

# House Study Bill 202

## Bill Text

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1 1 Section 1. Section [85.31](#), subsection 5, Code 1997, is  
1 2 amended to read as follows:

1 3 5. Except as otherwise provided by treaty, whenever, under  
1 4 the provisions of this chapter and chapters 86 and 87,  
1 5 compensation is payable to a dependent who is an alien not  
1 6 residing in the United States at the time of the injury, the  
1 7 employer shall be required to pay fifty percent of the  
1 8 compensation herein otherwise provided to such dependent

~~1 9 , and~~

1 9

~~1 10 the other fifty percent shall be paid into the second injury~~

1 10

~~1 11 fund in the custody of the treasurer of state~~

~~1 12 But~~

~~1 13 However,~~

1 11 if the nonresident alien dependent is a citizen of a  
1 12 government having a compensation law which excludes citizens  
1 13 of the United States, either resident or nonresident, from  
1 14 partaking of the benefits of such law in as favorable degree  
1 15 as herein extended to the nonresident alien,

~~1 16 then said~~

~~1 17 the~~

1 16 compensation

~~1 18 which would otherwise~~

~~1 19 shall not~~ be payable to

1 17 such dependent

~~1 20 shall be paid into the second injury fund in~~

1 18

~~1 19 the custody of the treasurer of state~~

1 19 Sec. 2. Section [85.36](#), subsection 9, paragraph c,  
1 20 unnumbered paragraph 2, Code 1997, is amended by striking the  
1 21 unnumbered paragraph.

1 22 Sec. 3. Section [85.55](#), Code 1997, is amended to read as  
1 23 follows:

1 24 85.55 WAIVERS PROHIBITED - PHYSICAL DEFECTS.

1 25 No employee or dependent to whom this chapter applies,  
1 26 shall have power to waive any of the provisions of this  
1 27 chapter in regard to the amount of compensation which may be  
1 28 payable to such employee or dependent hereunder. However, any  
1 29 person who has some physical defect which increases the risk  
1 30 of injury, may, subject to the approval of the industrial  
1 31 commissioner, enter into a written agreement with the  
1 32 employee's employer waiving compensation for injuries which

1 33 may occur directly or indirectly because of such physical  
1 34 defect

~~, provided, however, that such waiver shall not affect~~

1 35

~~the employee's benefits to be paid from the second injury fund~~

2 1

~~under the provisions of section 85.64~~

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

2 4 85.63 PRIOR INJURIES - PERMANENT TOTAL DISABILITY.

2 5 If an employee who has previously lost, or lost the use of,  
2 6 one hand, one arm, one foot, one leg, or one eye becomes  
2 7 permanently disabled by a compensable injury resulting in the  
2 8 loss or loss of use of another such member or organ, and the  
2 9 combination of the losses results in the employee being  
2 10 permanently and totally disabled, the employee may be entitled  
2 11 to recover from the employer benefits for a permanent total  
2 12 disability as provided by section 85.34, subsection 3.

2 13 Sec. 5. Section [85A.7](#), subsection 3, Code 1997, is amended  
2 14 to read as follows:

2 15 3. When such occupational disease causes the death of an  
2 16 employee and there are no dependents entitled to compensation,  
2 17 then the employer shall pay the medical, hospital and burial  
2 18 expenses as is provided by the workers' compensation law

~~, and~~

2 19

~~shall also pay to the treasurer of the state for the use and~~

2 20

~~benefit of the second injury compensation fund such amount as~~

2 21

~~is required by the second injury compensation law~~

2 22 Sec. 6. Section [86.12](#), unnumbered paragraph 1, Code 1997,  
2 23 is amended to read as follows:

2 24 The industrial commissioner may require any employer to  
2 25 supply the information required by section 86.10 or to file a  
2 26 report required by section 86.11, by written demand sent to  
2 27 the employer's last known address. Upon failure to supply  
2 28 such information or file such report within twenty days, the  
2 29 employer may be ordered to appear and show cause why the  
2 30 employer should not be subject to civil penalty of one hundred  
2 31 dollars for each occurrence. Upon such hearing, the  
2 32 industrial commissioner shall enter a finding of fact and may  
2 33 enter an order requiring such penalty to be paid into the  
2 34

~~second injury~~

~~general fund~~

~~created by sections 85.63 to 85.69~~

3 35 of the state. In the event the civil penalty assessed is not  
3 1 voluntarily paid the industrial commissioner may file a  
3 2 certified copy of such finding and order with the clerk of the

3 3 court for the district in which the employer maintains a place  
3 4 of business. If the employer maintains no place of business  
3 5 in this state service shall be made as provided in chapter 85  
3 6 for nonresident employers. In such case the finding and order  
3 7 may be filed in any court of competent jurisdiction within  
3 8 this state.

3 9 Sec. 7. 1996 Iowa Acts, chapter 1211, section 25,  
3 10 subsections 3 and 4, are amended to read as follows:

3 11 3. The surcharges collected pursuant to this section shall  
3 12 be deposited in the second injury compensation claims fund  
3 13 established in section 9 of this Act.

3 14 4. The administrative costs and expenses incurred by the  
3 15 treasurer of state, the attorney general, the second injury  
3 16 compensation claims fund, or the department of revenue and  
3 17 finance, in connection with the second injury compensation  
3 18 claims fund, may be paid from the fund to the extent  
3 19 authorized by

~~1995 Iowa Acts, chapter 219, section 25, and~~

3 20 this section. However, the payment of administrative costs  
3 21 and expenses incurred by the treasurer of state, the attorney  
3 22 general, the second injury compensation claims fund, and the  
3 23 department of revenue and finance, as authorized in this  
3 24 subsection, shall only be permitted for administrative costs  
3 25 and expenses incurred in the fiscal year commencing July 1,  
3 26 1996, and ending June 30, 1997, and shall not exceed \$170,000.

3 27 Sec. 8. 1996 Iowa Acts, chapter 1211, section 25,  
3 28 subsection 6, paragraph a, is amended to read as follows:

3 29 a. If an insurer, policyholder, or self-insurer withdraws  
3 30 from doing business in this state before the surcharges  
3 31 authorized by this section become due, or fails or neglects to  
3 32 pay the surcharge imposed, the treasurer of state shall at  
3 33 once proceed to collect the surcharge, and may employ such  
3 34 legal process as may be necessary for that purpose, and when  
3 35 so collected shall deposit the surcharge into the second  
4 1 injury compensation claims fund. The treasurer may bring the  
4 2 suit in any court of this state having jurisdiction, and  
4 3 reasonable attorney's fees may be taxed as costs in the suit.

4 4 Sec. 9. DISPOSITION OF SECOND INJURY FUND CLAIMS -  
4 5 SURCHARGE.

4 6 1. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A  
4 7 second injury compensation claims fund is created within the  
4 8 office of the treasurer of state. The second injury  
4 9 compensation claims fund is to be used to pay claims involving  
4 10 the second injury compensation Act. The treasurer of state  
4 11 shall be charged with the conservation of the assets of the  
4 12 second injury compensation claims fund and the collection of  
4 13 contributions to the fund. The attorney general shall appoint  
4 14 a staff member to represent the treasurer of state and the  
4 15 fund in all proceedings and matters pertaining to the fund.  
4 16 Upon the effective date of this Act, moneys in the second  
4 17 injury fund shall be transferred to the second injury  
4 18 compensation claims fund.

4 19 2. SECOND INJURY FUND LIABILITY - SURCHARGE ON EMPLOYERS.

4 20 a. Prior to each fiscal year commencing on or after the  
4 21 effective date of this Act, the commissioner of insurance  
4 22 shall examine claims in which there has been an agreement for  
4 23 settlement or an award has been made involving the second  
4 24 injury compensation Act and shall determine the outstanding  
4 25 liability of such claims. The commissioner of insurance shall  
4 26 continue to examine claims as required by this section until  
4 27 all outstanding liabilities involving the second injury  
4 28 compensation Act are retired.

4 29 b. For each fiscal year commencing on or after the  
4 30 effective date of this Act and for subsequent fiscal years,  
4 31 the commissioner of insurance may adopt by rule, pursuant to

4 32 chapter 17A, a surcharge on employers pursuant to the  
4 33 requirements of this section and payable to the second injury  
4 34 compensation claims fund if, pursuant to its annual  
4 35 examination of claims, the commissioner of insurance  
5 1 determines that insufficient funds are available in the second  
5 2 injury compensation claims fund to pay claims involving the  
5 3 second injury compensation Act. The surcharge shall apply to  
5 4 all workers' compensation insurance policies and self-  
5 5 insurance coverages of employers approved for self-insurance  
5 6 by the commissioner of insurance pursuant to section 87.4 or  
5 7 87.11, and to the state of Iowa, its departments, divisions,  
5 8 agencies, commissions, and boards, or any political  
5 9 subdivision coverages whether insured or self-insured. The  
5 10 surcharge shall not apply to any reinsurance or retrocessional  
5 11 transaction under section 520.4 or 520.9. The commissioner of  
5 12 insurance shall base the surcharge for each payor upon the  
5 13 payor's pro rata share of weekly benefits paid in the state  
5 14 during the immediately preceding fiscal year. The  
5 15 commissioner of insurance may use reports of weekly benefits  
5 16 paid derived from the last completed policy or reporting year,  
5 17 or other consistent allocation methodology. The surcharge is  
5 18 collectible by an insurer or from its policyholders if the  
5 19 insured employer fails to pay the insurer. An insurance  
5 20 carrier, its agent, or a third-party administrator shall not  
5 21 be entitled to any portion of the surcharge as a fee or  
5 22 commission for its collection. The surcharge is not subject  
5 23 to any taxes, licenses, or fees. The surcharge is not deemed  
5 24 to be an assessment or tax, but shall be deemed an additional  
5 25 benefit paid for injuries compensable under the second injury  
5 26 compensation Act.

5 27 3. FINAL DISPOSITION OF CLAIMS. The industrial  
5 28 commissioner of the department of workforce development, in  
5 29 cooperation with the treasurer of state, shall resolve claims  
5 30 involving the second injury compensation Act as soon as  
5 31 possible through payment methods, such as, but not limited to,  
5 32 entering into lump sum settlements or purchasing of annuities.

5 33 4. ADMINISTRATIVE EXPENSES OF SPECIAL COUNSEL. For each  
5 34 fiscal year commencing on or after the effective date of this  
5 35 Act and for subsequent fiscal years, the attorney general  
6 1 shall not be compensated for administrative expenses incurred  
6 2 in connection with the second injury compensation claims fund.  
6 3 Sec. 10. Sections 85.64, 85.65, 85.66, 85.67, 85.68, and  
6 4 85.69, Code 1997, are repealed.

6 5 Sec. 11. EFFECTIVE DATE. This Act, being deemed of  
6 6 immediate importance, takes effect upon enactment.

6 7 EXPLANATION

6 8 This bill repeals the second injury compensation Act. The  
6 9 second injury compensation Act provides that an employee who  
6 10 had previously lost the use of one hand, arm, foot, leg, or  
6 11 eye would be entitled to compensation for that loss from a  
6 12 separate second injury fund if the employee subsequently  
6 13 becomes permanently disabled by the loss of another member or  
6 14 organ which is compensable under workers' compensation  
6 15 provisions. Under current law, the employer is only liable  
6 16 for the degree of disability which resulted from the latter  
6 17 injury as if the previous injury did not occur. This bill  
6 18 provides that if the employee who had previously lost the use  
6 19 of one hand, arm, foot, leg, or eye becomes permanently  
6 20 disabled by the loss of another such member or organ, and the  
6 21 combination of the losses results in the employee being  
6 22 totally disabled, the employee is entitled to recover from the  
6 23 employer benefits for a permanent total disability.

6 24 The bill also establishes the process for settling unpaid  
6 25 claims and settlements arising out of the second injury  
6 26 compensation Act. The bill establishes a second injury  
6 27 compensation claims fund with the treasurer of state for  
6 28 payment of claims arising out of the second injury

6 29 compensation Act and provides that any moneys in the second  
6 30 injury fund shall be transferred to this new fund.

6 31 The bill also directs the commissioner of insurance to  
6 32 examine the claims involving the second injury compensation  
6 33 Act and determine the outstanding liability for such claims.  
6 34 The bill provides that if the commissioner of insurance  
6 35 determines that there are insufficient funds in the second  
7 1 injury compensation claims fund to pay claims, the  
7 2 commissioner of insurance may impose, by rule, a surcharge on  
7 3 employers. The surcharge shall apply to all workers'  
7 4 compensation insurance policies and self-insurance coverages  
7 5 of employers approved for self-insurance by the commissioner  
7 6 of insurance and to the state of Iowa, its departments,  
7 7 divisions, agencies, commissions, and boards, or any political  
7 8 subdivision coverages whether insured or self-insured. The  
7 9 bill provides that this examination and surcharge process  
7 10 shall continue until the outstanding debt arising out of the  
7 11 second injury compensation Act is retired.

7 12 The bill also directs the industrial commissioner, in  
7 13 cooperation with the treasurer of state, to resolve to final  
7 14 disposition claims involving the second injury compensation  
7 15 Act as soon as possible through payment methods, such as, but  
7 16 not limited to, entering into lump sum settlements or  
7 17 purchasing of annuities. In addition, the attorney general  
7 18 shall not be compensated from the second injury compensation  
7 19 claims fund for administrative expenses incurred in connection  
7 20 with the fund.

7 21 The bill takes effect upon enactment.

7 22 LSB 2015HC 77

7 23 ec/sc/14.1