

# REPRINTED

FEB 29 1996  
Place On Calendar

HOUSE FILE 2412  
BY COMMITTEE ON LABOR AND  
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 706)

Passed House, Date <sup>(p.903)</sup> 3/21/96 Passed Senate, Date \_\_\_\_\_  
Vote: Ayes 97 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to workers' compensation claims against the  
2 second injury fund and permanent partial disability  
3 compensation, authorizing the commissioner of insurance to  
4 impose a surcharge, and providing an effective date.

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

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HF 2412

**REPRINTED**

1 Section 1. Section 85.34, subsection 2, paragraph s, Code  
2 1995, is amended to read as follows:

3 s. The loss of both arms, or both hands, or both feet, or  
4 both legs, or both eyes, or any two thereof, caused by a  
5 single accident injury or a second injury in combination with  
6 a previous loss to a different member listed in paragraph "l",  
7 "m", "n", "o", or "p", shall equal five hundred weeks and  
8 shall be compensated as such, however, if ~~said~~ the employee is  
9 permanently and totally disabled the employee may be entitled  
10 to benefits under subsection 3.

11 Sec. 2. NEW SECTION. 85.64A ELIMINATION OF NEW CLAIMS  
12 AGAINST THE FUND.

13 An employee shall not receive payment from the second  
14 injury fund if the employee's original proceeding for workers'  
15 compensation benefits is commenced more than ninety days after  
16 the effective date of this Act.

17 Sec. 3. NEW SECTION. 85.66A REPORT ON LIABILITY OF THE  
18 FUND AND SURCHARGE ON EMPLOYERS.

19 The commissioner of insurance shall annually examine the  
20 claims against the second injury fund and shall determine the  
21 outstanding liability of such claims against the second injury  
22 fund. The commissioner of insurance shall annually prepare a  
23 report of the findings of the examination and shall submit the  
24 report to the committees of the general assembly having  
25 jurisdiction over workers' compensation issues. If the  
26 commissioner of insurance determines that insufficient funds  
27 are available in the second injury fund to pay claims against  
28 the second injury fund, the commissioner of insurance shall  
29 adopt by rule, pursuant to chapter 17A, a surcharge on  
30 employers. The surcharge shall apply to all workers'  
31 compensation insurance policies and self-insurance coverages  
32 of employers approved for self-insurance by the commissioner  
33 of insurance pursuant to section 87.4 or 87.11, and to the  
34 state of Iowa, its departments, divisions, agencies,  
35 commissions, and boards, or any political subdivision

1 coverages whether insured or self-insured. The surcharge  
2 shall not apply to any reinsurance or retrocessional  
3 transaction under section 520.4 or 520.9. The commissioner of  
4 insurance shall base the surcharge for each payor upon the  
5 payor's pro rata share of weekly benefits paid in the state  
6 during the immediately preceding fiscal year. The  
7 commissioner of insurance may use reports of weekly benefits  
8 paid derived from the last completed policy or reporting year,  
9 or other consistent allocation methodology. The surcharge is  
10 collectible by an insurer or from its policyholders if the  
11 insured employer fails to pay the insurer. An insurance  
12 carrier, its agent, or a third-party administrator shall not  
13 be entitled to any portion of the surcharge as a fee or  
14 commission for its collection. The surcharge is not subject  
15 to any taxes, licenses, or fees. The surcharge is not deemed  
16 to be an assessment or tax, but shall be deemed an additional  
17 benefit paid for injuries compensable under the second injury  
18 fund. The imposition of the surcharge shall be limited to the  
19 three fiscal years beginning after the effective date of this  
20 Act. At the conclusion of this three-year period, and for  
21 subsequent three-year periods until the outstanding liability  
22 of the second injury fund is retired, the commissioner of  
23 insurance, in the manner established by this section, shall  
24 examine and report on the outstanding liability against the  
25 second injury fund and may reimpose a surcharge.

26 Sec. 4. NEW SECTION. 85.66B FINAL DISPOSITION OF CLAIMS  
27 INVOLVING THE FUND.

28 The industrial commissioner, in cooperation with the  
29 treasurer of state, shall resolve claims involving the second  
30 injury fund as soon as possible through payment methods, such  
31 as, but not limited to, entering into lump sum settlements or  
32 purchasing of annuities.

33 Sec. 5. NEW SECTION. 85.67A ADMINISTRATIVE EXPENSES OF  
34 SPECIAL COUNSEL.

35 The attorney general shall not be compensated from the

1 second injury fund for administrative expenses incurred in  
2 connection with the second injury fund.

3 Sec. 6. EFFECTIVE DATE. This Act, being deemed of  
4 immediate importance, takes effect upon enactment.

5 EXPLANATION

6 Section 1 of this bill provides that permanent partial  
7 disability compensation shall be paid for the loss of both  
8 arms, or both hands, or both feet, or both legs, or both eyes,  
9 or any two thereof caused by a single injury or a second  
10 injury in combination with a previous loss of a hand, the part  
11 of an arm from the shoulder joint to the elbow joint, a foot,  
12 the part of a leg from the hip joint to the knee joint, or an  
13 eye. Existing law only provides for single-accident coverage  
14 of such losses under the permanent partial disability  
15 compensation provisions.

16 Section 2 provides that an employee shall not receive  
17 payment from the second injury fund if the employee's original  
18 proceeding for workers' compensation benefits is commenced  
19 more than 90 days after the effective date of this bill.

20 Section 3 directs the commissioner of insurance to examine  
21 the claims against the second injury fund, determine the  
22 fund's outstanding liability for such claims, and submit a  
23 report of the findings to the general assembly. The bill  
24 authorizes that if the commissioner of insurance determines  
25 that there are insufficient funds in the second injury fund to  
26 pay claims, the commissioner of insurance may impose, by rule,  
27 a surcharge on employers for a three-year interval. The  
28 surcharge shall apply to all workers' compensation insurance  
29 policies and self-insurance coverages of employers approved  
30 for self-insurance by the commissioner of insurance and to the  
31 state of Iowa, its departments, divisions, agencies,  
32 commissions, and boards, or any political subdivision  
33 coverages whether insured or self-insured. The bill provides  
34 that this examination, report, and surcharge process shall  
35 continue at three-year intervals until the outstanding debt of

1 the second injury fund is retired.

2 Section 4 directs the industrial commissioner, in  
3 cooperation with the treasurer of state, to resolve to final  
4 disposition claims involving the second injury fund as soon as  
5 possible through payment methods, such as, but not limited to,  
6 entering into lump sum settlements or purchasing of annuities.

7 Section 5 provides that the attorney general shall not be  
8 compensated from the second injury fund for administrative  
9 expenses incurred in connection with the second injury fund.

10 Section 6 provides that the bill takes effect upon  
11 enactment.

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## HOUSE FILE 2412

H-5255

1 Amend House File 2412 as follows:

2 1. Page 1, by inserting after line 10 the  
3 following:

4 "Sec. \_\_\_\_\_. Section 85.36, subsection 9, paragraph  
5 a, Code Supplement 1995, is amended to read as  
6 follows:

7 a. In computing the compensation to be allowed a  
8 volunteer fire fighter, emergency medical care  
9 provider, reserve peace officer, volunteer ambulance  
10 driver, volunteer emergency rescue technician as  
11 defined in section 147A.1, or emergency medical  
12 technician trainee, the earnings as a fire fighter,  
13 emergency medical care provider, reserve peace  
14 officer, volunteer ambulance driver, volunteer  
15 emergency rescue technician, or emergency medical  
16 technician trainee shall be disregarded and the  
17 volunteer fire fighter, emergency medical care  
18 provider, reserve peace officer, volunteer ambulance  
19 driver, volunteer emergency rescue technician, or  
20 emergency medical technician trainee shall be paid an  
21 amount equal to the compensation the volunteer fire  
22 fighter, emergency medical care provider, reserve  
23 peace officer, volunteer ambulance driver, volunteer  
24 emergency rescue technician, or emergency medical  
25 technician trainee would be paid if injured in the  
26 normal course of the volunteer fire fighter's,  
27 emergency medical care provider's, reserve peace  
28 officer's, volunteer ambulance driver's, volunteer  
29 emergency rescue technician's, or emergency medical  
30 technician trainee's regular employment or an amount  
31 equal to one hundred and forty percent of the  
32 statewide average weekly wage, whichever is greater.

33 Sec. \_\_\_\_\_. Section 85.61, subsection 2, Code  
34 Supplement 1995, is amended to read as follows:

35 2. "Employer" includes and applies to a person,  
36 firm, association, or corporation, state, county,  
37 municipal corporation, school corporation, area  
38 education agency, township as an employer of volunteer  
39 fire fighters, volunteer emergency rescue technicians,  
40 and emergency medical care providers only, benefited  
41 fire district, and the legal representatives of a  
42 deceased employer. "Employer" includes and applies to  
43 a rehabilitation facility approved for purchase-of-  
44 service contracts or for referrals by the department  
45 of human services or the department of education.

46 Sec. \_\_\_\_\_. Section 85.61, subsection 11, unnumbered  
47 paragraph 3, Code Supplement 1995, is amended to read  
48 as follows:

49 "Worker" or "employee" includes an emergency  
50 medical care provider as defined in section 147A.1, a

H-5255

H-5255

Page 2

1 volunteer emergency rescue technician as defined in  
 2 section 147A.1, a volunteer ambulance driver, or an  
 3 emergency medical technician trainee, only if an  
 4 agreement is reached between such worker or employee  
 5 and the employer for whom the volunteer services are  
 6 provided that workers' compensation coverage under  
 7 chapters 85, 85A, and 85B is to be provided by the  
 8 employer. An emergency medical care provider or  
 9 volunteer emergency rescue technician who is a worker  
 10 or employee under this paragraph is not a casual  
 11 employee. "Volunteer ambulance driver" means a person  
 12 performing services as a volunteer ambulance driver at  
 13 the request of the person in charge of a fire  
 14 department or ambulance service of a municipality.  
 15 "Emergency medical technician trainee" means a person  
 16 enrolled in and training for emergency medical  
 17 technician certification."

18 2. Title page, line 1, by inserting after the  
 19 word "compensation" the following: "concerning  
 20 benefits for volunteer emergency rescue technicians,  
 21 and concerning".

22 3. By renumbering as necessary.

By O'BRIEN of Boone

H-5255 FILED MARCH 7, 1996

*Not Hermon 3/21/96 (p.902)*

## HOUSE FILE 2412

H-5326

1 Amend House File 2412 as follows:

2 1. Page 1, by striking lines 7 and 8 and  
 3 inserting the following: ""m", "n", "o", or "p",  
 4 shall equal be paid during the number of weeks in  
 5 relation to five hundred weeks ~~and shall be~~  
 6 compensated as such as the disability bears to the  
 7 body of the injured employee as a whole, however, if  
 8 said the employee is".

9 2. By renumbering as necessary.

By MURPHY of Dubuque

H-5326 FILED MARCH 12, 1996

**WITHDRAWN**

3-21-96

*(p.897)*

## HOUSE FILE 2412

H-5495

- 1 Amend House File 2412 as follows:  
2 1. Page 1, by striking lines 1 through 10 and  
3 inserting the following:  
4 "Section 1. Section 85.34, subsection 2, paragraph  
5 u, Code 1995, is amended to read as follows:  
6 u. The loss of one arm, one hand, one foot, one  
7 leg, or one eye, if preceded by the loss of any other  
8 arm, hand, foot, or leg shall be compensated in the  
9 same manner as if both losses were the result of a  
10 single accident as provided in paragraph "s", whether  
11 or not compensation was previously paid for the loss  
12 of the first member.  
13 v. In all cases of permanent partial disability  
14 other than those hereinabove described or referred to  
15 in paragraphs "a" through "t" "u" hereof, the  
16 compensation shall be paid during the number of weeks  
17 in relation to five hundred weeks as the disability  
18 bears to the body of the injured employee as a whole."  
19 2. Page 1, line 19, by striking the words  
20 "commissioner of insurance" and inserting the  
21 following: "treasurer of state".  
22 3. Page 1, line 22, by striking the words  
23 "commissioner of insurance" and inserting the  
24 following: "treasurer of state".  
25 4. Page 1, line 26, by striking the words  
26 "commissioner of insurance" and inserting the  
27 following: "treasurer of state".  
28 5. Page 1, line 28, by striking the words  
29 "commissioner of insurance" and inserting the  
30 following: "treasurer of state".  
31 6. Page 1, by striking line 30 and inserting the  
32 following: "employers."  
33 1. The surcharge is payable by all self-insured  
34 employers making weekly benefit payments and all  
35 insurers making weekly benefit payments on behalf of  
36 insured employers. The surcharge shall apply to all  
37 workers".  
38 7. Page 2, by striking lines 3 and 4 and  
39 inserting the following: "transaction under section  
40 520.4 or 520.9. The treasurer of state shall base the  
41 surcharge for each payor upon the".  
42 8. Page 2, by striking line 18 and inserting the  
43 following: "fund. However, the treasurer of state  
44 shall not annually collect over seven hundred thousand  
45 dollars in assessing the surcharge.  
46 2. The surcharges collected to this section shall  
47 be deposited in the second injury fund, and may be  
48 used for the payment of claims or entering into  
49 settlements.  
50 3. An insurer or self-insurer shall pay a

H-5495

H-5495

Page 2

1 surcharge imposed by this section no later than thirty  
2 days following the assessment.

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

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

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

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

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

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

50 6. The imposition of the surcharge shall be

H-5495

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H-5495

Page 3

1 limited to the".

2 9. Page 2, by striking lines 22 and 23 and  
3 inserting the following: "of the second injury fund  
4 is retired, the treasurer of state, in the manner  
5 established by this section, shall".

6 10. Title page, line 3, by striking the words  
7 "commissioner of insurance" and inserting the  
8 following: "treasurer of state".

9 11. By renumbering as necessary.

By SUKUP of Franklin

H-5495 FILED MARCH 20, 1996

*Adopted 3/21/96 (p.901)*

## HOUSE FILE 2412

H-5507

1 Amend the amendment, H-5495, to House File 2412, as  
2 follows:

3 1. Page 1, by striking lines 2 through 18 and  
4 inserting the following:

5 " ". Page 1, by striking lines 7 and 8 and  
6 inserting the following: ""m", "n", "o", or "p",  
7 shall equal be paid during the number of weeks in  
8 relation to five hundred weeks and shall be  
9 compensated-as-such as the disability bears to the

10 body of the injured employee as a whole, however, if  
11 said the employee is"."

12 2. By renumbering as necessary.

By MURPHY of Dubuque

H-5507 FILED MARCH 20, 1996

*Lost 3/21/96*

*(p.901)*

S-3/21/10

HOUSE FILE 2412  
BY COMMITTEE ON LABOR AND  
INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 706)

(As Amended and Passed by the House, March 21, 1996)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to workers' compensation claims against the  
2 second injury fund and permanent partial disability  
3 compensation, authorizing the treasurer of state to impose a  
4 surcharge, and providing an effective date.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

1 Section 1. Section 85.34, subsection 2, paragraph u, Code  
2 1995, is amended to read as follows:

3 u. The loss of one arm, one hand, one foot, one leg, or  
4 one eye, if preceded by the loss of any other arm, hand, foot,  
5 or leg shall be compensated in the same manner as if both  
6 losses were the result of a single accident as provided in  
7 paragraph "s", whether or not compensation was previously paid  
8 for the loss of the first member.

9 v. In all cases of permanent partial disability other than  
10 those hereinabove described or referred to in paragraphs "a"  
11 through "t" "u" hereof, the compensation shall be paid during  
12 the number of weeks in relation to five hundred weeks as the  
13 disability bears to the body of the injured employee as a  
14 whole.

15 Sec. 2. NEW SECTION. 85.64A ELIMINATION OF NEW CLAIMS  
16 AGAINST THE FUND.

17 An employee shall not receive payment from the second  
18 injury fund if the employee's original proceeding for workers'  
19 compensation benefits is commenced more than ninety days after  
20 the effective date of this Act.

21 Sec. 3. NEW SECTION. 85.66A REPORT ON LIABILITY OF THE  
22 FUND AND SURCHARGE ON EMPLOYERS.

23 The treasurer of state shall annually examine the claims  
24 against the second injury fund and shall determine the  
25 outstanding liability of such claims against the second injury  
26 fund. The treasurer of state shall annually prepare a report  
27 of the findings of the examination and shall submit the report  
28 to the committees of the general assembly having jurisdiction  
29 over workers' compensation issues. If the treasurer of state  
30 determines that insufficient funds are available in the second  
31 injury fund to pay claims against the second injury fund, the  
32 treasurer of state shall adopt by rule, pursuant to chapter  
33 17A, a surcharge on employers.

34 1. The surcharge is payable by all self-insured employers  
35 making weekly benefit payments and all insurers making weekly

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

27 2. The surcharges collected to this section shall be  
28 deposited in the second injury fund, and may be used for the  
29 payment of claims or entering into settlements.

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

33 4. a. If an insurer, policyholder, or self-insurer  
34 withdraws from doing business in this state before the  
35 surcharges authorized by this section become due, or fails or

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

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

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

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

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

35 5. For the purposes of this section, "insurer" includes a

1 self-insurance group approved by the commissioner of insurance  
2 pursuant to section 87.4.

3 6. The imposition of the surcharge shall be limited to the  
4 three fiscal years beginning after the effective date of this  
5 Act. At the conclusion of this three-year period, and for  
6 subsequent three-year periods until the outstanding liability  
7 of the second injury fund is retired, the treasurer of state,  
8 in the manner established by this section, shall examine and  
9 report on the outstanding liability against the second injury  
10 fund and may reimpose a surcharge.

11 Sec. 4. NEW SECTION. 85.66B FINAL DISPOSITION OF CLAIMS  
12 INVOLVING THE FUND.

13 The industrial commissioner, in cooperation with the  
14 treasurer of state, shall resolve claims involving the second  
15 injury fund as soon as possible through payment methods, such  
16 as, but not limited to, entering into lump sum settlements or  
17 purchasing of annuities.

18 Sec. 5. NEW SECTION. 85.67A ADMINISTRATIVE EXPENSES OF  
19 SPECIAL COUNSEL.

20 The attorney general shall not be compensated from the  
21 second injury fund for administrative expenses incurred in  
22 connection with the second injury fund.

23 Sec. 6. EFFECTIVE DATE. This Act, being deemed of  
24 immediate importance, takes effect upon enactment.

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HOUSE FILE 2412  
FISCAL NOTE

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A fiscal note for House File 2412 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.

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House File 2412 provides for permanent partial disability compensation for loss of both arms, hands, feet, legs, eyes, or any two thereof caused by a single injury or a second injury in combination with a previous loss of a hand, the upper part of the arm or leg, a foot, or an eye.

The Bill states that no new claims are to be filed against the Second Injury Fund 90 days after the effective date, that the Industrial Commissioner is to resolve claims as soon as possible, and that the Attorney General is not to be compensated from the Fund for administrative expenses incurred in connection with the Fund.

The Bill also directs the Treasurer of State to examine claims against the Fund, determine the Fund's outstanding liability, and submit a report of the findings to the General Assembly. The Bill authorizes the Treasurer to impose, by rule a surcharge on employers if it is determined that there are insufficient funds to pay claims. The surcharge for each payor is to be based on the payor's pro rata share of weekly benefits paid in the State during the immediately preceding fiscal year.

FISCAL IMPACT

The estimated net fiscal impact to the Second Injury Fund is zero. The Treasurer would assess a surcharge and collect funds equal to the amount of the liability against the Fund. All funds collected would be paid to claimants. Approximately \$900,000 was paid out of the Fund in FY 1995. For FY 1996 approximately \$468,000 has been expended through the first six months.

SOURCE

Office of the Treasurer of State

(LSB 4308HV, LDC)

FILED MARCH 26, 1996

BY DENNIS PROUTY, FISCAL DIRECTOR

*Lukup, Ch  
Halvorson  
Murphy*

**HSB 706**  
LABOR & INDUSTRIAL RELATIONS

Succeeded By  
SF/AF 2412

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
LABOR AND INDUSTRIAL  
RELATIONS BILL BY CHAIR-  
PERSON TYRRELL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to workers' compensation claims against the  
2 second injury fund, authorizing the commissioner of insurance  
3 to impose a surcharge, and providing an effective date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 85.64A ELIMINATION OF NEW CLAIMS  
2 AGAINST THE FUND.

3 An employee shall not receive payment from the second  
4 injury fund if the employee's original proceeding for workers'  
5 compensation benefits is commenced more than ninety days after  
6 the effective date of this Act.

7 Sec. 2. NEW SECTION. 85.66A REPORT ON LIABILITY OF THE  
8 FUND AND SURCHARGE ON EMPLOYERS.

9 The commissioner of insurance shall annually examine the  
10 claims against the second injury fund and shall determine the  
11 outstanding liability of such claims against the second injury  
12 fund. The commissioner of insurance shall annually prepare a  
13 report of the findings of the examination and shall submit the  
14 report to the committees of the general assembly having  
15 jurisdiction over workers' compensation issues. If the  
16 commissioner of insurance determines that insufficient funds  
17 are available in the second injury fund to pay claims against  
18 the second injury fund, the commissioner of insurance shall  
19 adopt by rule, pursuant to chapter 17A, a surcharge on  
20 employers. The surcharge shall apply to all workers'  
21 compensation insurance policies and self-insurance coverages  
22 of employers approved for self-insurance by the commissioner  
23 of insurance pursuant to section 87.4 or 87.11, and to the  
24 state of Iowa, its departments, divisions, agencies,  
25 commissions, and boards, or any political subdivision  
26 coverages whether insured or self-insured. The surcharge  
27 shall not apply to any reinsurance or retrocessional  
28 transaction under section 520.4 or 520.9. The commissioner of  
29 insurance shall base the surcharge for each payor upon the  
30 payor's pro rata share of weekly benefits paid in the state  
31 during the immediately preceding fiscal year. The  
32 commissioner of insurance may use reports of weekly benefits  
33 paid derived from the last completed policy or reporting year,  
34 or other consistent allocation methodology. The surcharge is  
35 collectible by an insurer or from its policyholders if the

1 insured employer fails to pay the insurer. An insurance  
2 carrier, its agent, or a third-party administrator shall not  
3 be entitled to any portion of the surcharge as a fee or  
4 commission for its collection. The surcharge is not subject  
5 to any taxes, licenses, or fees. The surcharge is not deemed  
6 to be an assessment or tax, but shall be deemed an additional  
7 benefit paid for injuries compensable under the second injury  
8 fund. The imposition of the surcharge shall be limited to the  
9 three fiscal years beginning after the effective date of this  
10 Act. At the conclusion of this three-year period, and for  
11 subsequent three-year periods until the outstanding liability  
12 of the second injury fund is retired, the commissioner of  
13 insurance, in the manner established by this section, shall  
14 examine and report on the outstanding liability against the  
15 second injury fund and may reimpose a surcharge.

16 Sec. 3. NEW SECTION. 85.66B FINAL DISPOSITION OF CLAIMS  
17 INVOLVING THE FUND.

18 The industrial commissioner, in cooperation with the  
19 treasurer of state, shall resolve claims involving the second  
20 injury fund as soon as possible through payment methods, such  
21 as, but not limited to, entering into lump sum settlements or  
22 purchasing of annuities.

23 Sec. 4. NEW SECTION. 85.67A ADMINISTRATIVE EXPENSES OF  
24 SPECIAL COUNSEL.

25 The attorney general shall not be compensated from the  
26 second injury fund for administrative expenses incurred in  
27 connection with the second injury fund.

28 Sec. 5. EFFECTIVE DATE. This Act, being deemed of  
29 immediate importance, takes effect upon enactment.

30 EXPLANATION

31 Section 1 of this bill provides that an employee shall not  
32 receive payment from the second injury fund if the employee's  
33 original proceeding for workers' compensation benefits is  
34 commenced more than 90 days after the effective date of this  
35 Act.

1 Section 2 directs the commissioner of insurance to examine  
2 the claims against the second injury fund, determine the  
3 fund's outstanding liability for such claims, and submit a  
4 report of the findings to the general assembly. The bill  
5 authorizes that if the commissioner of insurance determines  
6 that there are insufficient funds in the second injury fund to  
7 pay claims, the commissioner of insurance may impose, by rule,  
8 a surcharge on employers for a three-year interval. The  
9 surcharge shall apply to all workers' compensation insurance  
10 policies and self-insurance coverages of employers approved  
11 for self-insurance by the commissioner of insurance and to the  
12 state of Iowa, its departments, divisions, agencies,  
13 commissions, and boards, or any political subdivision  
14 coverages whether insured or self-insured. The bill provides  
15 that this examination, report, and surcharge process shall  
16 continue at three-year intervals until the outstanding debt of  
17 the second injury fund is retired.

18 Section 3 directs the industrial commissioner, in  
19 cooperation with the treasurer of state, to resolve to final  
20 disposition claims involving the second injury fund as soon as  
21 possible through payment methods, such as, but not limited to,  
22 entering into lump sum settlements or purchasing of annuities.

23 Section 4 provides that the attorney general shall not be  
24 compensated from the second injury fund for administrative  
25 expenses incurred in connection with the second injury fund.

26 Section 5 provides that the bill takes effect upon  
27 enactment.

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