

to provide classroom and laboratory instruction, costs to students and to schools, privatizing driver's education, expansion of behind-the-wheel training and effects on insurance rates. The committee may consult with the department of transportation, department of education, parents, educators, insurance executives, and other persons the committee may believe relevant to the study of driver's education. The committee is directed to submit its findings, together with any recommendations, in a report to the general assembly which convenes in January 1999.

Sec. 16. EFFECTIVE DATE. This Act takes effect January 1, 1999.

Approved April 16, 1998

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## CHAPTER 1113

### CONTRIBUTIONS AND PAYMENTS TO SECOND INJURY FUND

#### S.F. 540

**AN ACT** relating to the second injury compensation Act, by providing for payments to the second injury fund including the imposition of an employer surcharge and a sunset of the ability to impose an employer surcharge, providing for the collection of payments to the second injury fund, and providing an effective date and applicability provision.

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

Section 1. Section 85.65, Code 1997, is amended to read as follows:  
85.65 PAYMENTS TO SECOND INJURY FUND.

The employer, or, if insured, the insurance carrier in each case of compensable injury causing death, shall pay to the treasurer of state for the second injury fund the sum of four twelve thousand dollars in a case where there are dependents and fifteen forty-five thousand dollars in a case where there are no dependents. The payment shall be made at the time compensation payments are begun, or at the time the burial expenses are paid in a case where there are no dependents. However, the payments shall be required only in cases of injury resulting in death coming within the purview of this chapter and occurring after July 1, 1978. These payments shall be in addition to any payments of compensation to injured employees or their dependents, or of burial expenses as provided in this chapter.

Sec. 2. NEW SECTION. 85.65A PAYMENTS TO SECOND INJURY FUND — SUR-CHARGE ON EMPLOYERS.

1. For purposes of this section, unless the context otherwise requires:

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

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

2. Prior to each fiscal year commencing on or after July 1, 1999, the commissioner of insurance shall conduct an examination of the outstanding liabilities of the second injury fund and shall make a determination as to whether sufficient funds will be available in the second injury fund to pay the liabilities of the fund for each of the next two fiscal years. If the

commissioner of insurance determines sufficient funds will be available, the commissioner shall not impose a surcharge on employers during the next succeeding fiscal year. If the commissioner determines sufficient funds will not be available, the commissioner shall impose by rule, pursuant to chapter 17A, a surcharge on employers during the next succeeding fiscal year for payment to the treasurer of state for the second injury fund pursuant to the requirements of this section.

3. If the commissioner of insurance determines that a surcharge on employers shall be imposed during any applicable fiscal year, the surcharge imposed shall comply with and be subject to all of the following requirements:

a. The surcharge shall apply 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.

b. In determining the surcharge for any applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed, in total, an amount the commissioner determines is sufficient, together with the moneys in the second injury fund, to meet the outstanding liabilities of the second injury fund.

c. The total assessment amount used in calculating the surcharge shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that is not to be collected from self-insured employers shall be collected from insured employers.

d. The method of assessing self-insured employers a surcharge shall be based on paid losses. The method of assessing insured employers a surcharge shall be by insurers collecting assessments from insured employers through a surcharge based on premium.

e. Assessments collected through imposition of a surcharge pursuant to this section shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. 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 this division.

4. The commissioner of insurance shall adopt rules, pursuant to chapter 17A, concerning the requirements of this section.

5. This section is repealed July 1, 2003.

Sec. 3. Section 85.66, Code 1997, is amended to read as follows:

85.66 SECOND INJURY FUND — PAYMENTS CREATION — CUSTODIAN.

When the total amount of the payments provided for in the preceding section, together with accumulated interest and earnings, equals or exceeds one million dollars no further contributions to the fund shall be required; but when, thereafter, the amount of the sum is reduced below five hundred thousand dollars by reason of payments made to employees pursuant to this division, contributions shall be resumed and shall continue until the sum, together with accumulated interest and earnings, again amounts to one million dollars.

~~The treasurer of state shall determine when contributions shall be made to the fund and when they shall be suspended and may enforce the collection of contributions.~~

The "Second Injury Fund" is hereby established under the custody of the treasurer of state and shall consist of payments to the fund as provided by this division and any accumulated interest and earnings on moneys in the second injury fund. The treasurer of state is charged with the conservation of the assets of the second injury fund. Moneys so collected shall constitute a in the "Second Injury Fund", in the custody of the treasurer of state, to shall be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys of the fund in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which the fund is invested, if necessary, for the proper administration or in the best interests of the fund. Disbursements from the fund shall be paid by the treasurer of state only upon the written order of the industrial commissioner. The treasurer of state shall quarterly prepare a statement of the fund, setting forth the balance of moneys in the fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of payments, and setting forth the balance of the fund remaining to its credit. The statement shall be open to public inspection in the office of the treasurer of state.

Sec. 4. Section 85.67, Code 1997, is amended to read as follows:

85.67 ADMINISTRATION OF FUND — SPECIAL COUNSEL — PAYMENT OF AWARD.

~~The treasurer of state shall be charged with the conservation of the assets of the second injury fund, and the collection of contributions to the fund. The attorney general shall appoint a staff member to represent the treasurer of state and the fund in all proceedings and matters arising under this division. In making an award under this division, the industrial commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks of compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time the payments shall continue.~~

Sec. 5. Section 85.68, Code 1997, is amended to read as follows:

85.68 ACTIONS — COLLECTION OF PAYMENTS — SUBROGATION.

~~The treasurer of state The labor commissioner shall be charged with the collection of contributions and payments to the second injury fund required to be made pursuant to section 85.65. In addition, the labor commissioner, on behalf of the second injury fund created under this division, shall have a cause of action under section 85.22 to the same extent as an employer against any person not in the same employment by reason of whose negligence or wrong the subsequent injury of the person with the previous disability was caused. The action shall be brought by the treasurer of state labor commissioner on behalf of the fund, and any recovery, less the necessary and reasonable expenses incurred by the treasurer of state labor commissioner, shall be paid to the treasurer of state and credited to the second injury fund.~~

Sec. 6. SECOND INJURY FUND LIABILITY — SURCHARGE ON EMPLOYERS.

1. For purposes of this section, unless the context otherwise requires:

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

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

2. Prior to the fiscal year commencing July 1, 1998, the commissioner of insurance shall

examine claims in which there has been an agreement for settlement or an award has been made involving the second injury compensation Act and shall determine the outstanding liability of such claims.

3. For the fiscal year commencing July 1, 1998, the commissioner of insurance may adopt by rule, pursuant to chapter 17A, a surcharge on employers pursuant to the requirements of this section and payable to the second injury fund if, pursuant to its examination of claims, the commissioner of insurance determines that insufficient funds are available in the second injury fund to pay claims involving the second injury compensation Act. The surcharge shall apply 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. In determining the surcharge for each applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed for the outstanding liabilities arising out of claims involving the second injury compensation Act as determined pursuant to subsection 2. The total assessment amount used in calculating the surcharge for each applicable fiscal year shall be allocated between self-insured employers and insured employers, based on paid losses for the preceding calendar year as provided in this subsection. The method of assessing self-insured employers shall be based on paid losses. The method of assessing insured employers shall be a surcharge based on premium, as set forth in this subsection. The portion of the total aggregate assessment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments on behalf of all insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. Insurers shall collect assessments from insured employers through a surcharge based on premium. Such assessments when collected shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. 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 compensation Act.

**Sec. 7. EFFECTIVE DATE — APPLICABILITY.**

1. This Act, being deemed of immediate importance, takes effect upon enactment.
2. Section 1 of this Act, amending section 85.65, applies to deaths occurring on or after the effective date of this Act.

Approved April 17, 1998