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3/19/98 Unfinished Business Calendar

MAR 3 1998  
Place On Calendar

HOUSE FILE 2515  
BY COMMITTEE ON LABOR  
AND INDUSTRIAL RELATIONS

(SUCCESSOR TO HSB 570)

Passed House, Date 4-11-98 Passed Senate, Date \_\_\_\_\_  
Vote: Ayes WITH Nays 11 4-8-98 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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 to  
4 include the imposition of an employer surcharge, providing for  
5 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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HT 2515

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 Supplement 1997, is amended by  
21 striking the 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 as  
8 determined by a physician, and the employee becomes  
9 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, then the  
23 employee shall also be entitled to compensation from the  
24 employer for the number of weeks representing this difference  
25 after the expiration of the full period provided by law for  
26 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. SECOND INJURY FUND CLAIMS -- DETERMINATION --  
24 DISPOSITION -- SURCHARGE.

25 1. SECOND INJURY FUND CLAIMS -- DETERMINATION.

26 Notwithstanding the provisions of this Act to the contrary,  
27 section 85.64 (Code 1997) and section 85.36, subsection 9,  
28 paragraph "c", unnumbered paragraph 2 (Code 1997), apply to  
29 compensable injuries occurring prior to the effective date of  
30 this Act. Any claims determined pursuant to this subsection  
31 to be payable from the second injury fund as provided by  
32 section 85.64 (Code 1997) shall be paid as provided by this  
33 section.

34 2. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A  
35 second injury compensation claims fund is created within the

1 office of the treasurer of state. The second injury  
2 compensation claims fund is to be used to pay claims involving  
3 the second injury compensation Act. The treasurer of state  
4 shall be charged with the conservation of the assets of the  
5 second injury compensation claims fund and the collection of  
6 contributions to the fund. The attorney general shall appoint  
7 a staff member to represent the treasurer of state and the  
8 fund in all proceedings and matters pertaining to the fund.  
9 Upon the effective date of this Act, moneys in the second  
10 injury fund shall be transferred to the second injury  
11 compensation claims fund.

12 3. SECOND INJURY FUND LIABILITY -- SURCHARGE ON EMPLOYERS.

13 a. Prior to each fiscal year commencing on or after the  
14 effective date of this Act, the commissioner of insurance  
15 shall examine claims in which there has been an agreement for  
16 settlement or an award has been made involving the second  
17 injury compensation Act and shall determine the outstanding  
18 liability of such claims. The commissioner of insurance shall  
19 continue to examine claims as required by this section until  
20 all outstanding liabilities involving the second injury  
21 compensation Act are retired.

22 b. For each fiscal year commencing on or after the  
23 effective date of this Act and for subsequent fiscal years,  
24 the commissioner of insurance may adopt by rule, pursuant to  
25 chapter 17A, a surcharge on employers pursuant to the  
26 requirements of this section and payable to the second injury  
27 compensation claims fund if, pursuant to its annual  
28 examination of claims, the commissioner of insurance  
29 determines that insufficient funds are available in the second  
30 injury compensation claims fund to pay claims involving the  
31 second injury compensation Act. The surcharge shall apply to  
32 all workers' compensation insurance policies and self-  
33 insurance coverages of employers approved for self-insurance  
34 by the commissioner of insurance pursuant to section 87.4 or  
35 87.11, and to the state of Iowa, its departments, divisions,

1 agencies, commissions, and boards, or any political  
2 subdivision coverages whether insured or self-insured. The  
3 surcharge shall not apply to any reinsurance or retrocessional  
4 transaction under section 520.4 or 520.9. In determining the  
5 surcharge for each applicable fiscal year, the commissioner of  
6 insurance shall provide that all insured and self-insured  
7 employers be assessed for the outstanding liabilities arising  
8 out of claims involving the second injury compensation Act as  
9 determined pursuant to paragraph "a". The total assessment  
10 amount used in calculating the surcharge for each applicable  
11 fiscal year shall be allocated between self-insured employers  
12 and insured employers, based on paid losses for the preceding  
13 calendar year as provided in this paragraph. The method of  
14 assessing self-insured employers shall be based on paid  
15 losses. The method of assessing insured employers shall be a  
16 surcharge based on premium, as set forth in this paragraph.  
17 The portion of the total aggregate assessment that shall be  
18 collected from self-insured employers shall be equal to that  
19 proportion of total paid losses during the preceding calendar  
20 year, which the total compensation payments of all self-  
21 insured employers bore to the total compensation payments made  
22 by all self-insured employers and insurers on behalf of all  
23 insured employers during the preceding calendar year. The  
24 portion of the total aggregate assessment that shall be  
25 collected from insured employers shall be equal to that  
26 proportion of total paid losses during the preceding calendar  
27 year, which the total compensation payments on behalf of all  
28 insured employers bore to the total compensation payments made  
29 by all self-insured employers and insurers on behalf of all  
30 insured employers during the preceding calendar year.  
31 Insurers shall collect assessments from insured employers  
32 through a surcharge based on premium. Such assessments when  
33 collected shall not constitute an element of loss for the  
34 purpose of establishing rates for workers' compensation  
35 insurance but shall for the purpose of collection be treated

1 as separate costs by insurers. The surcharge is collectible  
2 by an insurer or from its policyholders if the insured  
3 employer fails to pay the insurer. An insurance carrier, its  
4 agent, or a third-party administrator shall not be entitled to  
5 any portion of the surcharge as a fee or commission for its  
6 collection. The surcharge is not subject to any taxes,  
7 licenses, or fees. The surcharge is not deemed to be an  
8 assessment or tax, but shall be deemed an additional benefit  
9 paid for injuries compensable under the second injury  
10 compensation Act.

11 For purposes of this paragraph, unless the context  
12 otherwise requires:

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

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

23 4. FINAL DISPOSITION OF CLAIMS. The industrial  
24 commissioner of the department of workforce development, in  
25 cooperation with the treasurer of state, shall resolve claims  
26 involving the second injury compensation Act as soon as  
27 possible through payment methods, such as, but not limited to,  
28 entering into lump sum settlements or purchasing of annuities.

29 5. ADMINISTRATIVE EXPENSES OF SPECIAL COUNSEL. For each  
30 fiscal year commencing on or after the effective date of this  
31 Act and for subsequent fiscal years, the attorney general  
32 shall not be compensated for administrative expenses incurred  
33 in connection with the second injury compensation claims fund.

34 Sec. 8. Sections 85.64, 85.65, 85.66, 85.67, 85.68, and  
35 85.69, Code 1997, are repealed.

1 Sec. 9. EFFECTIVE DATE. This Act, being deemed of  
2 immediate importance, takes effect upon enactment.

3 EXPLANATION

4 This bill repeals the second injury compensation Act. The  
5 second injury compensation Act provides that an employee who  
6 had previously lost the use of one hand, arm, foot, leg, or  
7 eye would be entitled to compensation for that loss from a  
8 separate second injury fund if the employee subsequently  
9 becomes permanently disabled by the loss of another member or  
10 organ which is compensable under workers' compensation  
11 provisions. In lieu of compensation under the second injury  
12 compensation Act, the bill provides that if the employee who  
13 had previously lost the use of one hand, arm, foot, leg, or  
14 eye becomes permanently disabled by the loss of another member  
15 or organ, the employee shall receive additional workers'  
16 compensation benefits based upon the difference between the  
17 compensation that would otherwise be payable for the degree of  
18 disability involved for both injuries combined and the  
19 compensation that would be payable for the prior and  
20 subsequent injury if determined separately.

21 The bill provides that the second injury compensation Act  
22 still applies to injuries occurring prior to the effective  
23 date of this bill.

24 The bill establishes the process for settling unpaid claims  
25 and settlements arising out of the second injury compensation  
26 Act. The bill establishes a second injury compensation claims  
27 fund with the treasurer of state for payment of claims arising  
28 out of the second injury compensation Act and provides that  
29 any moneys in the second injury fund shall be transferred to  
30 this new fund.

31 The bill also directs the commissioner of insurance to  
32 examine the claims involving the second injury compensation  
33 Act and determine the outstanding liability for such claims.  
34 The bill provides that if the commissioner of insurance  
35 determines that there are insufficient funds in the second

1 injury compensation claims fund to pay claims, the  
2 commissioner of insurance may impose, by rule, a surcharge on  
3 employers. The surcharge shall apply to all workers'  
4 compensation insurance policies and self-insurance coverages  
5 of employers approved for self-insurance by the commissioner  
6 of insurance and to the state of Iowa, its departments,  
7 divisions, agencies, commissions, and boards, or any political  
8 subdivision coverages whether insured or self-insured. The  
9 bill also establishes the methodology for calculating the  
10 assessment charged to insured and self-insured employees. The  
11 bill provides that this examination and surcharge process  
12 shall continue until the outstanding debt arising out of the  
13 second injury compensation Act is retired.

14 The bill also directs the industrial commissioner, in  
15 cooperation with the treasurer of state, to resolve to final  
16 disposition claims involving the second injury compensation  
17 Act as soon as possible through payment methods, such as, but  
18 not limited to, entering into lump sum settlements or  
19 purchasing of annuities. In addition, the attorney general  
20 shall not be compensated from the second injury compensation  
21 claims fund for administrative expenses incurred in connection  
22 with the fund.

23 The bill takes effect upon enactment.

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## HOUSE FILE 2515

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1 Amend House File 2515 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,

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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

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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

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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.

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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

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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

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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 LAMBERTI of Polk  
TAYLOR of Linn

H-8892 FILED APRIL 2, 1998

*Adopted 4/8/98 p. 1281*

Lamberti, Ch

Lukens  
Taylor

HSB 570

LABOR & INDUSTRIAL RELATIONS

SU  
SF/11

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

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

**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 to  
4 include the imposition of an employer surcharge, and providing  
5 an effective date.

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

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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 Supplement 1997, is amended by  
21 striking the 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 85A.7, subsection 3, Code 1997, is amended  
3 to read as follows:

4 3. When such occupational disease causes the death of an  
5 employee and there are no dependents entitled to compensation,  
6 then the employer shall pay the medical, hospital and burial  
7 expenses as is provided by the workers' compensation law ~~7-and~~  
8 ~~shall-also-pay-to-the-treasurer-of-the-state-for-the-use-and~~  
9 ~~benefit-of-the-second-injury-compensation-fund-such-amount-as~~  
10 ~~is-required-by-the-second-injury-compensation-law.~~

11 Sec. 5. Section 86.12, unnumbered paragraph 1, Code 1997,  
12 is amended to read as follows:

13 The industrial commissioner may require any employer to  
14 supply the information required by section 86.10 or to file a  
15 report required by section 86.11, by written demand sent to  
16 the employer's last known address. Upon failure to supply  
17 such information or file such report within twenty days, the  
18 employer may be ordered to appear and show cause why the  
19 employer should not be subject to civil penalty of one hundred  
20 dollars for each occurrence. Upon such hearing, the  
21 industrial commissioner shall enter a finding of fact and may  
22 enter an order requiring such penalty to be paid into the  
23 ~~second-injury~~ general fund ~~created-by-sections-85-63-to-85-69~~  
24 of the state. In the event the civil penalty assessed is not  
25 voluntarily paid the industrial commissioner may file a  
26 certified copy of such finding and order with the clerk of the  
27 court for the district in which the employer maintains a place  
28 of business. If the employer maintains no place of business  
29 in this state service shall be made as provided in chapter 85  
30 for nonresident employers. In such case the finding and order  
31 may be filed in any court of competent jurisdiction within  
32 this state.

33 Sec. 6. SECOND INJURY FUND CLAIMS -- DETERMINATION --  
34 DISPOSITION -- SURCHARGE.

35 1. SECOND INJURY FUND CLAIMS -- DETERMINATION.

1 Notwithstanding the provisions of this Act to the contrary,  
2 section 85.64 (Code 1997) and section 85.36, subsection 9,  
3 paragraph "c", unnumbered paragraph 2 (Code 1997), apply to  
4 compensable injuries occurring prior to the effective date of  
5 this Act. Any claims determined pursuant to this subsection  
6 to be payable from the second injury fund as provided by  
7 section 85.64 (Code 1997) shall be paid as provided by this  
8 section.

9 2. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A  
10 second injury compensation claims fund is created within the  
11 office of the treasurer of state. The second injury  
12 compensation claims fund is to be used to pay claims involving  
13 the second injury compensation Act. The treasurer of state  
14 shall be charged with the conservation of the assets of the  
15 second injury compensation claims fund and the collection of  
16 contributions to the fund. The attorney general shall appoint  
17 a staff member to represent the treasurer of state and the  
18 fund in all proceedings and matters pertaining to the fund.  
19 Upon the effective date of this Act, moneys in the second  
20 injury fund shall be transferred to the second injury  
21 compensation claims fund.

22 3. SECOND INJURY FUND LIABILITY -- SURCHARGE ON EMPLOYERS.

23 a. Prior to each fiscal year commencing on or after the  
24 effective date of this Act, the commissioner of insurance  
25 shall examine claims in which there has been an agreement for  
26 settlement or an award has been made involving the second  
27 injury compensation Act and shall determine the outstanding  
28 liability of such claims. The commissioner of insurance shall  
29 continue to examine claims as required by this section until  
30 all outstanding liabilities involving the second injury  
31 compensation Act are retired.

32 b. For each fiscal year commencing on or after the  
33 effective date of this Act and for subsequent fiscal years,  
34 the commissioner of insurance may adopt by rule, pursuant to  
35 chapter 17A, a surcharge on employers pursuant to the

1 requirements of this section and payable to the second injury  
2 compensation claims fund if, pursuant to its annual  
3 examination of claims, the commissioner of insurance  
4 determines that insufficient funds are available in the second  
5 injury compensation claims fund to pay claims involving the  
6 second injury compensation Act. The surcharge shall apply to  
7 all workers' compensation insurance policies and self-  
8 insurance coverages of employers approved for self-insurance  
9 by the commissioner of insurance pursuant to section 87.4 or  
10 87.11, and to the state of Iowa, its departments, divisions,  
11 agencies, commissions, and boards, or any political  
12 subdivision coverages whether insured or self-insured. The  
13 surcharge shall not apply to any reinsurance or retrocessional  
14 transaction under section 520.4 or 520.9. In determining the  
15 surcharge for each applicable fiscal year, the commissioner of  
16 insurance shall provide that all insured and self-insured  
17 employers be assessed for the outstanding liabilities arising  
18 out of claims involving the second injury compensation Act as  
19 determined pursuant to paragraph "a". The total assessment  
20 amount used in calculating the surcharge for each applicable  
21 fiscal year shall be allocated between self-insured employers  
22 and insured employers, based on paid losses for the preceding  
23 calendar year as provided in this paragraph. The method of  
24 assessing self-insured employers shall be based on paid  
25 losses. The method of assessing insured employers shall be a  
26 surcharge based on premium, as set forth in this paragraph.  
27 The portion of the total aggregate assessment that shall be  
28 collected from self-insured employers shall be equal to that  
29 proportion of total paid losses during the preceding calendar  
30 year, which the total compensation payments of all self-  
31 insured employers bore to the total compensation payments made  
32 by all self-insured employers and insurers on behalf of all  
33 insured employers during the preceding calendar year. The  
34 portion of the total aggregate assessment that shall be  
35 collected from insured employers shall be equal to that

1 proportion of total paid losses during the preceding calendar  
2 year, which the total compensation payments on behalf of all  
3 insured employers bore to the total compensation payments made  
4 by all self-insured employers and insurers on behalf of all  
5 insured employers during the preceding calendar year.  
6 Insurers shall collect assessments from insured employers  
7 through a surcharge based on premium. Such assessments when  
8 collected shall not constitute an element of loss for the  
9 purpose of establishing rates for workers' compensation  
10 insurance but shall for the purpose of collection be treated  
11 as separate costs by insurers. The surcharge is collectible  
12 by an insurer or from its policyholders if the insured  
13 employer fails to pay the insurer. An insurance carrier, its  
14 agent, or a third-party administrator shall not be entitled to  
15 any portion of the surcharge as a fee or commission for its  
16 collection. The surcharge is not subject to any taxes,  
17 licenses, or fees. The surcharge is not deemed to be an  
18 assessment or tax, but shall be deemed an additional benefit  
19 paid for injuries compensable under the second injury  
20 compensation Act.

21 For purposes of this paragraph, unless the context  
22 otherwise requires:

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

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

33 4. FINAL DISPOSITION OF CLAIMS. The industrial  
34 commissioner of the department of workforce development, in  
35 cooperation with the treasurer of state, shall resolve claims

1 involving the second injury compensation Act as soon as  
2 possible through payment methods, such as, but not limited to,  
3 entering into lump sum settlements or purchasing of annuities.

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

9 Sec. 7. Sections 85.63, 85.64, 85.65, 85.66, 85.67, 85.68,  
10 and 85.69, Code 1997, are repealed.

11 Sec. 8. EFFECTIVE DATE. This Act, being deemed of  
12 immediate importance, takes effect upon enactment.

13

#### EXPLANATION

14 This bill repeals the second injury compensation Act. The  
15 second injury compensation Act provides that an employee who  
16 had previously lost the use of one hand, arm, foot, leg, or  
17 eye would be entitled to compensation for that loss from a  
18 separate second injury fund if the employee subsequently  
19 becomes permanently disabled by the loss of another member or  
20 organ which is compensable under workers' compensation  
21 provisions.

22 The bill provides that the second injury compensation Act  
23 still applies to injuries occurring prior to the effective  
24 date of this bill.

25 The bill establishes the process for settling unpaid claims  
26 and settlements arising out of the second injury compensation  
27 Act. The bill establishes a second injury compensation claims  
28 fund with the treasurer of state for payment of claims arising  
29 out of the second injury compensation Act and provides that  
30 any moneys in the second injury fund shall be transferred to  
31 this new fund.

32 The bill also directs the commissioner of insurance to  
33 examine the claims involving the second injury compensation  
34 Act and determine the outstanding liability for such claims.  
35 The bill provides that if the commissioner of insurance

1 determines that there are insufficient funds in the second  
2 injury compensation claims fund to pay claims, the  
3 commissioner of insurance may impose, by rule, a surcharge on  
4 employers. The surcharge shall apply to all workers'  
5 compensation insurance policies and self-insurance coverages  
6 of employers approved for self-insurance by the commissioner  
7 of insurance and to the state of Iowa, its departments,  
8 divisions, agencies, commissions, and boards, or any political  
9 subdivision coverages whether insured or self-insured. The  
10 bill also establishes the methodology for calculating the  
11 assessment charged to insured and self-insured employees. The  
12 bill provides that this examination and surcharge process  
13 shall continue until the outstanding debt arising out of the  
14 second injury compensation Act is retired.

15 The bill also directs the industrial commissioner, in  
16 cooperation with the treasurer of state, to resolve to final  
17 disposition claims involving the second injury compensation  
18 Act as soon as possible through payment methods, such as, but  
19 not limited to, entering into lump sum settlements or  
20 purchasing of annuities. In addition, the attorney general  
21 shall not be compensated from the second injury compensation  
22 claims fund for administrative expenses incurred in connection  
23 with the fund.

24 The bill takes effect upon enactment.

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