

F I N A L R E P O R T  
WORKERS' COMPENSATION STUDY COMMITTEE

Senator John Peterson, Co-chairperson  
Representative Gary Sherzan, Co-chairperson

Submitted to the General Assembly  
January 1990

Prepared by the Legislative Service Bureau

# F I N A L R E P O R T

## WORKERS COMPENSATION STUDY COMMITTEE

January 1990

### AUTHORIZATION AND APPOINTMENT

The Workers' Compensation Study Committee was established by the Legislative Council to "assess the operation of the Industrial Commissioner's office, and make recommendations to improve workplace safety and expedite the backlog of workers' compensation cases", and also "develop recommendations to maintain the long-term solvency of the Second Injury Fund."

Members serving on the Study Committee included:

Senator John Peterson, Co-chairperson  
Representative Gary Sherzan, Co-chairperson  
Senator William Palmer  
Senator Al Sturgeon  
Senator Linn Fuhrman  
Senator Richard Vande Hoef  
Representative Mike Peters  
Representative Arthur Ollie  
Representative Ron Corbett  
Representative Phil Tyrrell

### COMMITTEE PROCEEDINGS

The Study Committee was authorized to hold three meetings, which took place on August 30, September 27, and October 27.

#### MEETING -- AUGUST 30, 1989

The first meeting of the Study Committee was held on Wednesday, August 30, 1989, in Senate Committee Room 22 of the Statehouse. Presentations were made by interested persons concerning the workers' compensation claim process and the operations of the Industrial Commissioner's Office.

Ms. Jean Eakes, a workers' compensation claimant, described her situation and experience relating to the delay in collection of benefits under her employer's workers' compensation insurance coverage.

Mr. Barry Moranville, Executive Director of the Iowa Association of Workers' Compensation Lawyers, testified as to the increase in contested workers' compensation files in the Industrial Commissioner's office causing a delay in case finalization. He stated that one solution which would result in a decrease in delays would be to hire additional deputies to assist in case processing.

Mr. Fred Haas, Chairperson of the Workers' Compensation Committee of the Iowa Trial Lawyers' Association, provided testimony concerning delays in finalizing workers' compensation claims. He stated that employing additional deputies would probably help reduce delays in the system. He also expressed concern about the length of time for the claimant or the claimant's physician to receive payment for a claim.

Mr. Jim Glenn, testified concerning his personal experience in the workers' compensation claim process and expressed his impressions of the inadequacies of the claims process.

Mr. Mike Tramontina and Mr. Brian Schaeffer, State Treasurer's Office provided testimony regarding the workers' compensation second injury fund. Mr. Tramontina expressed four problems with the current system including an inadequate funding mechanism, an increase in the number of claims and the dollar amount paid, problems with receiving notice of job-related deaths, and an inequitable funding mechanism.

Ms. Jerry Morgan and Mr. Al Copenhaver presented testimony regarding the occupational safety program which has been implemented at Iowa Beef Processors.

Mr. Craig Kellinson, Special Assistant in the Attorney General's Office, testified that workers' compensation claim volume will continue to increase and increased awareness of the second injury fund will cause an increase in claims against the fund and amounts paid out.

Mr. Steven Ort, Workers' Compensation Superintendent, Employers Mutual Companies, presented testimony concerning the legislative intent of the second injury fund and the necessity of maintaining the fund.

Mr. William Riley, Workers' Compensation Advisory Committee stated that the Advisory Committee is willing to assist in the effort to alleviate the pressure on the second injury fund, and that a determination must be made concerning the amount of the expected revenue shortfall of the second injury fund.

Mr. Ted Tinlin addressed the Study Committee concerning his work-related injury and his experience with the workers' compensation claim process.

Mr. David Linguist, Industrial Commissioner, provided testimony regarding the second injury fund, and information concerning staffing needs in the commissioner's office.

SENATE FILE \_\_\_\_\_  
BY (RECOMMENDED BY WORKERS'  
COMPENSATION STUDY COMMITTEE)

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

**A BILL FOR**

1 An Act relating to workers' health, safety, and welfare, by  
2 providing funding for the second injury fund and an  
3 appropriation for the industrial commissioner, establishing  
4 initial hearing deadlines, requiring certain unannounced  
5 inspections, authorizing certain administrative search  
6 warrants, and imposing certain benefit payment requirements  
7 and penalties for unreasonable denial or nonpayment of medical  
8 benefits, and providing applicability and effective dates.

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 1. For the purpose of providing for revenue for the second  
2 injury fund, every authorized self-insurer, and every workers'  
3 compensation policyholder insured pursuant to this chapter,  
4 shall be liable for payment of an annual surcharge in  
5 accordance with this section. The annual surcharge shall  
6 apply to all workers' compensation insurance policies and  
7 self-insurance coverages which are written or renewed on or  
8 after July 1, 1991, including the state of Iowa coverages,  
9 including any coverages for its departments, divisions,  
10 agencies, commissions, and boards, or any political  
11 subdivision coverages which are self-insured or held out to be  
12 in any part self-insured. The surcharge shall not apply to  
13 any reinsurance or retrocessional transaction.

14 2. On January 1, 1991, and each year thereafter, the  
15 treasurer of state shall estimate the amount of benefits and  
16 administrative expenses payable from the second injury fund  
17 during the ensuing calendar year, and shall calculate the  
18 total amount of the annual surcharge to be imposed during the  
19 ensuing calendar year upon all workers' compensation  
20 policyholders and authorized self-insurers. The amount of the  
21 annual surcharge to be imposed upon all policyholders and  
22 self-insurers shall equal the moneys estimated by the  
23 treasurer of state to be payable from the second injury fund  
24 during the calendar year for which the annual surcharge is to  
25 be imposed, except that the surcharge shall not exceed three  
26 percent of the policyholder's or authorized self-insurer's  
27 workers' compensation net deposits, net premiums, or net  
28 assessments, and provided that a minimum annual surcharge of  
29 ten dollars per policyholder or authorized self-insurer shall  
30 be paid. The surcharge shall be collected from policyholders  
31 by each insurer at the same time and in the same manner that a  
32 premium is collected, but an insurance carrier or its agent  
33 shall not be entitled to any portion of the surcharge as a fee  
34 or commission for its collection. The surcharge is not  
35 subject to any taxes, licenses, or fees.

1 or transferred when due, the policyholder, self-insurer, or  
2 insurer responsible for the failure shall be required to pay,  
3 as part of the surcharge, interest on the surcharge at the  
4 rate of one and one-half percent per month for each month or  
5 fraction of a month delinquent. If the state prevails in any  
6 dispute concerning an assessment of surcharge which has not  
7 been paid or transferred, interest shall be paid upon the  
8 amount found due to the state at the rate of one and one-half  
9 percent per month for each month or fraction of a month  
10 delinquent.

11 2. In any legal contest concerning the amount of the  
12 surcharge imposed under section 85.65 for a calendar year, the  
13 quarterly installments for the following year shall continue  
14 to be made based upon the amount assessed by the director of  
15 revenue and finance. If after the end of any year, the amount  
16 of the actual surcharge due is less than the total amount of  
17 the installments actually paid, the excess amount paid shall  
18 be credited against the tax for the following year and  
19 deducted from the quarterly installment otherwise due on June  
20 first.

21 Sec. 5. Section 85.66, unnumbered paragraph 1, Code 1989,  
22 is amended to read as follows:

23 When the total amount of the payments provided for in the  
24 preceding section, together with accumulated interest and  
25 earnings, equals or exceeds five seven hundred thousand  
26 dollars ~~no-further-contributions-to~~ surcharge assessments for  
27 the fund shall be required suspended commencing with the next  
28 quarter; but when, thereafter, the amount of the sum is  
29 reduced below three five hundred thousand dollars by reason of  
30 payments made to employees pursuant to this division,  
31 contributions surcharge assessments shall be resumed  
32 commencing with the next quarter and shall continue until the  
33 sum, together with accumulated interest and earnings, again  
34 amounts to five seven hundred thousand dollars. The treasurer  
35 of state shall determine when contributions surcharge

1 been conducted. The filing of an abatement statement by the  
2 employer cited for a violation is not grounds for denial of an  
3 administrative search warrant.

4 b. NEUTRAL SELECTION. The person or site to be inspected  
5 was selected through a neutral selection process according to  
6 the state enforcement plan approved by the United States  
7 occupational safety and health administration, and entry has  
8 been denied after request pursuant to subsection 1, or entry  
9 has previously been denied upon prior requests to permit an  
10 inspection.

11 c. COMPLAINT OF AN EXISTING VIOLATION. A complaint has  
12 been submitted to the commissioner alleging the existence of  
13 an existing violation. The application for an administrative  
14 search warrant shall to the extent constitutionally  
15 permissible protect the identity of the complainant.

16 d. PROBABLE CAUSE. Probable cause sufficient to justify  
17 an administrative search warrant is otherwise shown.

18 Sec. 9. NEW SECTION. 88.6A UNANNOUNCED COMPULSORY  
19 INSPECTIONS OF RECENT VIOLATORS.

20 The commissioner of labor shall include as part of future  
21 proposed state enforcement plans, provisions to require  
22 annually reinspection or follow-up inspections of at least  
23 five percent of the employers cited for a violation within the  
24 immediately preceding three years, based upon a neutral system  
25 of random selection. An inspection pursuant to this section  
26 shall be performed unannounced and the commissioner shall seek  
27 to obtain in advance an administrative search warrant pursuant  
28 to section 88.6, subsection 8, to permit a compulsory  
29 inspection in the event that the employer refuses voluntary  
30 access.

31 Sec. 10. Section 86.13, unnumbered paragraph 4, Code 1989,  
32 is amended to read as follows:

33 If a delay in commencement or termination of weekly  
34 compensation or medical benefits occurs without reasonable or  
35 probable cause or excuse, the industrial commissioner shall

1 state and for each district of the state, detailing average  
2 time periods to prehearing, initial hearing, filing of initial  
3 opinion, and filing of final appeal decisions, total number of  
4 cases in each stage of the process, and total new cases filed  
5 since the last quarterly report.

6 2. Estimates of progress to be made in case backlog  
7 reduction in the current quarter, the fiscal year, and over  
8 the next four fiscal quarters.

9 3. Any other information relating to case backlog  
10 reduction and expedition of the administrative hearing process  
11 which is requested by the legislative fiscal bureau.

12 Sec. 12.

13 Section 11 of the Act, being deemed of immediate  
14 importance, is effective upon enactment.

15 Sec. 13.

16 Section 7 of this Act is effective July 1, 1991, and  
17 applies to all contested cases originally filed on or after  
18 that date.

19 EXPLANATION

20 Section 1 of the bill provides for payment of medical  
21 benefits to an injured employee pending determination of  
22 liability when either of two situations exist, when two or  
23 more possible insurance carriers are obligated to provide  
24 coverage, or when the employer exercises choice of care.

25 Sections 2 through 4 change the funding mechanism for the  
26 workers' compensation second injury fund and provide  
27 procedural and enforcement authority for collecting the newly  
28 imposed surcharge. Currently the second injury fund is  
29 financed by a payment to the fund from each death benefit paid  
30 under the workers' compensation system. The bill replaces the  
31 assessment upon death benefits paid with a surcharge or  
32 assessment based upon premium dollars or self-insurance costs.

33 Section 5 increases the minimum and maximum cap for the  
34 fund's balance and makes conforming changes with sections 2  
35 through 4.



1 section 11 is effective upon enactment.

2 Section 13 provides that section 7's new six-month deadline  
3 for holding the initial hearing is effective July 1, 1991.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35