

## CHAPTER 1056

### WORKERS' COMPENSATION SECOND INJURY FUND

*H.F. 2395*

**AN ACT** relating to workers' compensation, by establishing a second injury fund task force, continuing assessment of a surcharge on workers' compensation benefits paid in the state, and authorizing adoption of administrative rules.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### Section 1. SECOND INJURY FUND TASK FORCE ESTABLISHED.

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

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

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

- a. The long-term needs and goals of the fund.
- b. Whether current funding mechanisms are sufficient to adequately finance the fund, and if not, what types of additional funding mechanisms would be appropriate.
- c. Recommendations for payment of administrative costs associated with the fund.
- d. Changes in the administrative structure concerning the fund or a replacement payment mechanism.
- e. The role and purpose served by the second injury fund within the workers' compensation system.
- f. Any other related issues concerning the operation, administration, purposes, and funding of the second injury fund.

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

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

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

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

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

1. For the fiscal year commencing July 1, 1992, the treasurer of state may assess a surcharge on workers' compensation weekly benefits paid in the state during the immediately preceding fiscal year. The surcharge is payable by all self-insured employers making weekly benefit payments and all insurers making weekly benefit payments on behalf of insured employers. The surcharge applies to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9. The treasurer of state shall base the surcharge for each payor upon the payor's pro rata share of weekly benefits paid in the state during the immediately preceding fiscal year. The treasurer may use reports of weekly benefits paid derived from the last completed policy or reporting year, or other consistent allocation methodology. The surcharge is collectable by

an insurer or from its policyholders if the insured employer fails to pay the insurer. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under the second injury fund. However, the treasurer of state shall not collect over eight hundred seventy thousand dollars in assessing the surcharge.

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

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

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

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

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

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

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

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

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

Approved April 9, 1992