

# House Study Bill 570

## 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

~~, and~~

1 9

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

1 10

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

~~But~~

~~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,

~~then said~~

~~the~~

1 16 compensation

~~which would otherwise~~

~~shall not~~ be payable to

1 17 such dependent

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

1 18

~~the custody of the treasurer of state~~

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

~~1 35 provided, however, that such waiver shall not affect~~

1 35

~~1 36 the employee's benefits to be paid from the second injury fund~~

2 1

~~2 2 under the provisions of section 85.64~~

2 2 Sec. 4. Section [85A.7](#), subsection 3, Code 1997, is amended  
2 3 to read as follows:

2 4 3. When such occupational disease causes the death of an  
2 5 employee and there are no dependents entitled to compensation,  
2 6 then the employer shall pay the medical, hospital and burial  
2 7 expenses as is provided by the workers' compensation law

~~2 8 , and~~

2 8

~~2 9 shall also pay to the treasurer of the state for the use and~~

2 9

~~2 10 benefit of the second injury compensation fund such amount as~~

2 10

~~2 11 is required by the second injury compensation law~~

2 11 Sec. 5. Section [86.12](#), unnumbered paragraph 1, Code 1997,  
2 12 is amended to read as follows:

2 13 The industrial commissioner may require any employer to  
2 14 supply the information required by section 86.10 or to file a  
2 15 report required by section 86.11, by written demand sent to  
2 16 the employer's last known address. Upon failure to supply  
2 17 such information or file such report within twenty days, the  
2 18 employer may be ordered to appear and show cause why the  
2 19 employer should not be subject to civil penalty of one hundred  
2 20 dollars for each occurrence. Upon such hearing, the  
2 21 industrial commissioner shall enter a finding of fact and may  
2 22 enter an order requiring such penalty to be paid into the  
2 23

~~2 24 second injury~~

~~2 25 general fund~~

~~2 26 created by sections 85.63 to 85.69~~

2 24 of the state. In the event the civil penalty assessed is not  
2 25 voluntarily paid the industrial commissioner may file a  
2 26 certified copy of such finding and order with the clerk of the  
2 27 court for the district in which the employer maintains a place  
2 28 of business. If the employer maintains no place of business  
2 29 in this state service shall be made as provided in chapter 85  
2 30 for nonresident employers. In such case the finding and order  
2 31 may be filed in any court of competent jurisdiction within  
2 32 this state.

2 33 Sec. 6. SECOND INJURY FUND CLAIMS DETERMINATION  
2 34 DISPOSITION SURCHARGE.

2 35 1. SECOND INJURY FUND CLAIMS DETERMINATION.

3 1 Notwithstanding the provisions of this Act to the contrary,  
3 2 section [85.64](#) (Code 1997) and section [85.36](#), subsection 9,

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

3 9 2. CREATION OF SECOND INJURY COMPENSATION CLAIMS FUND. A  
3 10 second injury compensation claims fund is created within the  
3 11 office of the treasurer of state. The second injury  
3 12 compensation claims fund is to be used to pay claims involving  
3 13 the second injury compensation Act. The treasurer of state  
3 14 shall be charged with the conservation of the assets of the  
3 15 second injury compensation claims fund and the collection of  
3 16 contributions to the fund. The attorney general shall appoint  
3 17 a staff member to represent the treasurer of state and the  
3 18 fund in all proceedings and matters pertaining to the fund.  
3 19 Upon the effective date of this Act, moneys in the second  
3 20 injury fund shall be transferred to the second injury  
3 21 compensation claims fund.

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

3 23 a. Prior to each fiscal year commencing on or after the  
3 24 effective date of this Act, the commissioner of insurance  
3 25 shall examine claims in which there has been an agreement for  
3 26 settlement or an award has been made involving the second  
3 27 injury compensation Act and shall determine the outstanding  
3 28 liability of such claims. The commissioner of insurance shall  
3 29 continue to examine claims as required by this section until  
3 30 all outstanding liabilities involving the second injury  
3 31 compensation Act are retired.

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

4 35 collected from insured employers shall be equal to that  
5 1 proportion of total paid losses during the preceding calendar  
5 2 year, which the total compensation payments on behalf of all  
5 3 insured employers bore to the total compensation payments made  
5 4 by all self-insured employers and insurers on behalf of all  
5 5 insured employers during the preceding calendar year.  
5 6 Insurers shall collect assessments from insured employers  
5 7 through a surcharge based on premium. Such assessments when  
5 8 collected shall not constitute an element of loss for the  
5 9 purpose of establishing rates for workers' compensation  
5 10 insurance but shall for the purpose of collection be treated  
5 11 as separate costs by insurers. The surcharge is collectible  
5 12 by an insurer or from its policyholders if the insured  
5 13 employer fails to pay the insurer. An insurance carrier, its  
5 14 agent, or a third-party administrator shall not be entitled to  
5 15 any portion of the surcharge as a fee or commission for its  
5 16 collection. The surcharge is not subject to any taxes,  
5 17 licenses, or fees. The surcharge is not deemed to be an  
5 18 assessment or tax, but shall be deemed an additional benefit  
5 19 paid for injuries compensable under the second injury  
5 20 compensation Act.

5 21 For purposes of this paragraph, unless the context  
5 22 otherwise requires:

5 23 (1) "Insured employers" means employers who are  
5 24 commercially insured for purposes of workers' compensation  
5 25 coverage or who have been self-insured for less than twenty-  
5 26 four months as of the first day of the fiscal year in which a  
5 27 surcharge is imposed pursuant to this section.

5 28 (2) "Self-insured employers" means employers who have been  
5 29 self-insured for purposes of workers' compensation coverage  
5 30 for at least twenty-four months as of the first day of the  
5 31 fiscal year in which a surcharge is imposed pursuant to this  
5 32 section.

5 33 4. FINAL DISPOSITION OF CLAIMS. The industrial  
5 34 commissioner of the department of workforce development, in  
5 35 cooperation with the treasurer of state, shall resolve claims  
6 1 involving the second injury compensation Act as soon as  
6 2 possible through payment methods, such as, but not limited to,  
6 3 entering into lump sum settlements or purchasing of annuities.

6 4 5. ADMINISTRATIVE EXPENSES OF SPECIAL COUNSEL. For each  
6 5 fiscal year commencing on or after the effective date of this  
6 6 Act and for subsequent fiscal years, the attorney general  
6 7 shall not be compensated for administrative expenses incurred  
6 8 in connection with the second injury compensation claims fund.  
6 9 Sec. 7. Sections 85.63, 85.64, 85.65, 85.66, 85.67, 85.68,  
6 10 and 85.69, Code 1997, are repealed.

6 11 Sec. 8. EFFECTIVE DATE. This Act, being deemed of  
6 12 immediate importance, takes effect upon enactment.

#### 6 13 EXPLANATION

6 14 This bill repeals the second injury compensation Act. The  
6 15 second injury compensation Act provides that an employee who  
6 16 had previously lost the use of one hand, arm, foot, leg, or  
6 17 eye would be entitled to compensation for that loss from a  
6 18 separate second injury fund if the employee subsequently  
6 19 becomes permanently disabled by the loss of another member or  
6 20 organ which is compensable under workers' compensation  
6 21 provisions.

6 22 The bill provides that the second injury compensation Act  
6 23 still applies to injuries occurring prior to the effective  
6 24 date of this bill.

6 25 The bill establishes the process for settling unpaid claims  
6 26 and settlements arising out of the second injury compensation  
6 27 Act. The bill establishes a second injury compensation claims  
6 28 fund with the treasurer of state for payment of claims arising  
6 29 out of the second injury compensation Act and provides that  
6 30 any moneys in the second injury fund shall be transferred to  
6 31 this new fund.

6 32 The bill also directs the commissioner of insurance to  
6 33 examine the claims involving the second injury compensation  
6 34 Act and determine the outstanding liability for such claims.  
6 35 The bill provides that if the commissioner of insurance  
7 1 determines that there are insufficient funds in the second  
7 2 injury compensation claims fund to pay claims, the  
7 3 commissioner of insurance may impose, by rule, a surcharge on  
7 4 employers. The surcharge shall apply to all workers'  
7 5 compensation insurance policies and self-insurance coverages  
7 6 of employers approved for self-insurance by the commissioner  
7 7 of insurance and to the state of Iowa, its departments,  
7 8 divisions, agencies, commissions, and boards, or any political  
7 9 subdivision coverages whether insured or self-insured. The  
7 10 bill also establishes the methodology for calculating the  
7 11 assessment charged to insured and self-insured employees. The  
7 12 bill provides that this examination and surcharge process  
7 13 shall continue until the outstanding debt arising out of the  
7 14 second injury compensation Act is retired.

7 15 The bill also directs the industrial commissioner, in  
7 16 cooperation with the treasurer of state, to resolve to final  
7 17 disposition claims involving the second injury compensation  
7 18 Act as soon as possible through payment methods, such as, but  
7 19 not limited to, entering into lump sum settlements or  
7 20 purchasing of annuities. In addition, the attorney general  
7 21 shall not be compensated from the second injury compensation  
7 22 claims fund for administrative expenses incurred in connection  
7 23 with the fund.

7 24 The bill takes effect upon enactment.

7 25 LSB 3776HC 77

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