note for House File 2395 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.

House File 2395 establishes a new Second Injury Fund Task Force to study issues related to the workers' compensation Second Injury Fund. The number of and members of the Task Force are to be chosen by the Industrial Commissioner and the Insurance Commissioner. The Insurance Commissioner is to perform administrative functions for the Task Force. The Task Force is to submit a report to the Senate Business and Labor Relations Committee and the House Labor and Industrial Relations Committee by January 15, 1993.

The bill continues a surcharge on workers' compensation weekly benefits paid in the State per Chapter 162 of the 1991 Iowa Acts.

The bill also requires the Insurance Commissioner to adopt rules requiring parties involved in a dispute regarding benefits for a second injury to enter into a mediation proceeding administered by the Insurance Commissioner prior to entering a contested case proceeding. The statute of limitations for bringing an action in a contested case proceeding is to be tolled during the mediation proceeding.

Assumptions:

1. The State of Iowa, as an employer, would pay the same assessment as FY 1992 which is \$39,000. The General Fund portion of the assessment would be 79.0% and the remaining 21.0% would be paid by the Road Use Tax Fund and the Primary Road Fund.
2. The Task Force may request an actuarial study.

Fiscal Impact:

General Fund - \$31,000 for the assessment against the State of Iowa as an employer.

RUTF/PRF - \$8,000 for the assessment against the State as an employer.

Second Injury Fund - The Treasurer estimated assessments of \$850,000 against employers in FY 1993 to support the Second Injury Fund. The following costs will be charged against the Second Injury Fund:

1. Treasurer of State - \$600 for administrative costs.
2. Department of Commerce, Insurance Division - \$20,000 potential cost for actuarial services required by the Task Force.
3. Attorney General - \$149,000 for 4.0 FTE to provide legal representation for the Fund.

-2-

Sources: Department of Commerce - Insurance Division
Department of Employment Services - Industrial Services Division
Treasurer of State
Attorney General (LSB 6170HV, MAS)

FILED MARCH 23, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

Sen. Bus. & Labor 3/24, No Pass 3/25

HOUSE FILE 2395
BY COMMITTEE ON LABOR AND
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 705)

(As Amended and Passed by the House March 23, 1992)

Passed House, Date 3/23/92 (p. 746) Passed Senate, Date 3/31/92 (p. 1123)
Vote: Ayes 54 Nays 46 Vote: Ayes 38 Nays 10
Approved April 9, 1992 (p. 1298)

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2 second injury fund task force, continuing assessment of a
3 surcharge on workers' compensation benefits paid in the state,
4 and authorizing adoption of administrative rules.

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House Amendments _____

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30 legislative fiscal bureau, shall examine the financial
31 condition of the fund, including, but not limited to, any
32 trends concerning the fund. The treasurer, in consultation
33 with the legislative fiscal bureau, shall prepare a report of
34 the findings of the examination and transmit the report to the
35 task force.

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3 relations of the senate and the committee on labor and
4 industrial relations of the house of representatives by
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16 of insurance pursuant to section 87.4 or 87.11, and to the
17 state of Iowa, its departments, divisions, agencies,
18 commissions, and boards, or any political subdivision
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22 state shall base the surcharge for each payor upon the payor's
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27 allocation methodology. The surcharge is collectable by an
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29 fails to pay the insurer. An insurance carrier, its agent, or
30 a third-party administrator shall not be entitled to any
31 portion of the surcharge as a fee or commission for its
32 collection. The surcharge is not subject to any taxes,
33 licenses, or fees. The surcharge is not deemed to be an
34 assessment or tax, but shall be deemed an additional benefit
35 paid for injuries compensable under the second injury fund.

1 However, the treasurer of state shall not collect over eight
2 hundred seventy thousand dollars in assessing the surcharge.

3 2. The surcharges collected pursuant to this section shall
4 be deposited in the second injury fund, and may be used for
5 the payment of claims, settlements, expenses for claim
6 adjustments, and administrative costs. The expenses incurred
7 by the treasurer of state, the attorney general, the second
8 injury fund, the task force, or the department of revenue and
9 finance, in connection with the second injury fund, may be
10 paid from the fund. However, the payment of administrative
11 costs and expenses incurred by the treasurer of state, the
12 attorney general, the second injury fund, the task force, and
13 the department of revenue and finance, as authorized in this
14 subsection, shall only be permitted for administrative costs
15 and expenses incurred in the fiscal year commencing July 1,
16 1992, and shall not exceed one hundred seventy thousand
17 dollars.

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

21 4. a. If an insurer, policyholder, or self-insurer
22 withdraws from doing business in this state before the
23 surcharges authorized by this section become due, or fails or
24 neglects to pay the surcharge imposed, the treasurer of state
25 shall at once proceed to collect the surcharge, and may employ
26 such legal process as may be necessary for that purpose, and
27 when so collected shall deposit the surcharge into the second
28 injury fund. The treasurer may bring the suit in any court of
29 this state having jurisdiction, and reasonable attorney's fees
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34 as part of the surcharge, interest on the surcharge at the
35 rate of one and one-half percent per month for each month or

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8 paid to the insurer by the policyholder or employer provided
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11 carrier shall report to the treasurer of state a policyholder
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27 FOR MEDIATION. The industrial commissioner shall adopt rules
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33 rules shall provide that the statute of limitations in section
34 85.26, subsection 1, shall be tolled for the duration of the
35 mediation proceedings.

Beatty, Chair

HSB 705

LABOR & INDUSTRIAL RELATIONS
Now
HOUSE FILE *2395*
BY (PROPOSED COMMITTEE ON
LABOR AND INDUSTRIAL
RELATIONS BILL BY
CHAIRPERSON RENAUD)

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

A BILL FOR

1 An Act relating to workers' compensation, by establishing a
2 second injury fund task force, continuing assessment of a
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SUB COMMITTEE ASSIGNMENTS
CHAIR: *Beatty*
COMMITTEE: *Labor*
3-3-92

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16 of insurance pursuant to section 87.4 or 87.11, and to the
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19 coverages whether insured or self-insured. The surcharge
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27 injury fund. The treasurer may bring the suit in any court of
28 this state having jurisdiction, and reasonable attorney's fees
29 may be taxed as costs in the suit.

30 b. If the surcharges imposed by this section are not paid
31 or transferred when due, the insurer, policyholder, or self-
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 treasurer of state

1 prevails in any dispute concerning the assessment of a
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 c. An insurer is not liable for a surcharge which is not
7 paid to the insurer by the policyholder or employer provided
8 the insurer has made good faith efforts to collect the
9 surcharge from the policyholder or employer. An insurance
10 carrier shall report a policyholder or employer who fails to
11 pay a surcharge within thirty days of its due date to the
12 treasurer of state.

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

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

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

25 Sec. 3. INSURANCE COMMISSIONER TO ADOPT RULES PROVIDING
26 FOR MEDIATION. The commissioner of insurance shall adopt
27 rules pursuant to chapter 17A requiring that parties who are
28 involved in a dispute regarding benefits for a second injury
29 claimed under section 85.64 enter into a mediation proceeding
30 administered by the commissioner of insurance prior to
31 entering into a contested case proceeding under section 85.26.
32 The rules shall provide that the statute of limitations in
33 section 85.26, subsection 1, shall be tolled for the duration
34 of the mediation proceedings.

35

EXPLANATION

1 Section 1 of the bill establishes a new second injury fund
2 task force to study issues related to the workers'
3 compensation second injury fund. The number of and persons
4 serving as members are to be chosen by the industrial
5 commissioner and the commissioner of insurance, under the
6 bill. Meetings are to be called by agreement by the
7 commissioners, and the commissioner of insurance shall perform
8 administrative functions for the task force. The task force
9 is instructed to submit a report to the senate and house of
10 representatives labor committees by January 15, 1993.

11 Section 2 of the bill also continues a surcharge on
12 workers' compensation weekly benefits paid in the state
13 established in chapter 162 of the 1991 Acts.

14 Section 3 of the bill requires the commissioner of
15 insurance to adopt rules requiring parties involved in a
16 dispute regarding benefits for a second injury to enter into a
17 mediation proceeding administered by the insurance
18 commissioner prior to entering into a contested case
19 proceeding. The statute of limitations for bringing an action
20 in a contested case proceeding is to be tolled during the
21 mediation proceeding.

22 The bill may establish a state mandate under chapter 25B.

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HOUSE FILE 2395

AN ACT

RELATING TO WORKERS' COMPENSATION, BY ESTABLISHING A SECOND INJURY FUND TASK FORCE, CONTINUING ASSESSMENT OF A SURCHARGE ON WORKERS' COMPENSATION BENEFITS PAID IN THE STATE, AND AUTHORIZING ADOPTION OF ADMINISTRATIVE RULES.

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 number of and persons serving as members of the task force shall be chosen by the industrial commissioner and the commissioner of insurance.

2. The commissioner of insurance shall perform administrative functions for the task force. Meetings shall be called upon agreement by the industrial commissioner and the commissioner of insurance.

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. 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, 1993.

Sec. 2. SURCHARGE FOR THE 1992-1993 FISCAL YEAR.

1. For the fiscal year commencing July 1, 1992, 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 eight hundred seventy thousand dollars in assessing the surcharge.

2. 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, expenses for claim adjustments, 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, 1992, and shall not exceed one hundred seventy thousand dollars.

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

4. 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 to the treasurer of state a policyholder or employer who fails to pay a surcharge within thirty days of its due date.

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.

5. 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. INDUSTRIAL COMMISSIONER TO ADOPT RULES PROVIDING FOR MEDIATION. The industrial commissioner shall adopt rules pursuant to chapter 17A requiring that parties who are involved in a dispute regarding benefits for a second injury claimed under section 85.64 enter into a mediation proceeding administered by the industrial commissioner prior to entering into a contested case proceeding under section 85.26. The rules shall provide that the statute of limitations in section 85.26, subsection 1, shall be tolled for the duration of the mediation proceedings.

ROBERT C. ARNOULD
Speaker of the House

MICHAEL E. GRONSTAL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2395, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 9, 1992

TERRY E. BRANSTAD
Governor

HF 2395