CHAPTER 455—S.F.No. 2078

An act relating to insurance; providing for government immunity; requiring certain annual reports of property and casualty insurers; prohibiting certain tying arrangements; providing for remitting of certain premiums; providing deposit requirements for domestic companies; extending certain filing, approval, and disapproval dates; creating a joint underwriting association; requiring participation by insurers; broadening fair plan coverage; regulating rates, forms and cancellations; regulating medical malpractice insurance to health care providers who are unable to obtain the coverage in the voluntary market; regulating malpractice actions against health care providers; providing certification of expert review and the waiver of privilege by health care providers; requiring disclosure of experts; revising the statute of limitations for medical malpractice claims by minors; regulating claims for punitive damages; changing the collateral source rule; providing for discount of future damages; regulating civil actions; limiting intangible loss; amending Minnesota Statutes 1984, sections 60A.06, by adding a subdivision; 60A.13, by adding a subdivision; 60A.25; 62A.02, subdivisions 2 and 3; 62B.07, subdivisions 2 and 3; 62C.14, subdivision 10; 62E.14, by adding a subdivision; 62F.01; 62F.02, subdivision 1; 62F.03, subdivision 2; 62F.04, by adding a subdivision; 62G.16, subdivision 9; 65A.32; 65A.33; 65A.34, subdivision 1; 65A.35, subdivisions 1 and 2; 65A.37; 65B.13; 65B.47, subdivision 1; 70A.04, subdivision 2; 70A.06, subdivisions 1 and 2; 70A.08, by adding a subdivision; 70A.10; 70A.11; 72A.13, subdivision 1; 245.814; 398A.04, subdivision 6; 465.72; 466.01, subdivision 1; 466.03, subdivision 4, and by adding subdivisions; 466.05; 466.07, by adding a subdivision; 471.982, subdivision 3; 541.051; 541.15; 549.09, subdivision 1; 549.21; 595.02, by adding a subdivision; 604.02, subdivision 1, and by adding a subdivision; Minnesota Statutes 1985 Supplement, sections 3.736, subdivisions 1 and 3; 60A.10, subdivision 1; and 62B.05; proposing coding for new law in Minnesota Statutes, chapters 16B; 60A; 65B; 145; 317; 466; 541; 548; 549; and 604; proposing coding for new law as Minnesota Statutes, chapter 62I; repealing Minnesota Statutes 1984, section 70A.06, subdivision 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1985 Supplement, section 3.736, subdivision 1, is amended to read:

Subdivision 1. **GENERAL RULE.** The state will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of any employee of the state while acting within the scope of his office or employment or peace officer who is not acting on behalf of a private employer and who is acting in good faith pursuant to section 629.40, subdivision 3, under circumstances where the state, if a private person, would be liable to the claimant, whether arising out of a governmental or proprietary function. Nothing in this section waives the defense of judicial or legislative immunity except to the extent provided in subdivision 8.

Sec. 2. Minnesota Statutes 1985 Supplement, section 3.736, subdivision 3, is amended to read:

Subd. 3. **EXCLUSIONS.** Without intent to preclude the courts from finding

additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses:

(a) Any loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or regulation;

(b) Any loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused;

(c) Any loss in connection with the assessment and collection of taxes;

(d) Any loss caused by snow or ice conditions on any highway ~~or other public place~~ or public sidewalk that does not abut a publicly-owned building or a publicly-owned parking lot, except when the condition is affirmatively caused by the negligent acts of a state employee;

(e) Any loss caused by wild animals in their natural state;

(f) Any loss other than injury to or loss of property or personal injury or death;

(g) Any loss caused by the condition of unimproved real property owned by the state, which means land that the state has not improved, and appurtenances, fixtures and attachments to land that the state has neither affixed nor improved;

(h) Any loss incurred by a user within the boundaries of the outdoor recreation system and arising from the construction, operation, or maintenance of the system, as defined in section 86A.04, or from the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, or from the construction, operation, or maintenance of a water access site created by the iron range resources and rehabilitation board, except that the state is liable for conduct that would entitle a trespasser to damages against a private person.

(i) Any loss of benefits or compensation due under a program of public assistance or public welfare, except where state compensation for loss is expressly required by federal law in order for the state to receive federal grants-in-aid;

(j) Any loss based on the failure of any person to meet the standards needed for a license, permit, or other authorization issued by the state or its agents;

(k) Any loss based on the usual care and treatment, or lack of care and treatment, of any person at a state hospital or state corrections facility where reasonable use of available appropriations has been made to provide care;

(l) Any loss, damage, or destruction of property of a patient or inmate of a state institution;

(m) Any loss for which recovery is prohibited by section 169.121, subdivision 9.

The state will not pay punitive damages.

Sec. 3. **[16B.85] RISK MANAGEMENT.**

Subdivision 1. **ALTERNATIVES TO CONVENTIONAL INSURANCE.** In the event that the state is unable to obtain certain types of insurance, or the commissioner determines insurance to be unreasonably costly, the commissioner may implement alternatives to the purchase of conventional insurance. A mechanism for implementing possible alternatives to conventional insurance is the risk management fund created in subdivision 2.

Subd. 2. **RISK MANAGEMENT FUND.** A state risk management fund is created. All state agencies which have had or may have casualty claims against them with respect to the risks for which the commissioner has implemented conventional insurance alternatives shall contribute to the fund a portion of the money appropriated to them. The commissioner shall determine the proportionate share of each agency on the basis of the agency's casualty claim experience as compared to other affected agencies. The money in the fund to pay casualty claims arising from state activities and for administrative costs, including costs for the adjustment and defense of the claims, is appropriated to the commissioner. Interest earned from the investment of money in the fund shall be credited to the fund and be available to the commissioner for the expenditures authorized in this subdivision. The fund is exempt from the provisions of section 16A.15, subdivision 1. In the event that proceeds in the fund are insufficient to pay outstanding claims and associated administrative costs, the commissioner, in consultation with the commissioner of finance, may assess state agencies participating in the fund amounts sufficient to pay the costs. The commissioner shall determine the proportionate share of the assessment of each agency on the basis of the agency's casualty claim experience as compared to other affected agencies.

Sec. 4. Minnesota Statutes 1984, section 60A.06, is amended by adding a subdivision to read:

Subd. 3. Unless specifically authorized by section 60A.06, subdivision 1, clause (4), it is unlawful to combine in one policy coverage permitted by section 60A.06, subdivision 1, clauses (4) and (5)(a). This subdivision does not prohibit the simultaneous sale of these products, but the sale must involve two separate and distinct policies. This subdivision does not apply to group policies.

Sec. 5. Minnesota Statutes 1985 Supplement, section 60A.10, subdivision 1, is amended to read:

Subdivision 1. **DOMESTIC COMPANIES. (1) DEPOSIT AS SECURITY FOR ALL POLICYHOLDERS REQUIRED.** No company in this state, other than farmers' mutual, or real estate title insurance companies, shall do business in this state unless it has on deposit with the commissioner, for the protection of both its resident and nonresident policyholders, securities to an amount, the actual market value of which, exclusive of interest, shall never be less than

$200,000 until July 1, 1986, $300,000 until July 1, 1987, $400,000 until July 1, 1988, and $500,000 on and after July 1, 1988 or one-half the applicable financial requirement set forth in section 60A.07, whichever is less. The securities shall be retained under the control of the commissioner as long as any policies of the depositing company remain in force.

(2) **SECURITIES DEFINED.** For the purpose of this subdivision, the word "securities" means bonds or other obligations of, or bonds or other obligations insured or guaranteed by, the United States, any state of the United States, any municipality of this state, or any agency or instrumentality of the foregoing.

(3) **PROTECTION OF DEPOSIT FROM LEVY.** No judgment creditor or other claimant may levy upon any securities held on deposit with, or for the account of, the commissioner. Upon the entry of an order by a court of competent jurisdiction for the rehabilitation, liquidation or conservation of any depositing company as provided in chapter 60B, that company's deposit together with any accrued income thereon shall be transferred to the commissioner as rehabilitator, liquidator, or conservator.

Sec. 6. Minnesota Statutes 1984, section 60A.13, is amended by adding a subdivision to read:

Subd. 8. **ANNUAL REPORTS.** Each insurer licensed to write property and casualty insurance in this state, as a supplement to the annual statement required by this section, shall submit a report on a form furnished by the commissioner separately showing its direct writings in Minnesota and in the United States on: liquor liability, product liability, medical malpractice, and any other line so designated by the commissioner on January 1 of each year.

The supplemental reports must include the following data for the previous year ending on the 31st day of December:

(1) direct premiums written;

(2) direct premiums earned;

(3) net investment income, including net realized capital gains and losses, using appropriate estimates where necessary;

(4) incurred claims, developed as the sum, and with figures provided for, of the following:

(a) dollar amount of claims closed with payment, plus

(b) reserves for reported claims at the end of the current year, minus

(c) reserves for reported claims at the end of the previous year, plus

(d) reserves for incurred but not reported claims at the end of the current year, minus

(e) reserves for incurred but not reported claims at the end of the previous year, plus

(f) reserves for loss adjustment expense at the end of the current year, minus

(g) reserves for loss adjustment expense at the end of the previous year;

(5) actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, general office expenses, taxes, licenses and fees, and all other expenses;

(6) net underwriting gain or loss; and

(7) net operation gain or loss, including net investment income.

This report is due by the first of May of each year and the report due May 1, 1987 must cover the last six months of 1986. The commissioner shall annually compile and review all reports submitted by insurers pursuant to this section. These filings must be published and made available to any interested insured or citizen.

Sec. 7. Minnesota Statutes 1984, section 60A.25, is amended to read:

60A.25 **INSOLVENT COMPANIES, ~~NOTIFICATION OF POLICYHOLDERS~~.**

Subdivision 1. **NOTIFICATION OF POLICYHOLDERS.** Whenever any foreign or domestic insurance company authorized to transact the business of insurance in Minnesota is adjudicated insolvent, or whenever its policies are declared null and void by court order, the commissioner of commerce shall ascertain the names and last known addresses of all Minnesota policyholders of said company, and shall notify all Minnesota policyholders within 30 days of such adjudication or court order. In the case of foreign insurers authorized to do business in this state, the commissioner of commerce may elect to notify all of the company's licensed agents in Minnesota with a directive that the agents notify all insureds of the company's insolvency or that its policies have been declared null and void.

Subd. 2. **REMITTANCE OF PREMIUMS.** Every agency contract written by an insurance company writing property and casualty insurance in Minnesota shall contain or be construed to contain the following provision: "Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of any administrative or legal proceeding by any state against the carrier regarding its financial condition. After the commencement of the proceedings, the obligation of the agent to remit premiums shall be confined to the premiums earned before the commencement of the proceedings. The agent shall not owe or remit to the company or to the liquidator or receiver any premiums that are unearned as of the date of the commencement of the delinquency proceedings, and any unearned premiums in the possession of the agent on the date shall be returned promptly by the agent to the insured or, with the approval of the insured, be used to purchase new coverage for the insured with a different insurer.

Sec. 8. **[60A.29] NONPROFIT RISK INDEMNIFICATION TRUST ACT.**

Subdivision 1. **TITLE.** This section may be cited as the "nonprofit risk indemnification trust act."

Subd. 2. **PURPOSE.** The purpose of this section is to authorize the establishment of trust funds for the purpose of indemnifying nonprofit beneficiary organizations and their officers, directors, and agents for financial loss due to the imposition of legal liability, and to regulate the operation of trust funds established under this section.

Subd. 3. **APPROVAL OF COMMISSIONER.** No trust fund with the purpose of indemnifying multiple nonprofit beneficiary organizations shall be established without the prior approval of the commissioner of the department of commerce. The commissioner shall withhold approval of any trust fund that fails to comply with the provisions and requirements of this section.

Subd. 4. **ELIGIBLE BENEFICIARIES.** No organization, corporation, agency, or program shall be a beneficiary of any trust fund established under this section unless it is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as amended through December 30, 1985. No trust fund established under this section shall agree to indemnify the state of Minnesota, any political subdivision of the state, or any hospital licensed pursuant to section 144.55. No trust fund established under this section shall indemnify any beneficiary for loss or damage to property permanently located outside the boundaries of this state or for legal liabilities arising from operations or activities occurring outside this state, except where those operations or activities are of a nonroutine nature; provided, however, that this restriction shall not apply to a beneficiary which is incorporated under the laws of this state and has its principal office located in this state.

Subd. 5. **INELIGIBLE RISKS.** No trust fund established under this section shall indemnify any beneficiary for property loss, liabilities incurred under the workers' compensation act, or for benefits provided to employees pursuant to any medical, dental, life, or disability income protection plan.

Subd. 6. **BENEFIT SCHEDULES.** Every trust fund established under this section shall establish in its bylaws or plan of operation a schedule of benefits, to be approved by the commissioner, governing the indemnification of beneficiaries of the trust. The schedule of benefits shall include all conditions, limitations, and exclusions relevant to indemnification.

Subd. 7. **INDEMNIFICATION AGREEMENTS.** Every trust fund established under this section shall provide each of its beneficiaries with a written indemnification agreement specifying the rights and obligations of the trust fund and the beneficiary under the agreement. Each form of indemnification agreement shall be filed with and approved by the commissioner.

Subd. 8. **CONTRIBUTIONS.** The trust fund shall establish contributions required of beneficiaries necessary to fund the operations of the fund. All contribution schedules shall be filed with and approved by the commissioner

prior to use. Contributions must be based on sound actuarial principles and be adequate to fund the operation of the trust fund. Contributions may not be excessive, in relation to the benefits provided, or unfairly discriminatory.

Subd. 9. **MULTIPLE TRUST AGREEMENTS PROHIBITED.** No trust fund established under this section shall enter into an agreement with any other trust fund whereby the risks assumed by each are pooled or shared.

Subd. 10. **BOARD OF TRUSTEES.** Every trust fund established under this section shall be governed by a board of no fewer than five trustees. The initial trustees need not be appointed or elected by the beneficiaries of the trust fund. During the second year following the creation of an authorized trust fund, at least one-fourth of all its trustees in office shall have been elected or appointed by the beneficiaries. After the end of the second year following the creation of an authorized trust fund, a majority of all trustees in office shall have been elected or appointed by the beneficiaries. All trustees serving during the first two years following the creation of an authorized trust fund shall be elected or appointed for one-year terms. All trustees serving thereafter shall be elected or appointed for two-year terms, provided that the trustees may be elected or appointed for one-year terms to the extent necessary in order to create staggered terms. Any trustee may be removed at any time, with or without cause, by a majority vote of the beneficiaries. The board of trustees shall meet no fewer than four times each year.

Subd. 11. **TRUSTEES; COMPENSATION.** No trustee shall be paid a salary or receive other compensation for service as a trustee, except that the bylaws or plan of operation may provide for reimbursement for actual expenses incurred on behalf of the trust fund and for the payment of a reasonable per diem amount for attendance at meetings of the board.

Subd. 12. **BYLAWS; PLAN OF OPERATION.** The trustees of each trust fund authorized under this section shall cause to be adopted a set of bylaws or plan of operation which shall govern the operation of the trust fund. All bylaws or plans of operation or amendments to them are subject to prior approval by the commissioner. The commissioner shall adopt rules governing the content and approval of bylaws or plans of operation.

Subd. 13. **FINANCIAL STATEMENT; REPORT ON OPERATIONS.** Every trust fund authorized under this section shall, by June 1 of every year, file with the commissioner a financial statement for the previous year's operations. The financial statement must include the opinion of a certified public accountant that the statement was prepared in conformity with generally accepted accounting principles. Also by June 1 of every year, every trust fund must file with the commissioner, on forms provided by the department, a report summarizing the trust fund's operations during the previous year.

Subd. 14. **FINANCIAL STANDARDS.** Every authorized trust fund shall have and maintain financial assets sufficient to satisfy all current and future financial obligations and responsibilities to beneficiaries. The commissioner

shall adopt rules establishing minimum financial standards for authorized trust funds.

Subd. 15. **CONTRACTS; FEES.** Authorized trust funds may enter into contracts with risk management service providers, actuarial consultants, or other vendors as are necessary to ensure the effective and efficient operation of the trust fund. Fees paid to vendors for services provided must not be excessive.

Subd. 16. **REINSURANCE.** Authorized trust funds may insure or reinsure their obligations and liabilities with insurance companies authorized to do business in Minnesota, pursuant to section 60A.06, or with companies similarly authorized in any other state of the United States.

Subd. 17. **INTERBENEFICIARY CAUSE OF ACTION.** No beneficiary shall have any cause of action against any other beneficiary arising solely out of the insolvency of inability of the trust fund to meet its obligations.

Subd. 18. **EXAMINATION.** The commissioner may examine authorized trust funds to the same extent and with the same purpose as is provided, with respect to insurance companies, by section 60A.031.

Subd. 19. **SECURITY DEPOSIT.** As a condition of authorization, every trust fund shall deposit with the commissioner an acceptable security of a value equal to not less than $500,000. In the event that a trust fund fails to honor the obligations assumed by it under trust agreements issued to its beneficiaries, use of the security deposit shall revert to the commissioner for the purpose of executing the trust fund's obligations to its beneficiaries. The commissioner shall adopt rules governing the amount of security required and the acceptable forms of security.

Subd. 20. **RULES.** The commissioner may adopt rules to enforce and administer the requirements of this section.

Subd. 21. **TRUST FUNDS NOT SUBJECT TO INSURANCE REGULATIONS.** Trust funds established under this section shall not be considered insurance companies or to be in the business of insurance nor shall they be subject to regulation by the commissioner, except as provided for in this section.

Sec. 9. Minnesota Statutes 1984, section 62A.02, subdivision 2, is amended to read:

Subd. 2. **APPROVAL.** No such policy shall be issued, nor shall any application, rider, or endorsement be used in connection therewith, until the expiration of ~~30~~ 60 days after it has been so filed unless the commissioner shall sooner give his written approval thereto.

Sec. 10. Minnesota Statutes 1984, section 62A.02, subdivision 3, is amended to read:

Subd. 3. **DISAPPROVAL.** The commissioner shall, within ~~30~~ 60 days after the filing of any form, disapprove the form:

(1) if the benefits provided therein are unreasonable in relation to the premium charged;

(2) if it contains a provision or provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the policy; or

(3) If the proposed premium rate is excessive because the insurer has failed to exercise reasonable cost control.

For the purposes of clause (1), the commissioner shall establish by rule a schedule of minimum anticipated loss ratios which shall be based on (i) the type or types of coverage provided, (ii) whether the policy is for group or individual coverage, and (iii) the size of the group for group policies. Except for individual policies of disability or income protection insurance, the minimum anticipated loss ratio shall not be less than 50 percent after the first year that a policy is in force. All applicants for a policy shall be informed in writing at the time of application of the anticipated loss ratio of the policy. For the purposes of this subdivision, "anticipated loss ratio" means the ratio at the time of form filing or at the time of subsequent rate revision of the present value of all expected future benefits, excluding dividends, to the present value of all expected future premiums. Nothing in this paragraph shall prohibit the commissioner from disapproving a form which meets the requirements of this paragraph but which the commissioner determines still provides benefits which are unreasonable in relation to the premium charged. ~~The commissioner may until December 31, 1978, exercise emergency power for the purpose of implementing the minimum anticipated loss ratio requirement, and for this purpose may adopt emergency rules as provided in sections 14.29 to 14.36. Notwithstanding the expiration of the commissioner's emergency power, any emergency rule adopted by him prior to the expiration of his emergency power may remain effective for the periods authorized in sections 14.29 to 14.36.~~

If the commissioner notifies an insurer which has filed any form that the form does not comply with the provisions of this section or sections 62A.03 to 62A.05 and section 72A.20, it shall be unlawful thereafter for the insurer to issue the form or use it in connection with any policy. In the notice the commissioner shall specify the reasons for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

Sec. 11. Minnesota Statutes 1984, section 62B.07, subdivision 2, is amended to read:

Subd. 2. The commissioner shall within ~~30~~ 60 days after the filing of policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the premium rates charged or to be charged are excessive in relation to benefits, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance laws or of any rule or regulation promulgated thereunder. In order to determine whether the premium to be charged under a particular policy

form submitted by an insurer is excessive in relation to benefits, and to facilitate the submission and approval of policy forms and premium rates to be used in connection therewith, the commissioner shall give full consideration to and make reasonable allowances for underwriting expenses including, but not limited to, claim adjustment expenses, general administrative expenses including costs for handling return premiums, compensation to agents, expense allowances to creditors, if any, branch and field expenses and other acquisition costs, the types of policies actually issued and authorized as defined in section 62B.03, (1), (2), (3) and (4), and any and all other factors and trends demonstrated to be relevant. An insurer may support these factors by statistical information, experience, actuarial computations, and/or estimates certified by an executive officer of the insurer, and the commissioner shall give due consideration to such supporting data.

Sec. 12. Minnesota Statutes 1984, section 62B.07, subdivision 3, is amended to read:

Subd. 3. If the commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for the insurer to issue or use it. In his notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after a request in writing by the insurer. No policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of ~~30~~ 60 days after it has been filed, unless the commissioner gives his prior written approval thereto.

Sec. 13. Minnesota Statutes 1984, section 62C.14, subdivision 10, is amended to read:

Subd. 10. Except as otherwise provided in subdivision 9, all forms received by the commissioner shall be deemed filed ~~30~~ 60 days after received unless disapproved by order transmitted to the corporation stating that the form used in a specified respect is contrary to law, contains a provision or provisions which are unfair, inequitable, misleading, inconsistent or ambiguous, or is in part illegible. It shall be unlawful to issue or use a document disapproved by the commissioner.

Sec. 14. Minnesota Statutes 1984, section 62E.14, is amended by adding a subdivision to read:

Subd. 4. Notwithstanding the above, any Minnesota resident holder of a policy or certificate of medicare supplement coverages pursuant to sections 62A.32 to 62A.35, or medicare supplement plans previously approved by the commissioner, may enroll in the comprehensive health insurance plan as described in section 62E.07, with a waiver of the preexisting condition as described in subdivision 3, without interruption in coverage, provided, the policy or certificate has been terminated by the insuror for reasons other than nonpayment of premium and, provided further, that the option to enroll in the plan is exercised within 30 days of termination of the existing contract.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Coverage in the state plan for purposes of this section shall be effective on the date of termination upon completion of the proper application and payment of the required premium. The application must include evidence of termination of the existing policy or certificate.

Sec. 15. Minnesota Statutes 1984, section 62F.01, is amended to read:

62F.01 **CITATION; ~~EXPIRATION DATE.~~**

~~Subdivision 1.~~ Sections 62F.01 to 62F.14 may be cited as the "~~Temporary~~ Joint Underwriting Association Act".

~~Subd. 2. Sections 62F.01 to 62F.14 expire September 1, 1988.~~

Sec. 16. Minnesota Statutes 1984, section 62F.02, subdivision 1, is amended to read:

Subdivision 1. **CREATION.** There is created a ~~temporary~~ joint underwriting association to provide medical malpractice insurance coverage to any licensed health care provider unable to obtain this insurance through ordinary methods. Every insurer authorized to write and writing personal injury liability insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Sec. 17. Minnesota Statutes 1984, section 62F.03, subdivision 2, is amended to read:

Subd. 2. "Association" means the ~~temporary~~ joint underwriting association.

Sec. 18. Minnesota Statutes 1984, section 62F.04, is amended by adding a subdivision to read:

Subd. 1a. **REAUTHORIZATION.** The authorization to issue insurance is valid for a period of two years from the date it was made. The commissioner may reauthorize the issuance of insurance for additional two-year periods under the terms of subdivision 1. This subdivision is not a limitation on the number of times the commissioner may reauthorize the issuance of insurance.

Sec. 19. Minnesota Statutes 1984, section 62G.16, subdivision 9, is amended to read:

Subd. 9. All forms received by the commissioner shall be deemed filed ~~30~~ 60 days after received unless disapproved by order transmitted to the legal service plan corporation stating that the form used in a specified respect is contrary to law, contains a provision or provisions which are unfair, inequitable, misleading, inconsistent or ambiguous, or is in part illegible. It shall be unlawful to issue or use a document disapproved by the commissioner.

Sec. 20. **[62I.01] CITATION.**

Sections 20 to 41 may be cited as the Minnesota joint underwriting association act.

Sec. 21. **[62I.02] MINNESOTA JOINT UNDERWRITING ASSOCIATION.**

Subdivision 1. **CREATION.** The Minnesota joint underwriting association is created to provide insurance coverage to any person or entity unable to obtain insurance through ordinary methods if the insurance is required by statute, ordinance, or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose. Prudent business practice or mere desire to have insurance coverage is not a sufficient standard for the association to offer insurance coverage to a person or entity. The association shall be specifically authorized to provide insurance coverage to day care providers, foster parents, foster homes, developmental achievement centers, group homes, and sheltered workshops for mentally, emotionally, or physically handicapped persons, and citizen participation groups established pursuant to the housing and community redevelopment act of 1974, Public Law Number 93-383. Because the activities of certain persons or entities present a risk that is so great, the association shall not offer insurance coverage to any person or entity the board of directors of the association determines is outside the intended scope and purpose of the association because of the gravity of the risk of offering insurance coverage. The association shall not offer environmental impairment liability or product liability insurance, or coverage for activities that are conducted substantially outside the state of Minnesota unless the insurance is required by statute, ordinance, or otherwise required by law. Every insurer authorized to write property and casualty insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Subd. 2. **DIRECTOR.** The association shall have a board of directors composed of 11 persons chosen annually as follows: five persons elected by members of the association at a meeting called by the commissioner; three public members, as defined in section 214.02, appointed by the commissioner; and three members, appointed by the commissioner representing groups to whom coverage has been extended by the association. If at any time no coverage is currently extended by the association, then either additional public members may be appointed to fill these three positions or, at the option of the commissioner, representatives from groups who had previously been covered by the association may serve as directors.

Subd. 3. **REAUTHORIZATION.** The authorization to issue insurance to day care providers, foster parents, foster homes, developmental activity centers, group homes, and sheltered workshops for mentally, emotionally, or physically handicapped persons, and citizen participation groups established pursuant to the housing and community redevelopment act of 1974, Public Law Number 93-383, is valid for a period of two years from the date it was made. The commissioner may reauthorize the issuance of insurance for additional two-year periods pursuant to sections 40 and 41. This subdivision is not a limitation on the number of times the commissioner may reauthorize the issuance of insurance. Insurance may not be offered pursuant to this section to persons or entities other than those listed in this subdivision after December 31, 1989.

Sec. 22. **[62I.03] DEFINITION.**

Subdivision 1. **SCOPE.** As used in sections 20 to 41 the following terms have the meanings given them in this section.

Subd. 2. **ASSOCIATION.** "Association" means the Minnesota joint underwriting association.

Subd. 3. **COMMISSIONER.** "Commissioner" means the commissioner of commerce.

Subd. 4. **DIRECT WRITTEN PREMIUMS.** "Direct written premiums" means that amount at column (2), lines 5, 8, 9, 17, 21.2, 22, 23, 24, 25, 26, and 27, page 14, of the annual statement filed annually with the department of commerce pursuant to section 60A.13.

Subd. 5. **DEFICIT.** "Deficit" means, for a particular policy year and line or type of insurance, that amount by which total paid and outstanding losses and loss adjustment expenses exceed premium revenue, including retrospective premium revenue.

Sec. 23. **[62I.04] POLICY ISSUANCE.**

Any person or entity that is a resident of the state of Minnesota who has a current written notice of refusal to insure from an insurer licensed to offer insurance in the state of Minnesota may make written application to the association for coverage. The applicable premium or required portion of it must be paid prior to coverage by the association.

The application shall be filed simultaneously with the association and the market assistance plan for the association.

The association is authorized to (1) issue or cause to be issued insurance policies to applicants subject to limits specified in the plan of operation; (2) underwrite the insurance and adjust and pay losses with respect to it, or appoint service companies to perform those functions; (3) assume reinsurance from its members; and (4) cede reinsurance.

Sec. 24. **[62I.05] PLAN OF OPERATION.**

Within 45 days after the appointment of the directors of the association, the directors shall submit to the commissioner for review, a proposed plan of operation, consistent with the provisions of this chapter.

The plan of operation shall provide economic, fair, and nondiscriminatory administration and for the prompt, efficient provision of insurance coverage of the types provided by section 20. It shall provide for an expedited review and determination by the board of any application for a type of coverage that has not been previously excluded or authorized. The action of the board on the application shall be an amendment to the plan of operation and the type of

coverage shall thereafter be specified in the plan as either excluded or authorized. It may contain other provisions necessary for the operation of the association, including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cessation of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

The plan of operation is subject to approval by the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, the directors shall within 15 days submit for review an appropriate revised plan of operation. If a revised plan is not submitted within 15 days the commissioner shall promulgate a plan of operation. The plan of operation approved or promulgated by the commissioner is effective and operational upon the order of the commissioner.

Amendments to the plan of operation may be made by the directors of the association subject to approval by the commissioner.

Sec. 25. **[62I.06] POLICY FORMS; PREMIUM RATE.**

Subdivision 1. **REQUIREMENT.** The policies and contracts of coverage issued pursuant to this chapter shall contain the usual and customary provisions of similar insurance policies issued by private insurance companies. If a standard form is used in the private marketplace for any type of coverage that is to be extended by the association, then the association shall use that form. If there are varying types of forms used in the marketplace the association may choose to use a standard policy form issued by a service organization or other entity who commonly prepares standardized types of forms. If the board determines that neither of these alternatives is appropriate, then it shall adopt a policy form based upon the terms and conditions of the policies used for this type of coverage that are the most commonly used in the private market. As far as practical the board shall attempt to adopt forms that are consistent with the practice in the private market. No policy forms shall be used by the association unless it has been filed with the commissioner, and the commissioner may disapprove the form within 30 days if the commissioner determines that it is misleading, it violates public policy, or for any reason that the commissioner would be empowered to reject a similar form filed by a private company.

Subd. 2. **CANCELLATION.** If the insured fails to pay a stabilization reserve fund charge the association may cancel the policy by mailing or delivering to the insured at the insured's address shown on the policy at least ten days written notice stating the date that the cancellation is effective.

Subd. 3. **RATES.** The rates, rating plan, rating rules, rating classification and territories applicable to insurance written by the association and related statistics are subject to chapter 70A. Rates shall be on an actuarially sound

basis, giving consideration to the group retrospective rating plan. The commissioner shall take all appropriate steps to make available, upon request of the association, loss and expense experience of insurers previously writing or currently writing insurance of any type the association offers or intends to offer.

Subd. 4. **APPROVAL.** All policies issued by the association are subject to the group retrospective rating plan approved by the commissioner under which the final premium for the insureds of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingency and servicing. If the board of directors feels it is appropriate and in the interest of fairness and equity, the insureds of the association may be broken down into more than one group. The rating plan may provide for varying rates within the rating plan for such groups as their relative burden to the group as a whole would merit. Policyholders shall be given full credit for all investment income, net of expenses and reasonable management fee on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association rates, rating plans, rating rules, rating classifications and territories then in effect. The maximum premium for all policyholders of the association as a group shall be limited as provided in sections 20 to 41.

Subd. 5. **EXAMINATIONS.** The commissioner shall examine the business of the association as often as is appropriate to insure that the group retrospective rating plan is operating in a manner consistent with this chapter or other Minnesota laws. If it is found that the operation is deficient or inconsistent with this chapter or other Minnesota laws the commissioner may order the association to take corrective action.

Subd. 6. **DEFICITS.** The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted and payment of the maximum final premium for all policyholders of the association. Within 60 days after the certification, the commissioner shall authorize the association to recover the members' respective shares of the deficit by assessing all members an amount sufficient to fully fund the obligations of the association. The assessment of each member shall be determined in the manner provided in section 26. An assessment made pursuant to this section shall be deductible by the member from past or future premium taxes due the state.

Subd. 7. **AMENDMENTS TO RATING PLAN.** In addition to the usual manner of amending the rating plan set forth in this section and section 24, the following procedure may also be used:

(1) Any person may, by written petition served upon the commissioner of commerce request that a hearing be held to amend the rating plan, or any part of the rating plan.

(2) The commissioner shall forward a copy of the petition to the chief administrative law judge within three business days of its receipt. The chief administrative law judge shall, within three business days of receipt of the copy of the petition or a request for hearing by the commissioner, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be set not less than 60 days nor more than 90 days from the date of receipt of the petition by the commissioner or the date of the commissioner's request for hearing if the commissioner is the person requesting a hearing.

(3) The commissioner shall publish a notice of the hearing in the State Register at least 30 days before the hearing date. The notice should be similar to that used for rulemaking under the administrative procedure act. Approval of the notice by the administrative law judge is not required.

(4) The hearing and all matters which occur after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

(5) The commissioner shall render a decision within ten business days of the receipt of the administrative law judge's report.

(6) If all parties to the proceeding agree, any of the previous requirements may be waived or modified.

(7) A petition for a hearing to amend the rating plan or any part of the rating plan received by the commissioner within 180 days of the date of the commissioner's decision in a prior proceeding to amend the rating plan is invalid and requires no action provided the petition involves the same rates as the previous hearing. If the petition involves matters in addition to those dealt with in the previous hearing, then the additional matters shall be treated as a separate petition for hearing and a hearing may be held on those matters.

Sec. 26. **[62I.07] MEMBERSHIP ASSESSMENTS.**

Each member of the association shall participate in its losses and expenses in the proportion that the direct written premiums of the member bears to the total aggregate direct written premiums written in this state by all members. The members' participation in the association shall be determined annually on the direct written premiums written during the preceding calendar year as reported on the annual statements and other reports filed by the member with the commissioner.

Sec. 27. **[62I.08] APPLICATION PROCEDURE.**

A person or entity that has been denied coverage or is unable to find an insurer willing to write coverage is eligible to make an application to the association. The application shall be on a form approved by the board of directors. To show eligibility to participate in the association the applicant shall certify that the applicant has been unable to find anyone to offer the coverage sought by the applicant. No further proof shall be required of the applicant. The application shall be filed simultaneously with the association and the market assistance plan of the association.

Sec. 28. **[62I.09] MARKET ASSISTANCE PLAN.**

Subdivision 1. **CREATION.** A market assistance program committee consisting of 12 members is created. The 12 members shall be appointed by the commissioner of commerce. The commissioner's designated representative shall serve as an ex officio member. The commissioner shall appoint six members of the committee as representatives of insurers; two members who are insurance agents; two public members; and two members representative of groups to whom the association has issued coverage. If, at any time after appointment, a member of the committee, through change of employment or similar circumstances, is no longer representative of the group the member was appointed to represent, that member shall be deemed unable to continue to serve as a member of the committee and the commissioner shall appoint a replacement for the balance of that member's term.

Subd. 2. **TERMS AND VACANCIES.** In the event of a member's inability to continue to serve, the commissioner shall appoint a replacement. The committee shall elect a chair and vice chair from among the members. The term of each member is one year commencing on June 1, except that the first members to be appointed to the committee shall serve from the date of their appointment until June 1 immediately following their appointment.

Subd. 3. **MEETINGS.** The committee shall convene upon the call of the commissioner, the chair or vice chair or at the request of one of the committee members. No quorum requirements are necessary.

Sec. 29. **[62I.10] DISPOSITION OF APPLICATION.**

Subdivision 1. **ACTION UPON APPLICATION.** Upon receipt of an application, the committee or persons the committee appoints or designates will immediately review the application to determine what assistance the committee can give. The assistance may include: (1) discussion with the applicant's most recent underwriter, if any, to determine if the applicant's coverage can be maintained with the most recent carrier; (2) discussion with other known available insurance markets to determine if any other carrier will accept the applicant; (3) negotiating extensions of coverage with the most recent carrier or a temporary carrier, if possible, to permit additional exploration of insurance markets or accumulation of essential underwriting data; and (4) referring the application to the first five participating insurers (participants) on the relevant list provided in subdivision 2. Subsequent applications will be sent to the next five participants on a rotating basis. If at any time there are less than ten participants on the master list then the master list will no longer be utilized.

Subd. 2. **LIST OF PARTICIPATING INSURERS.** A list of participants shall be prepared and updated at least every two years in the following manner: (1) the committee will secure a mailing list from the department of commerce of every licensed insurer admitted to do business as well as every eligible licensed surplus lines licensee; (2) the committee will mail to each admitted insurer and eligible surplus lines licensee an outline of the conditions of participation; (3) a master list of participants willing to take part in the market assistance program will be created from the responses to the initial mailing. The master list will be updated at least every two years pursuant to clauses (1) and (2). Order on the master list will be determined by random selection.

Subd. 3. **REFERRAL TO PARTICIPANTS.** Upon receipt of an application, the committee or the persons the committee appoints or designates may mail or telex copies of the application to the first five participants on the master list.

Subd. 4. **QUOTES.** Participants must quote on at least one out of every three applications submitted. Each participant will have the right to individually evaluate the risk the applicant poses and develop a price commensurate with that risk.

Subd. 5. **REFERRAL.** If no quote is received from the first five participants on the list, the next five participants on the list shall receive the application and the same procedure shall be followed until a quote is obtained or the list is exhausted. All participants may, if the committee feels it appropriate, be given the application at once.

Subd. 6. **RESPONSE FROM PARTICIPANT.** Participants may provide a quote on the same coverage basis they normally provide for similar coverage for that type of insurance in Minnesota. Participants will return their quotations or refusals to quote to the committee within ten days. The applicant or the applicant's agent, if any, will be notified of the quotations. The agent will then complete the placement of the insurance, if the applicant accepts coverage from the participant at the price quoted, without need for an agency appointment from that participant. The insurer is not required to pay the agent any commission, but the agent may negotiate a fee with the applicant prior to initial submission of the application.

Subd. 7. **LIMITATION ON REAPPLICATION.** An applicant provided a quotation in accordance with the above procedure will not be eligible to seek additional quotations from the market assistance plan or to obtain coverage from the association if the quotation received would not be deemed to be a notice of refusal for purposes of determining eligibility for participation in the association.

Subd. 8. **REVIEW BY THE COMMITTEE.** If the procedures in subdivisions 1 to 7 do not produce a quote, the application may be submitted to the committee. The committee after reviewing the application shall proceed as follows: (1) attempt to place the applicant with a single carrier; or (2) attempt to arrange coverage on a quota share basis with a number of carriers.

Subd. 9. **DISQUALIFICATION AFTER COVERAGE GRANTED.** If an application is filed with the market assistance program less than 30 business days before the expiration date of the applicant's current insurance coverage the market assistance program may continue to seek coverage for the applicant after coverage is extended by the association. The market assistance program will have 30 business days from the date of filing of the application with the market assistance program to obtain an offer of coverage for the applicant. If the market assistance program is able to secure an offer of coverage for the applicant within 30 business days of filing of the application and if the offer of coverage would not otherwise be considered a refusal for purposes of the association, the applicant will be deemed to not be qualified to participate in the association and coverage, if any, shall be terminated. If the applicant accepts the coverage obtained by the market assistance plan, coverage from the association will terminate when the new coverage begins.

Subd. 10. **NOTIFICATION OF FAILURE TO PLACE.** If the market assistance program does not produce a quote, it shall notify the submitting agent or the applicant at least 24 hours before the time the applicant's current insurance coverage terminates. A copy of the notification must be submitted to the commissioner and the association at the same time notice is made to the agent or applicant. Notwithstanding the foregoing, the market assistance program may continue to act pursuant to subdivision 9. Notice that the market assistance program is continuing to act pursuant to subdivision 9 shall be included in the notice required by this subdivision.

Sec. 30. **[62I.11] PROGRAM PARTICIPATION.**

Subdivision 1. **TERMINATION.** A participant may terminate its participation in the program at any time by providing written notice of the termination 90 days in advance of the effective date of the termination to the commissioner and to the committee.

Subd. 2. **NEW PARTICIPANTS.** New participants may join the program at any time by submitting a written request to the commissioner and to the committee.

Sec. 31. **[62I.12] ASSOCIATION ADMINISTRATION.**

Subdivision 1. **ADMINISTRATOR.** The association shall be administered by a qualified insurer or vendor of risk management services selected by the commissioner. If the commissioner deems it necessary, the commissioner may select more than one person to administer the association.

Subd. 2. **DUTIES.** The administrator shall perform all services necessary to accomplish the purposes of the association, including the servicing of policies or contracts of coverage, data management, and collection of assessments.

Subd. 3. **APPEALS.** Anyone adversely affected by the decision of the administrator may object to the decision by appealing to the commissioner

within 15 days after the decision. The appeal must be made by letter mailed to the commissioner with a copy to the administrator within the 15-day period. The letter must include a summary of the administrator's decision from which the appeal is taken, the basis for the objection to the administrator's decision, and any argument or evidence in support of the appeal. Within 15 days after receipt of the letter, the administrator shall file a response, including the basis of the administrator's decision and all argument and evidence in support of the decision, with the commissioner. Within ten days after receipt of the administrator's response, the commissioner shall either affirm, reverse, or modify the administrator's decision as the commissioner deems appropriate.

Sec. 32. **[62I.13] ACTION BY THE MINNESOTA JOINT UNDERWRITING ASSOCIATION UPON THE APPLICATION.**

Subdivision 1. **GENERALLY.** Eligibility for coverage by the association is subject to the terms and conditions of subdivisions 2 and 3.

Subd. 2. **MINIMUM OF QUALIFICATIONS.** Anyone who is unable to obtain insurance in the private market and who so certifies to the association in the application is eligible to make written application to the association for coverage. Payment of the applicable premium or required portion of it must be paid prior to coverage by the association. An offer of coverage at a rate in excess of the rate that would be charged by the association for similar coverage and risk shall be deemed to be a refusal of coverage for purposes of eligibility for participation in the association. It shall not be deemed to be a written notice of refusal if the rate for coverage offered is less than five percent in excess of the joint underwriting association rates for similar coverage and risk. However, the offered rate must also be the rate that the insurer has filed with the department of commerce if the insurer is required to file its rates with the department. If the insurer is not required to file its rates with the department, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Subd. 3. **DISQUALIFYING FACTORS.** For good cause, coverage may be denied or terminated by the association. Good cause may exist if the applicant or insured: (1) has an outstanding debt due or owing to the association at the time of application or renewal arising from a prior policy; (2) refuses to permit completion of an audit requested by the commissioner or administrator; (3) submits misleading or erroneous information to the commissioner or administrator; (4) disregards safety standards, laws, rules or ordinance pertaining to the risk being insured; (5) fails to supply information requested by the commissioner or administrator; (6) fails to comply with the terms of the policies or contracts for coverage issued by the association; and (7) has not satisfied the requirements of the market assistance program as set forth in section 28.

Subd. 4. **DISQUALIFICATION AFTER COVERAGE GRANTED.** If an application is filed with the market assistance program less than 30 business days before the expiration of the applicant's current insurance coverage, the market assistance program may continue to seek coverage for the applicant after coverage is extended by the association. The market assistance program will have 30 business days from the date of filing the application with the market assistance program to obtain an offer of coverage for the applicant. If the

market assistance program is able to secure an offer of coverage for the applicant within 30 business days of filing of the application and if the offer of coverage would not otherwise be considered refusal for purposes of the association, the applicant will be deemed to be not qualified to participate in the association plan and coverage, if any, shall be terminated.

Subd. 5. **NOTICE.** An application for coverage under the association must be granted or denied within ten days after receipt by the administrator of a properly completed application and any supplemental information requested by the administrator. Anyone covered by the association must be given at least 30 days notice of nonrenewal or cancellation of coverage.

Sec. 33. **[62I.14] ASSESSMENTS.**

In the event the commissioner deems it necessary to make an assessment, an assessed insurer must pay the assessment within 30 days of receipt of notice of the assessment. The commissioner may suspend or revoke an insurer's certificate of authority and impose a civil penalty in an amount not to exceed $5,000 for an insurer's failure to pay the assessment within the 30 day period.

Sec. 34. **[62I.15] EXTENSION OF COVERAGE.**

If the association determines that the applicant meets the underwriting standards of the association as described in the plan of operation and there is no unpaid, uncontested premium due from the application for prior insurance, including failure to make written objections to premium charges within 30 days after billing, or if there is no other allowable reason as set forth in this chapter for denial of coverage, the association upon receipt of the premium or portion of it as described in the plan of operation shall issue a policy of insurance to the applicant.

Sec. 35. **[62I.16] STABILIZATION RESERVE FUND.**

Subdivision 1. **CREATION.** There is created a stabilization reserve fund. Each policyholder shall pay to the association a stabilization reserve fund charge of 33 percent of each premium payment due for insurance through the association. This charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

Subd. 2. **PAYMENT.** The association shall promptly pay into the stabilization reserve fund all fund charges it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan.

Subd. 3. **SUPERVISION.** All money paid into the fund shall be held in trust by the corporate trustee selected by the board of directors. The corporate trustee may invest the money held in trust subject to the approval of the board. All investment income shall be credited to the fund. All expenses of the admin-

istration of the fund shall be charged against the fund. The money held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders and any retrospective premium refunds payable to policyholders under the group retrospective rating plan. Payment of retrospective premium charges shall be made upon certification of the amount due. If all money accruing to the fund is exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall terminate and shall be conclusively presumed to have been discharged. Any stabilization reserve fund charges from a particular policy year and line or type of insurance not used to pay retrospective premiums must be returned to policyholders after all claims and expense obligations from that particular policy year and line or type of insurance are satisfied.

Subd. 4. **EXEMPTION.** The board of directors may, upon their own motion or upon application of any applicant or insured, exempt any group from the payment of the stabilization reserve charge. The exemption shall be granted only to those groups who are unable to obtain insurance coverage in the private market as a result of the private market's refusal to write coverage for that group rather than because of loss experiences or risks posed by the applicant or insured as an individual. It shall be presumed that a group is qualified for this exemption if more than 20 percent of the members of that group are unable to obtain the insurance coverage that they seek. The board of directors shall also consider granting exemption if any members of the same group are unable to obtain coverage in the private market even though no claims have been made against them or payments made on their behalf by any insurer within the last three years.

Subd. 5. **SURCHARGE.** In addition to determining the basic rate for coverages to be offered by the joint underwriting association, the association shall also develop a surcharge plan or similar method for adjusting the rate to be charged to those persons who have had claims made against them. The surcharge plan shall take into effect the risk posed to the association by the applicant or the insured. The surcharge plan shall be sufficient to provide for the sound financial operation of the plan based upon commonly agreed upon actuarial principles.

Sec. 36. **[62I.17] IMMUNITY FROM LIABILITY.**

No cause of action of any nature shall arise against the association, the commissioner or the commissioner's authorized representatives, or any other person or organization, for any statements made in good faith by them during any proceedings or concerning any matters within the scope of this chapter.

Sec. 37. **[62I.18] RIGHT OF APPEAL.**

Any applicant to the association, any person insured pursuant to this chapter or their representatives, any affected insurer, or any person who has applied for coverage pursuant to this chapter may appeal to the commissioner within 30

days after any ruling, action, or decision by or on behalf of the association with respect to those items that the plan of operation defines as appealable matters.

Sec. 38. **[62I.19] ANNUAL STATEMENTS.**

On March 1 of each year the association shall file with the commissioner a report of its transactions, financial conditions, and operations during the preceding year. The report shall be on a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information to assist in evaluating the scope, operation, and experience of the association.

Sec. 39. **[62I.20] MERGER OF OTHER PLANS.**

Upon application by the governing body of the liquor liability assigned risk plan authorized by section 340A.409 or the joint underwriting association authorized by chapter 62F to be merged with the association, the commissioner shall, if the commissioner deems it appropriate, hold a public hearing in regard to the merger. The commissioner upon motion or upon the motion of any insured under plans shall hold a hearing. Unless it can be shown that the rights of the insured would be adversely affected by the merger or that it would be less efficient or more costly to merge the plans, the commissioner shall consent to the merger. The commissioner shall also consent to the merger at any time there are less than ten insureds in any plan.

Sec. 40. **[62I.21] ACTIVATION OF MARKET ASSISTANCE PLAN AND JOINT UNDERWRITING ASSOCIATION.**

At any time the commissioner of commerce deems it necessary to provide assistance with respect to the placement of general liability insurance coverage on Minnesota risks for a class of business, the commissioner shall by notice in the state register activate the market assistance plan and the joint underwriting association. The plan and association are activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the market assistance plan and the joint underwriting association is necessary beyond the 180-day period. The hearing must be held in accordance with section 41. The commissioner by order shall deactivate a market assistance program and the joint underwriting association at any time the commissioner finds that the market assistance program and the joint underwriting association are not necessary.

Sec. 41. **[62I.22] HEARING.**

Subdivision 1. **ADMINISTRATIVE LAW JUDGE.** The commissioner shall forward a copy of the petition to activate the market assistance plan and the joint underwriting association with respect to a class of business to the chief administrative law judge. The chief administrative law judge shall, within three business days of receipt of the copy of the petition, set a hearing date, assign an

administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be no less than 60 days nor more than 90 days from the date of receipt of the petition by the chief administrative law judge.

Subd. 2. **NOTICE.** The commissioner of commerce shall publish notice of the hearing in the State Register at least 30 days before the hearing date. The notice should be that used for rulemaking under chapter 14. Approval by the administrative law judge of the notice prior to publication is not required.

Subd. 3. **CONTESTED CASE; REPORT.** The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. **DECISION.** The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. **WAIVER OR MODIFICATION.** If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Sec. 42. Minnesota Statutes 1984, section 65A.32, is amended to read:

65A.32 **PURPOSES.**

The purposes of sections 65A.31 to 65A.43 are:

(1) To encourage stability in the property and liability insurance market for property located in ~~urban areas of~~ this state;

(2) To encourage maximum use, in obtaining ~~basic~~ property and liability insurance, as defined in sections 65A.31 to 65A.43, of the normal insurance market provided by the private property and casualty insurance industry;

(3) To encourage the improvement of the condition of properties located in ~~urban areas of~~ this state and to further orderly community development generally;

(4) To provide for the formulation and administration by an industry placement facility of a plan assuring fair access to insurance requirements (FAIR Plan) in order that no property shall be denied ~~basic~~ property or liability insurance through the normal insurance market provided by the private property and casualty insurance industry except after a physical inspection of such property and a fair evaluation of its individual underwriting characteristics;

(5) To publicize the purposes and procedures of the FAIR Plan to the end that no one may fail to seek its assistance through ignorance thereof;

(6) To provide for the formulation and administration by the industry placement facility of a reinsurance arrangement whereby property and casualty insurers shall share equitably the responsibility for insuring insurable property for which ~~basic~~ property and liability insurance cannot be obtained through the normal insurance markets; and

(7) To provide a framework for participation by the state in a sharing of insured losses resulting from riots and other civil disorders occurring in this state as required by section 1223 of the Housing and Urban Development Act of 1968 (Public Law 90-448, Ninetieth Congress, August 1, 1968).

Sec. 43. Minnesota Statutes 1984, section 65A.33, is amended to read:

65A.33 **DEFINITIONS.**

Subdivision 1. As used in sections 65A.31 to 65A.43, unless the context otherwise requires, the terms defined in this section have the following meaning given to them.

Subd. 2. "Insurer" means any insurance company or other organization licensed to write and engaged in writing property or liability insurance business, including the property or liability insurance components of multi-peril policies, on a direct basis, in this state, except where such insurer is specifically exempted by statute from participation in this program.

Subd. 3. "~~Basic~~ Property or liability insurance" means the coverage against direct loss to real or tangible personal property at a fixed location that is provided in the standard fire policy, extended coverage endorsement, homeowners insurance, as defined in section 65A.27, subdivision 4, cooperative housing insurance, condominium insurance, builders risk, and such vandalism and malicious mischief insurance and such other classes of insurance as may be added to the program with respect to said property by amendment as hereinafter provided. ~~Basic~~ Property or liability insurance does not include automobile, farm, commercial liability, or such manufacturing risks as may be excluded by the commissioner.

Subd. 4. "Industry placement facility", hereinafter referred to as the facility, means the organization formed by insurers to assist applicants ~~in urban areas~~ in securing ~~basic~~ property or liability insurance and to administer the FAIR Plan and the joint reinsurance association.

Subd. 5. "Inspection bureau" means the ~~fire insurance~~ rating organization designated by the facility with the approval of the commissioner to make inspections as required under this program and to perform such other duties as may be authorized by the facility.

Subd. 6. ~~"Urban area" includes any municipality or other political subdivision, subject to population or other limitations defined in rules and regulations of the secretary and such additional areas as may be designated by the commissioner.~~

~~Subd. 7.~~ "Premiums written" means gross direct premiums, excluding that portion of premium on risks ceded to the joint reinsurance association, charged during the second preceding calendar year with respect to property in this state on all policies of ~~basic~~ property or liability insurance and the ~~basic~~ property or liability insurance premium components of all multi-peril policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

Subd. ~~8~~ 7. "Commissioner" means the commissioner of commerce of the state of Minnesota.

Subd. ~~9~~ 8. "Secretary" means the secretary of the United States department of housing and urban development.

~~Subd. 10. "Servicing Insurer" means an insurer designated by the governing committee to issue policies on behalf of the industry placement facility.~~

Sec. 44. Minnesota Statutes 1984, section 65A.34, subdivision 1, is amended to read:

65A.34 **FAIR PLAN; INSPECTIONS AND REPORTS.**

Subdivision 1. Any person having an insurable interest in real or tangible personal property ~~at a fixed location in an urban area~~ shall be entitled upon oral or written application therefor to the facility to a prompt inspection of the property by the inspection bureau without cost.

Sec. 45. Minnesota Statutes 1984, section 65A.35, subdivision 1, is amended to read:

65A.35 **FAIR PLAN BUSINESS; DISTRIBUTION AND PLACEMENT.**

Subdivision 1. **MEMBERSHIP.** Each insurer which is authorized to write and is engaged in writing within this state, on a direct basis, ~~basic~~ property or liability insurance or any component thereof contained in a multi-peril policy, including homeowners and commercial multi-peril policies, shall participate in the industry placement facility, as hereinafter described, as a condition of its authority to write such kinds of insurance within this state.

Sec. 46. Minnesota Statutes 1984, section 65A.35, subdivision 2, is amended to read:

Subd. 2. **PURPOSES.** The purposes of the facility shall be twofold, as more fully set forth in this section:

(1) To formulate and administer, subject to the approval of the commissioner, a plan assuring fair access to insurance requirements in order that no property ~~in urban areas~~ shall be denied ~~basic~~ property or liability insurance through the normal insurance market provided by the private property and casualty insurance industry, except after a physical inspection of such property and a fair evaluation of its individual underwriting characteristics; and

(2) To formulate and administer, subject to the approval of the commissioner, a reinsurance arrangement whereby the members of the facility shall share equitably the responsibility for insuring property ~~in urban areas~~ which is insurable but for which ~~basic~~ property or liability insurance cannot be obtained through normal insurance markets.

Sec. 47. Minnesota Statutes 1984, section 65A.37, is amended to read:

65A.37 **STANDARD POLICY COVERAGE.**

All policies ~~issued~~, except homeowners policies, shall be ~~for basic property insurance~~ on standard policy forms at rates published by ~~the inspection bureau~~ Insurance Services Office and shall be issued for a term of one year. All homeowners, cooperative housing insurance, and condominium insurance policies must be on forms published by Insurance Services Office and approved by the commissioner.

Sec. 48. Minnesota Statutes 1984, section 65B.13, is amended to read:

65B.13 **AUTOMOBILE INSURANCE, DISCRIMINATION IN AUTOMOBILE POLICIES FORBIDDEN.**

No insurance company, or its agent, shall refuse to issue any standard or preferred policy of motor vehicle insurance or make any discrimination in the acceptance of risks, in rates, premiums, dividends, or benefits of any kind, or by way of rebate:

(a) between persons of the same class, or

(b) on account of race, or

(c) on account of physical handicap if the handicap is compensated for by special training, equipment, prosthetic device, corrective lenses, or medication and if the physically handicapped person;

(1) is licensed by the department of public safety to operate a motor vehicle in this state, and

(2) operates only vehicles which are equipped with auxiliary devices and equipment necessary for safe and effective operation by the handicapped person, or

(d) on account of marital dissolution.

Every company or agent violating any of the foregoing provisions shall be fined not more than $100 per violation, and every officer, agent, or solicitor violating the same shall be guilty of a misdemeanor. The commissioner of commerce is authorized to treat violations of this section as an unfair insurance practice and to enforce this section using the procedures, remedies, and penalties provided in sections 72A.17 to 72A.32.

Sec. 49. **[65B.1311] COVERAGE FOR FORMER SPOUSE.**

Subdivision 1. **NEW POLICY ISSUED.** If the former spouse of a named insured under a policy of private passenger vehicle insurance applies within 60 days of entry of a valid decree of dissolution of the marriage and the former spouse was an insured driver under the policy for at least 12 months prior to entry of the decree, the insurer must issue a policy, upon payment of the appropriate premium, to the former spouse only on the basis of the driving record applicable to the former spouse and any person who is to be an insured, as defined in section 65B.43, under the policy to be issued, provided the person or persons to be insured meets the insurer's eligibility standards.

Subd. 2. **NAMED INSURED.** A named insured under a policy of private passenger vehicle insurance shall have the premium determined at the first and any subsequent renewals of the policy after entry of a valid decree of dissolution of the marriage of the named insured only on the basis of the driving record applicable to the named insured and any person who is to be an insured, as defined in section 65B.43, under the policy to be renewed.

Sec. 50. Minnesota Statutes 1984, section 65B.47, subdivision 1, is amended to read:

Subdivision 1. In case of injury to the driver or other occupant of a motor vehicle other than a commuter van, or other than a vehicle being used to transport children to school or to a school sponsored activity or other bus while it is in operation within the state of Minnesota as to any Minnesota resident who is an insured as defined in section 65B.43, subdivision 5, if the accident causing the injury occurs while the vehicle is being used in the business of transporting persons or property, the security for payment of basic economic loss benefits is the security covering the vehicle or, if none, the security under which the injured person is an insured.

Sec. 51. Minnesota Statutes 1984, section 70A.04, subdivision 2, is amended to read:

Subd. 2. **EXCESSIVENESS; MARKET TEST.** (a) Rates are presumed not to be excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the commissioner shall consider all relevant tests~~, including, but not limited to, the following:~~

~~1. The number of insurers actively engaged in the class of business.~~

~~2. The nature of rate differentials in that class of business.~~

~~3. Whether long-run profitability for insurers generally of the class of business is unreasonably high in relation to its riskiness.~~

In addition to any other manner of determining whether a reasonable degree of price competition exists with respect to any class of insurance, it is presumed that a reasonable degree of competition does not exist if less than five insurers write more than 75 percent of the direct written premiums.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(b) If such competition does not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

In determining whether an excessive rate is being charged by an individual insurer for a class of insurance where a reasonable degree of competition does not exist, the commissioner shall determine whether the rate charged produces a rate of return that is not in excess of a reasonable rate of return. To determine what is a reasonable rate of return, the riskiness of the class of insurance, the profitability of the insurer in that class of business, and other relevant factors shall be considered.

Sec. 52. Minnesota Statutes 1984, section 70A.06, subdivision 1, is amended to read:

Subdivision 1. Every licensed insurer and every rate service organization licensed under section 70A.14 shall ~~furnish~~ file with the commissioner all rates and all changes and amendments of rates made by it for use in this state not later than their effective date. No rates contained in a filing shall become effective unless they have been filed with the commissioner. In any filing, the commissioner may require the insurer or rate service organization to file supporting data and explanatory data which shall include:

(1) the experience and judgment of the filer, and, to the extent it wishes or the commissioner requires, of other insurers or rate service organizations;

(2) its interpretation of any statistical data relied upon;

(3) descriptions of the actuarial and statistical methods employed; and

(4) any other matters deemed relevant by the commissioner or the filer.

Notwithstanding the foregoing, if the supporting data is not filed within 30 days after so requested by the commissioner, the rate is no longer effective and is presumed to be an excessive rate.

Sec. 53. Minnesota Statutes 1984, section 70A.06, subdivision 2, is amended to read:

Subd. 2. No policy form shall be delivered or issued for delivery unless it has been filed with the commissioner and either (i) he has approved it or (ii) ~~30~~ 60 days have elapsed and he has not disapproved it as misleading or violative of public policy, which period may be extended by the commissioner for an additional period not to exceed ~~30~~ 60 days.

Sec. 54. Minnesota Statutes 1984, section 70A.08, is amended by adding a subdivision to read:

Subd. 3. Until January 1, 1988, the commissioner may restrict approval on claims-made policies to forms filed by a rate service organization which have been approved.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 55. Minnesota Statutes 1984, section 70A.10, is amended to read:

70A.10 **DELAYED EFFECT OF RATES.**

Subdivision 1. ~~**RULE**~~ **ORDER INSTITUTING DELAYED EFFECT.** If the commissioner finds, after a hearing, that competition is not an effective regulator of the rates charged or that a substantial number of companies are competing irresponsibly through the rates charged, or that there are widespread violations of this chapter, in any kind or line of insurance or subdivision thereof or in any rating class or rating territory, he may issue ~~a rule~~ an order requiring that in the kind or line of insurance or subdivision thereof or rating class or rating territory comprehended by the finding any subsequent changes in the rates or supplementary rate information be filed with him at least ~~30~~ 60 days before they become effective. He may extend the waiting period for not to exceed ~~15~~ 30 additional days by written notice to the filer before the ~~30~~ 60 day period expires.

Subd. 2. **SUPPORTING DATA.** In the ~~rule~~ order issued under subdivision 1 or in any supplementary ~~rule~~ order, the commissioner may require the filing of supporting data as to any or all kinds or lines of insurance or subdivisions thereof or classes of risks or combinations thereof as he deems necessary for the proper functioning of the rate monitoring and regulating process. The supporting data shall include:

(a) The experience and judgment of the filer, and, to the extent it wishes or the commissioner requires, of other insurers or rate service organizations;

(b) Its interpretation of any statistical data relied upon;

(c) Descriptions of the actuarial and statistical methods employed; and

(d) Any other matters deemed relevant by the commissioner or the filer.

Subd. 3. **EXPIRATION OF ~~REGULATION~~ ORDER.** ~~A regulation~~ An order issued under subdivision 1 shall expire no more than ~~one year~~ two years after issue. ~~The commissioner may renew it after a hearing and appropriate findings as provided under subdivision 1.~~

Subd. 4. **SUPPORTING INFORMATION.** Whenever a filing is not accompanied by such information as the commissioner has required under subdivision 2, he may so inform the insurer and the filing shall be deemed to be made when the information is furnished.

Sec. 56. Minnesota Statutes 1984, section 70A.11, is amended to read:

70A.11 **DISAPPROVAL OF RATES.**

Subdivision 1. **ORDER ~~IN EVENT OF VIOLATION~~ AFTER HEARING.** If the commissioner finds after a ~~hearing~~ contested case proceeding under chapter 14 that a rate is not in compliance with section 70A.04, he shall order that its

use is to be discontinued ~~on a date not less than 30 days after the order~~ and shall order the excess premium plus interest at the rate specified in section 549.09 to be refunded to the policyholder. The amount of the refund, plus interest, must be computed from the commencement date of the contested case hearing on the rate. Interest must be computed as simple interest per annum.

Subd. 2. **TIMING OF ORDER.** The order under subdivision 1 shall be issued within ~~30~~ 60 days after the close of the hearing or within such reasonable time extension as the commissioner may fix.

Subd. 3. **APPROVAL OF SUBSTITUTED RATE.** No rate replacing a disapproved rate may be used until it has been filed with the commissioner and not disapproved within ~~30~~ 60 days thereafter, except that the rate disapproved under subdivision 1, with the consent of the commissioner, or the last previous rate in effect for the insurer may be used for a period of not more than three months pending the approval of a substituted rate. The commissioner's order may include provision for a premium adjustment in a rate charged pending approval of a substituted rate.

Sec. 57. Minnesota Statutes 1984, section 72A.13, subdivision 1, is amended to read:

Subdivision 1. Any company, corporation, association, society, or other insurer, or any officer or agent thereof, which or who solicits, issues or delivers to any person in this state any policy in violation of the provisions of sections 4 or 62A.01 to 62A.10, may be punished by a fine of not more than $100 for each offense, and the commissioner may revoke the license of any company, corporation, association, society, or other insurer of another state or country, or of the agent thereof, which or who wilfully violates any provision of sections 4 or 62A.01 to 62A.10.

Sec. 58. **[60A.30] RENEWAL OF INSURANCE POLICY WITH ALTERED RATES.**

If an insurance company licensed to do business in this state offers or purports to offer to renew any commercial liability and/or property insurance policy at less favorable terms as to the dollar amount of coverage or deductibles, higher rates, and/or higher rating plan, the new terms, the new rates and/or rating plan may take effect on the renewal date of the policy if the insurer has sent to the policyholder notice of the new terms, new rates and/or rating plan at least 30 days prior to the expiration date. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the 30-day period after receipt of the notice. Earned premium for the period of coverage, if any, shall be calculated pro rata upon the prior rate. This subdivision does not apply to ocean marine insurance, accident and health insurance, and reinsurance.

Sec. 59. **[60A.31] MID TERM CANCELLATION.**

In addition to the requirements of Minnesota Statutes 1984, section 176.185, subdivision 1, no policy of insurance issued to cover the liability to pay compensation under Minnesota Statutes 1984, chapter 176, shall be canceled by the insurer within the policy period unless the insurer has also complied with the requirements of such rules as the commissioner of commerce may adopt in regard to the cancellation of commercial liability and/ or commercial property insurance policies.

Sec. 60. **[145.682] CERTIFICATION OF EXPERT REVIEW; AFFIDAVIT.**

Subdivision 1. **DEFINITION.** For purposes of this section, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

Subd. 2. **REQUIREMENT.** In an action alleging malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider which includes a cause of action as to which expert testimony is necessary to establish a prima facie case, the plaintiff must: (1) unless otherwise provided in subdivision 3, paragraph (b), serve upon defendant with the summons and complaint an affidavit as provided in subdivision 3; and (2) serve upon defendant within 180 days after commencement of the suit an affidavit as provided by subdivision 4.

Subd. 3. **AFFIDAVIT OF EXPERT REVIEW.** The affidavit required by subdivision 2, clause (1), must be by the plaintiff's attorney and state that:

(a) the facts of the case have been reviewed by the plaintiff's attorney with an expert whose qualifications provide a reasonable expectation that the expert's opinions could be admissible at trial and that, in the opinion of this expert, one or more defendants deviated from the applicable standard of care and by that action caused injury to the plaintiff; or

(b) the expert review required by paragraph (a) could not reasonably be obtained before the action was commenced because of the applicable statute of limitations. If an affidavit is executed pursuant to this paragraph, the affidavit in paragraph (a) must be served on defendant or the defendant's counsel within 90 days after service of the summons and complaint.

Subd. 4. **IDENTIFICATION OF EXPERTS TO BE CALLED.** The affidavit required by subdivision 2, clause (2), must be by the plaintiff's attorney and state the identity of each person whom plaintiff expects to call as an expert witness at trial to testify with respect to the issues of malpractice or causation, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Answers to interrogatories that state the information required by this subdivision satisfy the requirements of this subdivision if they are signed by the plaintiff's attorney and served upon the

defendant within 180 days after commencement of the suit against the defendant.

The parties or the court for good cause shown, may by agreement, provide for extensions of the time limits specified in subdivision 2, 3, or this subdivision. Nothing in this subdivision may be construed to prevent either party from calling additional expert witnesses or substituting other expert witnesses.

Subd. 5. **RESPONSIBILITIES OF PLAINTIFF AS ATTORNEY.** If the plaintiff is acting pro se, the plaintiff shall sign the affidavit or answers to interrogatories referred to in this section and is bound by those provisions as if represented by an attorney.

Subd. 6. **PENALTY FOR NONCOMPLIANCE.** Failure to comply with subdivision 2, clause (1), within 60 days after demand for the affidavit results, upon motion, in mandatory dismissal with prejudice of each cause of action as to which expert testimony is necessary to establish a prima facie case.

Failure to comply with subdivision 2, clause (2), and subdivision 4 results, upon motion, in mandatory dismissal with prejudice of each cause of action as to which expert testimony is necessary to establish a prima facie case.

Subd. 7. **CONSEQUENCES OF SIGNING AFFIDAVIT.** The signature of the plaintiff or the plaintiff's attorney constitutes a certification that the person has read the affidavit or answers to interrogatories, and that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, it is true, accurate, and made in good faith. A certification made in violation of this subdivision subjects the attorney or plaintiff responsible for such conduct to reasonable attorney's fees, costs, and disbursements.

Sec. 61. Minnesota Statutes 1984, section 245.814, is amended to read:

245.814 **LIABILITY INSURANCE FOR ~~FOSTER PARENTS~~ LICENSED PROVIDERS.**

Subdivision 1. **INSURANCE FOR FOSTER PARENTS.** The commissioner of human services shall within the appropriation provided purchase and provide insurance to foster parents to cover their liability for:

(1) injuries or property damage caused or sustained by foster children in their home; and

(2) actions arising out of alienation of affections sustained by the natural parents of a foster child.

Coverage shall apply to all foster boarding homes licensed by the department of human services, licensed by a federally recognized tribal government, or established by the juvenile court and certified by the commissioner of corrections pursuant to section 260.185, subdivision 1, clause (c) (5), to the extent that the liability is not covered by the provisions of the standard homeowner's or

automobile insurance policy. The insurance shall not cover property owned by the foster parents, damage caused intentionally by a child over 12 years of age, or property damage arising out of business pursuits or the operation of any vehicle, machinery, or equipment.

Subd. 2. **LIABILITY INSURANCE; RISK POOL.** If the commissioner determines that appropriate commercial liability insurance coverage is not available for a licensed foster home, group home, developmental achievement center, or day care provider, and that coverage available through the joint underwriting authority of the commissioner of commerce or other public entity is not appropriate for the provider or a class of providers, the commissioner of human services and the commissioner of commerce may jointly establish a risk pool to provide coverage for licensed providers out of premiums or fees paid by providers. The commissioners may set limits on coverage, establish premiums or fees, determine the proportionate share of each provider to be collected in a premium or fee based on the provider's claim experience and other factors the commissioners consider appropriate, establish eligibility and application requirements for coverage, and take other action necessary to accomplish the purposes of this subdivision. A human services risk pool fund is created for the purposes of this subdivision. Fees and premiums collected from providers for risk pool coverage are appropriated to the risk pool fund. Interest earned from the investment of money in the fund must be credited to the fund and money in the fund is appropriated to the commissioner of human services to pay administrative costs and covered claims for participating providers. In the event that money in the fund is insufficient to pay outstanding claims and associated administrative costs, the commissioner of human services may assess providers participating in the risk pool amounts sufficient to pay the costs. The commissioner of human services may not assess a provider an amount exceeding one year's premiums collected from that provider.

Sec. 62. **[317.201] UNPAID DIRECTORS OR TRUSTEES; LIABILITY FOR DAMAGES.**

A director or trustee of a nonprofit corporation or association who is not paid for services to the corporation or association is not individually liable for damages occasioned solely by reason of membership on or participation in board activities.

Sec. 63. Minnesota Statutes 1984, section 398A.04, subdivision 6, is amended to read:

Subd. 6. **INSURANCE AND INDEMNITY.** (a) The authority shall be subject to tort liability to the extent provided in chapter 466 and may procure insurance against the liability, and may indemnify and purchase and maintain insurance on behalf of any of its commissioners, officers, employees, or agents, in connection with any threatened, pending, or completed action, suit, or proceeding, as provided in chapter 466, and to the same extent and in the same manner and with the same force and effect as provided in the case of a private

corporation by section ~~300.082~~ 300.083. It may also procure insurance against loss of or damage to property in the amounts, by reason of the risks, and from the insurers as it deems prudent.

(b) A railroad leasing its tracks and right-of-way to a railroad authority that is created under this chapter and affiliated with a railroad museum is subject to tort liability only to the extent provided for municipalities in chapter 466 as to any claims arising out of fare-paying passenger operations carried on by the railroad authority primarily for the purpose of promoting tourism on tracks and right-of-way leased from the railroad.

Sec. 64. Minnesota Statutes 1984, section 466.01, subdivision 1, is amended to read:

Subdivision 1. **MUNICIPALITY.** For the purposes of sections 466.01 to 466.15, "municipality" means any city, whether organized under home rule charter or otherwise, any county, town, public authority, public corporation, special district, school district, however organized, county agricultural society organized pursuant to chapter 38, joint powers board or organization created under section 471.59 or other statute, public library, regional public library system, multicounty multitype library system, or other political subdivision.

Sec. 65. Minnesota Statutes 1984, section 466.03, subdivision 4, is amended to read:

Subd. 4. **ACCUMULATIONS OF SNOW AND ICE.** Any claim based on snow or ice conditions on any highway ~~or other public place~~ or public sidewalk that does not abut a publicly-owned building or publicly-owned parking lot, except when the condition is affirmatively caused by the negligent acts of the municipality.

Sec. 66. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 6e. **PARKS AND RECREATION AREAS.** Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person.

Sec. 67. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 8. Any claim for a loss other than injury to or loss of property or personal injury or death.

Sec. 68. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 9. Any claim for a loss of benefits or compensation due under a program of public assistance or public welfare, except where municipal compensation for loss is expressly required by federal law in order for the municipality to receive federal grants-in-aid.

Sec. 69. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 10. Any claim for a loss based on the failure of any person to meet the standards needed for a license, permit, or other authorization issued by the municipality or its agents.

Sec. 70. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 11. Any claim for a loss based on the usual care and treatment, or lack of care and treatment, of any person at a municipal hospital or corrections facility where reasonable use of available funds has been made to provide care.

Sec. 71. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 12. Any claim for a loss, damage, or destruction of property of a patient or inmate of a municipal institution.

Sec. 72. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 13. Any claim for a loss caused by the condition of unimproved real property owned by a municipality, which means land that the municipality has not improved, and appurtenances, fixtures and attachments to land that the municipality has neither affixed nor improved.

Sec. 73. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 14. Any claim for a loss for which recovery is prohibited by section 169.121, subdivision 9.

Sec. 74. Minnesota Statutes 1984, section 466.03, is amended by adding a subdivision to read:

Subd. 15. Any claim against a municipality, if the same claim would be excluded under section 3.736, if brought against the state.

Sec. 75. Minnesota Statutes 1984, section 466.05, is amended to read:

466.05 **NOTICE OF CLAIM.**

Subdivision 1. **NOTICE REQUIRED.** Except as provided in subdivisions 2 and 3, every person, whether plaintiff, defendant or third party plaintiff or defendant, who claims damages from any municipality or municipal employee acting within the scope of employment for or on account of any loss or injury within the scope of section 466.02 shall cause to be presented to the governing body of the municipality within 180 days after the alleged loss or injury is discovered a notice stating the time, place and circumstances thereof, the names of the municipal employees known to be involved, and the amount of compensation or other relief demanded. Actual notice of sufficient facts to reasonably put the governing body of the municipality or its insurer on notice of a possible claim shall be construed to comply with the notice requirements of this section. Failure to state the amount of compensation or other relief demanded does not invalidate the notice; but in such case, the claimant shall furnish full information regarding the nature and extent of the injuries and damages within 15 days after demand by the municipality. ~~No action therefor shall be maintained unless such notice has been given and unless the action is commenced within one year after such notice.~~ The time for giving such notice does not include the time, ~~not exceeding 90 days,~~ during which the person injured is incapacitated by the injury from giving the notice.

~~Subd. 2. EXCEPTIONS TO THE NOTICE REQUIREMENT. Notice shall not be required to maintain an action for damages for or on account of any loss or injury within the scope of section 466.02 if such injury or loss:~~

~~(a) arises out of an intentional tort committed by an officer, employee or agent of the municipality; or~~

~~(b) involves a motor vehicle or other equipment owned by the municipality or operated by an officer, employee or agent of the municipality.~~

~~Where no notice of claim is required under this chapter, no action shall be maintained unless the action is commenced within two years after the date of the incident, accident or transaction out of which the cause of action arises.~~

Subd. ~~3~~ 2. **CLAIMS FOR WRONGFUL DEATH; NOTICE.** When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in such death; if the person for whose death the claim is made has presented a notice that would have been sufficient had he lived an action for wrongful death may be brought without any additional notice.

Sec. 76. Minnesota Statutes 1984, section 466.07, is amended by adding a subdivision to read:

Subd. 4. **PUNITIVE DAMAGES.** A municipality may not save harmless, indemnify or insure an officer or employee for punitive damages levied against the officer or employer. The municipality may provide a defense against a claim for punitive damages as a necessary incident to other elements of a defense.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 77. **[466.101] LAW ENFORCEMENT COSTS.**

When costs are assessed against a municipality for injuries incurred or other medical expenses connected with the arrest of individuals violating Minnesota Statutes, the municipality responsible for the hiring, firing, training, and control of the law enforcement and other employees involved in the arrest is responsible for those costs.

Sec. 78. Minnesota Statutes 1984, section 471.982, subdivision 3, is amended to read:

Subd. 3. Self-insurance pools established and open for enrollment on a statewide basis by the Minnesota league of cities insurance trust, the Minnesota school boards association insurance trust or the Minnesota association of counties insurance trust and the political subdivisions that belong to them are exempt from the requirements of this section and section 65B.48, subdivision 3.

Sec. 79. Minnesota Statutes 1984, section 541.15, is amended to read:

541.15 **PERIODS OF DISABILITY NOT COUNTED.**

(a) Except as provided in paragraph (b), any of the following grounds of disability, existing at the time when a cause of action accrued or arising anytime during the period of limitation, shall suspend the running of the period of limitation until the same is removed; provided that such period, except in the case of infancy, shall not be extended for more than five years, nor in any case for more than one year after the disability ceases:

(1) That the plaintiff is within the age of 18 years;

(2) His insanity;

(3) His imprisonment on a criminal charge, or under a sentence of a criminal court for a term less than his natural life;

(4) Is an alien and the subject or citizen of a country at war with the United States;

(5) When the beginning of the action is stayed by injunction or by statutory prohibition.

If two or more disabilities shall coexist, the suspension shall continue until all are removed.

(b) In actions alleging malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, the ground of disability specified in paragraph (a), clause (1), suspends the period of limitation until the disability is removed. The suspension may not be extended for more than seven years, or for more than one year after the disability ceases.

For purposes of this paragraph, health care provider means a physician, surgeon, dentist, or other health care professional or hospital, including all

persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

Sec. 80. **[548.36] COLLATERAL SOURCE CALCULATIONS.**

Subdivision 1. **DEFINITION.** For purposes of this section, "collateral sources" means payments related to the injury or disability in question made to the plaintiff, or on the plaintiff's behalf up to the date of the verdict, by or pursuant to:

(1) a federal, state, or local income disability or workers' compensation act; or other public program providing medical expenses, disability payments, or similar benefits;

(2) health, accident and sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others, payments made pursuant to the United States Social Security Act, or pension payments;

(3) a contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental or other health care services; or

(4) a contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability, except benefits received from a private disability insurance policy where the premiums were wholly paid for by the plaintiff.

Subd. 2. **MOTION.** In a civil action, whether based on contract or tort, when liability is admitted or is determined by the trier of fact, and when damages include an award to compensate the plaintiff for losses available to the date of the verdict by collateral sources, a party may file a motion within ten days of the date of entry of the verdict requesting determination of collateral sources. If the motion is filed, the parties shall submit written evidence of, and the court shall determine:

(1) amounts of collateral sources that have been paid for the benefit of the plaintiff or are otherwise available to the plaintiff as a result of losses except those for which a subrogation right has been asserted; and

(2) amounts that have been paid, contributed, or forfeited by, or on behalf of, the plaintiff or members of the plaintiff's immediate family for the two-year period immediately before the accrual of the action to secure the right to a collateral source benefit that the plaintiff is receiving as a result of losses.

Subd. 3. **DUTIES OF THE COURT.** (a) The court shall reduce the award by the amounts determined under subdivision 2, clause (1), and offset any reduction in the award by the amounts determined under subdivision 2, clause (2).

(b) If the court cannot determine the amounts specified in paragraph (a) from the written evidence submitted, the court may within ten days request additional written evidence or schedule a conference with the parties to obtain further evidence.

Subd. 4. **CALCULATION OF ATTORNEYS' FEES.** If the fees for legal services provided to the plaintiff are based on a percentage of the amount of money awarded to the plaintiff, the percentage must be based on the amount of the award as adjusted under subdivision 3. Any subrogated provider of a collateral source not separately represented by counsel shall pay the same percentage of attorneys' fees as paid by the plaintiff and shall pay its proportionate share of the costs.

Subd. 5. **JURY NOT INFORMED OF COLLATERAL SOURCES.** The jury shall not be informed of the existence of collateral sources or any future benefits which may or may not be payable to the plaintiff.

Sec. 81. Minnesota Statutes 1984, section 549.09, subdivision 1, is amended to read:

Subdivision 1. **WHEN OWED; RATE.** (a) When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk as provided in clause (c) and added to the judgment. (b) Except as otherwise provided by contract or allowed by law, pre-verdict or pre-report interest on pecuniary damages shall be computed as provided in clause (c) from the time of the commencement of the action, or the time of a written settlement demand, whichever occurs first, except as provided herein. The action must be commenced within 60 days of a written settlement demand for interest to begin to accrue from the time of the demand. If either party serves a written offer of settlement, the other party may serve a written acceptance or a written counter-offer within 60 days. After that time interest on the judgment shall be calculated by the judge in the following manner. The prevailing party shall receive interest on any judgment from the time the action was commenced or a written settlement demand was made, or as to special damages from the time when special damages were incurred, if later ~~than commencement of the action~~, until the time of verdict or report only if the amount of its offer is closer to the judgment than the amount of the opposing party's offer. If the amount of the losing party's offer was closer to the judgment than the prevailing party's offer, the prevailing party shall receive interest only on the amount of the settlement offer or the judgment, whichever is less, and only from the time the action was commenced or a written settlement demand was made, or as to special damages from when the special damages were incurred, if later ~~than commencement of the action,~~ until the time the settlement offer was made. Subsequent offers and counteroffers supersede the legal effect of earlier offers and counteroffers. For the purposes of clause (3), the amount of settlement offer must be allocated between past and future damages in the same proportion as determined by the trier of fact. Except as otherwise provided by contract or

allowed by law, pre-verdict or pre-report interest shall not be awarded on the following:

(1) judgments, awards, or benefits in workers' compensation cases, but not including third-party actions;

(2) judgments, decrees, or orders in dissolution, annulment, or legal separation actions;

(3) judgments for future damages;

(4) punitive damages, fines, or other damages that are noncompensatory in nature;

~~(4)~~ (5) judgments not in excess of the amount specified in section 487.30; and

~~(5)~~ (6) that portion of any verdict or report which is founded upon interest, or costs, disbursements, attorney fees, or other similar items added by the court. (c) The interest shall be computed as simple interest per annum. The rate of interest shall be based on the secondary market yield of one year United States treasury bills, calculated on a bank discount basis as provided in this section.

On or before the 20th day of December of each year the state court administrator shall determine the rate from the secondary market yield on one year United States treasury bills for the most recent calendar month, reported on a monthly basis in the latest statistical release of the board of governors of the federal reserve system. This yield, rounded to the nearest one percent, shall be the annual interest rate during the succeeding calendar year; provided, however, that in no event shall the rate of interest be less than eight percent per annum. The state court administrator shall also determine the average rate of interest on judgments to be used during the succeeding calendar year for computation of the discount rate under section 86, subdivision 4. The state court administrator shall communicate the interest ~~rate~~ rates to the clerks of court for ~~their~~ use in computing the interest on verdicts and the discount rate under section 86.

Sec. 82. **[549.191] CLAIM FOR PUNITIVE DAMAGES.**

Upon commencement of a civil action, the complaint must not seek punitive damages. After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under section 549.20 or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

Sec. 83. Minnesota Statutes 1984, section 549.21, is amended to read:

549.21 **REIMBURSEMENT FOR CERTAIN COSTS IN CIVIL ACTIONS.**

Subdivision 1. **ACKNOWLEDGEMENT IN PLEADINGS.** The parties by their attorneys in any civil action shall attach to and make a part of the pleading served on the opposite party or parties a signed acknowledgment stating that the parties acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties pursuant to subdivision 2.

Subd. 2. **AWARD OF COSTS.** Upon motion of a party, or upon the court's own motion, the court in its discretion may award to that party costs, disbursements, reasonable attorney fees and witness fees if the party or attorney against whom costs, disbursements, reasonable attorney and witness fees are charged acted in bad faith; asserted a claim or defense ~~knowing it to be~~ that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass; or committed a fraud upon the court. ~~To qualify for an award under this section, a party shall give timely notice of intent to claim an award.~~ An award under this section shall be without prejudice and as an alternative to any claim for sanctions that may be asserted under the rules of civil procedure. Nothing herein shall authorize the award of costs, disbursements or fees against a party or attorney advancing a claim or defense unwarranted under existing law, if it is supported by a good faith argument for an extension, modification, or reversal of the existing law.

Sec. 84. Minnesota Statutes 1984, section 595.02, is amended by adding a subdivision to read:

Subd. 5. **WAIVER OF PRIVILEGE FOR HEALTH CARE PROVIDERS.** A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider on the person's own behalf or in a representative capacity, waives in that action any privilege existing under subdivision 1, paragraphs (d) and (g), as to any information or opinion in the possession of a health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. This waiver must permit all parties to the action, and their attorneys or authorized representatives, to informally discuss the information or opinion with the health care provider if the provider consents. Prior to an informal discussion with a health care provider, the defendant must mail written notice to the other party at least 15 days before the discussion. The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. Appropriate medical authorizations permitting discussion must be provided by the party commencing the action upon request from any other party.

A health care provider may refuse to consent to the discussion but, in that event, the party seeking the information or opinion may take the deposition of the health care provider with respect to that information and opinion, without obtaining a prior court order.

For purposes of this subdivision, "health care provider" means a physician, surgeon, dentist, or other health care professional or hospital, including all persons or entities providing health care as defined in section 145.61, subdivisions 2 and 4, or a certified health care professional employed by or providing services as an independent contractor in a hospital.

Sec. 85. Minnesota Statutes 1984, section 604.02, subdivision 1, is amended to read:

Subdivision 1. When two or more persons are jointly liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that each is jointly and severally liable for the whole award. If the state or a municipality as defined in section 466.01 is jointly liable, and its fault is less than 35 percent, it is jointly and severally liable for an amount no greater than twice the amount of fault.

Sec. 86. **[604.07] DISCOUNT, FUTURE DAMAGE AWARDS.**

Subdivision 1. **DEFINITIONS.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "Economic loss" means all pecuniary harm for which damages are recoverable, including, but not limited to, medical expenses, loss of earnings, and loss of earning capacity.

(c) "Future damages" means all damages which the trier of fact finds will accrue after the damage findings are made.

(d) "Intangible loss" means embarrassment, emotional distress, and loss of consortium.

(d) "Noneconomic loss" means pain, disability, and disfigurement.

(e) "Past damages" means all damages that have accrued when the damage findings are made.

Subd. 2. **DISCOUNT REQUIRED.** In all actions seeking damages for personal injury, wrongful death, or loss of means of support, awards of all future damages, including economic, noneconomic and intangible loss, reasonably certain to occur must be discounted to present value as provided in this section.

Subd. 3. **FUTURE DAMAGES; EVIDENCE.** The amount of all future damages, including economic, noneconomic and intangible loss reasonably certain to occur, must be ascertained at the time of trial without reference to projected inflationary or noninflationary changes. Evidence of noninflationary changes in earnings or earning capacity that are reasonably certain to occur are admissible, but this evidence is limited to the present value of the future changes without regard to inflationary changes. Projected increases in earnings or earning capacity dependent upon general economic statistics are not admissible.

Subd. 4. **DISCOUNT RATE.** The award calculated under subdivision 3 must be reduced to present value at the time of trial by application of a discount rate equal to:

(1) the average rate of interest on judgments under section 549.09 for the five calendar years immediately preceding the commencement of trial, rounded to the nearest one-tenth, less

(2) the average increase in the Consumer Price Index for all Urban Consumers, all items, as published by the U.S. Department of Labor, Bureau of Labor Statistics, rounded to the nearest one-tenth, for the same five-year period. If the Labor Department statistics are not published by the time of trial, the court shall employ the average increase over the most recent five-year period available in the published statistics.

In no instance may the discount rate fall below two percent or rise above six percent.

Sec. 87. Minnesota Statutes 1985 Supplement, section 62B.05, is amended to read:

62B.05 **TERM OF CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE.**

The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and the evidence is furnished more than 30 days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in that event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of the insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor.

If an indebtedness is prepaid in full before its scheduled maturity, except by performance of the insurer's obligation under the policy, the insurance shall be deemed canceled and a refund shall be paid or credited as provided in section 62B.08. Upon prepayment in full, the creditor shall make the refund of unearned premium, unless the credit insurance was originated by a third party, in which case the creditor shall promptly notify the third party who shall make the refund.

Sec. 88. **[549.23] INTANGIBLE LOSSES; LIMITATIONS.**

Subdivision 1. **DEFINITION.** For purposes of this section, "intangible

loss" means embarrassment, emotional distress, and loss of consortium. Intangible loss does not include pain, disability or disfigurement.

Subd. 2. **LIMITATION.** In civil actions, whether based on contract or tort, the amount of damages per person for intangible losses may not exceed $400,000.

Subd. 3. **JURY NOT INFORMED OF LIMITATION.** The court may not inform the jury of the existence of the limitation in subdivision 2.

Subd. 4. **NOT NEW ACTION.** This section does not create a new cause of action for intangible loss.

Sec. 89. **[549.24] SPECIFIC DAMAGE FINDINGS BY JURY.**

The court shall require the jury to specify amounts for past damages and future damages as defined in section 86. Within each category of damages, the jury must further specify amounts for intangible loss as defined in section 88.

Sec. 90. **[466.132] INDEMNIFICATION BY STATE.**

Municipalities, when performing, as required or mandated by state law, inspections or investigations of persons prior to the issuance of state licenses, are employees of the state for purposes of the indemnification provisions of section 3.736, subdivision 9. A municipality is not, however, an employee of the state for purposes of this section if in hiring, supervising, or continuing to employ the person performing an inspection or investigation for the municipality, the municipality was clearly negligent.

Sec. 91. Minnesota Statutes 1984, section 465.72, is amended to read:

465.72 **SEVERANCE PAY.**

Subdivision 1. **PAYMENT; LIMITS.** Except as may otherwise be provided in Laws 1959, Chapter 690, as amended, any county, city, township, school district or other governmental subdivision may pay severance pay to its employees and promulgate rules for the payment of severance pay to an employee who leaves employment on or before or subsequent to the normal retirement date. Severance pay shall also include the payment of accumulated vacation leave, accumulated sick leave or a combination thereof. The severance pay shall be excluded from retirement deductions and from any calculations in retirement benefits. It shall be paid in a manner mutually agreeable to the employee and employer and, except as provided in subdivision 2, over a period not to exceed five years from retirement or termination of employment. If a retired or terminated employee dies before all or a portion of the severance pay has been disbursed, that balance due shall be paid to a named beneficiary or, lacking same, to the deceased's estate. Except as provided in subdivision 2, in no event shall severance pay provided for an employee leaving employment exceed an amount equivalent to one year of pay.

Subd. 2. **EXCEPTIONS.** The provisions of subdivision 1 requiring that

severance pay be paid over a period not to exceed five years from retirement or termination of employment and limiting severance pay to an amount equal to one year of pay do not apply to severance pay constituting compensation for accumulated sick leave in the form of periodic contributions toward premiums for group insurance policies provided for a former employee by a governmental subdivision.

This subdivision applies only to periodic contributions that have commenced before the effective date of this act or that are required under contracts, or, with respect to employees not covered by contracts, personnel policies, formally adopted by the governing body of the governmental subdivision, in existence on the effective date of this act. After the effective date of this act, a governmental subdivision may not enter into a contract or adopt a personnel policy providing for a payment in violation of subdivision 1. A personnel policy or portion of a personnel policy in existence on the effective date of this act and providing for a payment in violation of subdivision 1 is null and void (i) upon the expiration of a collective bargaining agreement containing a similar provision and covering employees of the governmental subdivision that has adopted the policy, or (ii) two years from the effective date of this act, whichever is earlier. Any payments by governmental subdivisions in accordance with this subdivision before the effective date of this act are validated.

Sec. 92. Minnesota Statutes 1984, section 541.051, is amended to read:

541.051 **LIMITATION OF ACTION FOR DAMAGES BASED ON SERVICES OR CONSTRUCTION TO IMPROVE REAL PROPERTY.**

Subdivision 1. Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained on account of the injury, shall be brought against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property or against the owner of the real property more than two years after discovery thereof, nor, in any event shall such a cause of action accrue more than ~~15~~ ten years after substantial completion of the construction. Date of substantial completion shall be determined by the date when construction is sufficiently completed so that the owner or his representative can occupy or use the improvement for the intended purpose.

Nothing in this section shall apply to actions for damages resulting from negligence in the maintenance, operation or inspection of the real property improvement against the owner or other person in possession.

Subd. 2. Notwithstanding the provisions of subdivision 1, in the case of an action which accrues during the ~~14th~~ ninth or ~~15th~~ tenth year after substantial completion of the construction, an action to recover damages may be brought within two years after the date on which the action accrued, but in no event may

an action be brought more than ~~17~~ twelve years after substantial completion of the construction.

Subd. 3. Nothing in this section shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

Subd. 4. This section shall not apply to actions based on breach of the statutory warranties set forth in section 327A.02, or to actions based on breach of an express written warranty, provided such actions shall be brought within two years of the discovery of the breach.

Sec. 93. **[541.052] LIMITATION OF ACTIONS FOR DAMAGES BASED ON ERRORS IN LAND SURVEYS.**

Subdivision 1. Except where fraud is involved, no action to recover damages for an error in the survey of land, nor any action for contribution or indemnity for damages sustained on account of an error, may be brought against any person performing the survey more than two years after the discovery of the error, nor in any event more than ten years after the date of the survey.

Subd. 2. Notwithstanding the provisions of subdivision 1, in the case of action which occurs during the ninth or tenth year after the date of the survey, an action to recover damages may be brought within two years after the date on which the action occurred, but in no event may an action be brought more than twelve years after the date of the survey.

Sec. 94. **REPEALER.**

Minnesota Statutes 1984, section 70A.06, subdivision 4, is repealed.

Sec. 95. **EFFECTIVE DATES.**

Sections 2, 63 to 77, and 90 are effective July 1, 1986, and apply to claims arising from incidents that occur on or after that date.

Sections 60, 79, 82, and 83 apply to all actions commenced on or after the effective date of those sections. Sections 80, 84, 85, 86, 88, and 89 apply to actions pending on or commenced on or after the effective date of those sections.

Sections 3 to 59, 61, 62, 78, and 94 are effective the day following final enactment. Section 79 is effective January 1, 1987.

Approved March 25, 1986