

Subd. 8. "Metropolitan system plans" means the airports ~~portion~~ and transportation portions of the metropolitan development guide, and the policy plans, ~~development programs~~ implementation plans, and capital budgets for metropolitan waste control, transportation, and regional recreation open space.

Sec. 57. REPORT.

The report required in 1986 by section 18, subdivision 3, of this act should be in the scope and detail that the council, in consultation with the advisory committee, deems appropriate and practicable.

Sec. 58. EXISTING PLANS.

Existing plans and development programs of the council and affected agencies remain in effect until expressly superseded by plans adopted in accordance with this act.

Sec. 59. REPEALER.

Minnesota Statutes 1984, sections 473.01; 473.02; 473.03; 473.04; 473.05; 473.06; 473.07; 473.08; 473.09; 473.10; 473.11; 473.121, subdivisions 7 and 9; 473.128; 473.163, subdivisions 3 and 4; 473.193; 473.203; 473.215; 473.216; 473.217; 473.218; 473.219; 473.373, subdivision 3; 473.377, subdivisions 2 and 3; 473.38, subdivision 1; 473.502; 473.523, subdivision 3; and 473.802 are repealed.

Sec. 60. APPLICATION.

Sections 1 to 59 of this act apply in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington. Sections 13 to 17 of this act are effective for plans and plan amendments adopted after January 1, 1987, and do not apply to the amendments to the transportation policy plan and transit implementation plan required to be adopted in 1986 by Laws 1984, chapter 654, article 3, sections 108 and 118.

Approved March 25, 1986

CHAPTER 461—H.F.No. 1873

An act relating to workers' compensation; regulating the obligations and administration of the special compensation fund; restricting liability for out-of-state injuries; regulating the payment and right to benefits; compensation court of appeals; regulating attorneys' fees; relating to jurisdiction of issues of medical causation; providing for the administration of claims; providing penalties; amending Minnesota Statutes 1984, sections 176.012; 176.041, subdivisions 1, 2, 3, and by adding a subdivision; 176.081, subdivision 1; 176.101, subdivision 3f; 176.103, subdivision 2; 176.104, subdivision 1; 176.105, subdivision 4; 176.111, subdivisions 6, 12, 15, and 20; 176.129, subdivision 8; 176.131, subdivisions 1a and 3; 176.135,

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subdivisions 1 and 1a; 176.179; 176.225, subdivision 1; 176.231, subdivisions 1 and 10; 176.242, subdivision 2; 176.243, subdivision 3; 176.361, subdivisions 1 and 2; 176.421, subdivision 6; 176.521, subdivision 3; 176.603; 176.611, subdivision 2; 176.83, subdivision 2; Minnesota Statutes 1985 Supplement, sections 176.101, subdivision 3e; and 176.138; proposing coding for new law in Minnesota Statutes, chapters 79 and 176; repealing Minnesota Statutes 1984, sections 176.265; 176.431; 176.441; and 176.611, subdivisions 3 and 4.

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

Section 1. **[79.531] NEGLIGENTLY PAID CLAIMS.**

An insurer who has negligently paid benefits under chapter 176 may not charge the payment to the employer's experience rating.

Sec. 2. Minnesota Statutes 1984, section 176.012, is amended to read:

176.012 ELECTION OF COVERAGE.

The persons, partnerships and corporations described in this section may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c) may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A person, partnership, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor.

A person, partnership, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage and the name of the independent contractors, and (3) the fee and how it is calculated.

The persons, partnerships and corporations described in this section may also elect coverage for an employee who is a spouse, parent or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this section. Coverage may be elected for a spouse, parent or child whether or not coverage is elected for the related owner, partner or executive

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director and whether or not the person, partnership or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this section shall be included within the meaning of the term employee for the purposes of this chapter.

Notice of election of coverage or of termination of election under this section shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names of those persons for whom coverage has been elected or terminated under this section. An election of coverage under this section shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

Nothing in this section shall be construed to limit the responsibilities of owners, partnerships or corporations to provide coverage for their employees, if any, as required under this chapter.

Sec. 3. Minnesota Statutes 1984, section 176.041, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYMENTS EXCLUDED.** This chapter does not apply to a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law; to a person employed by a family farm as defined by section 176.011, subdivision 11a, or the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer; to a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business; to an executive officer of a family farm corporation; to an executive officer of a closely held corporation referred to in section 176.012; to a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation; to a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation referred to in section 176.012; to another farmer or to a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community; to a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer; persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83 except that this exclusion does not apply to an employee of an independent contractor; nor does this chapter apply to an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member.

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Neither does the chapter apply to a person employed as a household worker in, for, or about a private home or household who earns less than ~~\$500~~ \$1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned ~~\$500~~ \$1,000 or more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned ~~\$500~~ \$1,000 in the present quarter.

This chapter does not apply to those persons employed by a corporation if those persons are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to the officers of the corporation, and if the corporation files a written election with the commissioner to have those persons excluded from this chapter except that a written election is not required for a person who is otherwise excluded from this chapter by this section.

This chapter does not apply to a nonprofit association which does not pay more than ~~\$500~~ \$1,000 in salary or wages in a year.

This chapter does not apply to persons covered under the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. sections 5011, et. seq.

Sec. 4. Minnesota Statutes 1984, section 176.041, subdivision 2, is amended to read:

Subd. 2. **EXTRA-TERRITORIAL APPLICATION.** If an employee who regularly performs the primary duties of his employment within this state, ~~or who is hired within this state,~~ receives an injury while outside of this state in the employ of the same employer, the provisions of this chapter shall apply to such injury ~~unless the transfer is normally considered to be permanent.~~ If a resident of this state is transferred outside the territorial limits of the United States as an employee of a Minnesota employer, he shall be presumed to be temporarily employed outside of this state while so employed.

Sec. 5. Minnesota Statutes 1984, section 176.041, subdivision 3, is amended to read:

Subd. 3. **TEMPORARY OUT-OF-STATE EMPLOYMENT.** If an employee hired in this state by a Minnesota employer, receives an injury while temporarily employed outside of this state, such injury shall be subject to the provisions of this chapter. ~~If the employer's business is in Minnesota and the employee's residence is in Minnesota, employment outside of this state shall be considered temporary.~~

Sec. 6. Minnesota Statutes 1984, section 176.041, is amended by adding a subdivision to read:

Subd. 5a. **OUT-OF-STATE INJURIES.** Except as specifically provided by subdivisions 2 and 3, injuries occurring outside of this state are not subject to this chapter.

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Sec. 7. Minnesota Statutes 1984, section 176.081, subdivision 1, is amended to read:

Subdivision 1. (a) A fee for legal services of 25 percent of the first \$4,000 of compensation awarded to the employee and 20 percent of the next \$27,500 of compensation awarded to the employee is permissible and does not require approval by the commissioner, compensation judge, or any other party except as provided in clause (b). If the employer or the insurer or the defendant is given written notice of claims for legal services or disbursements, the claim shall be a lien against the amount paid or payable as compensation. In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan. Fees for administrative conferences under sections 176.242, 176.2421, 176.243, or 176.244 shall be determined on an hourly basis, according to the criteria in subdivision 5.

(b) An attorney who is claiming legal fees under this section shall file a statement of attorney's fees with the commissioner, compensation judge before whom the matter was heard, or workers' compensation court of appeals on cases before the court. A copy of the signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall clearly and conspicuously state that the employee or insurer has ten calendar days to object to the attorney fees requested. If no objection is timely made by the employee or insurer, the amount requested shall be conclusively presumed reasonable providing the amount does not exceed the limitation in subdivision 1. The commissioner, compensation judge, or court of appeals shall issue an order granting the fees and the amount requested shall be awarded to the party requesting the fee.

If a timely objection is filed, or the fee is determined on an hourly basis, the commissioner, compensation judge, or court of appeals shall review the matter and make a determination based on the criteria in subdivision 5.

If no timely objection is made by an employer or insurer, reimbursement under subdivision 7 shall be made if the statement of fees requested this reimbursement.

Sec. 8. Minnesota Statutes 1985 Supplement, section 176.101, subdivision 3e, is amended to read:

Subd. 3e. **END OF TEMPORARY TOTAL COMPENSATION; SUIT-ABLE JOB.** (a) Ninety days after an employee has reached maximum medical improvement and the medical report described in clause (c) has been served on the employee, or 90 days after the end of an approved retraining program, whichever is later, the employee's temporary total compensation shall cease. This cessation shall occur at an earlier date if otherwise provided by this chapter.

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(b) If at any time prior to the end of the 90-day period described in clause (a) the employee retires or the employer furnishes work to the employee that is consistent with an approved plan of rehabilitation and meets the requirements of section 176.102, subdivision 1, or, if no plan has been approved, that the employee can do in his or her physical condition and that job produces an economic status as close as possible to that the employee would have enjoyed without the disability, or the employer procures this employment with another employer or the employee accepts this job with another employer, temporary total compensation shall cease and the employee shall, if appropriate, receive impairment compensation pursuant to subdivision 3b. This impairment compensation is in lieu of economic recovery compensation under subdivision 3a, and the employee shall not receive both economic recovery compensation and impairment compensation. Temporary total compensation and impairment compensation shall not be paid concurrently. Once temporary total compensation ceases no further temporary total compensation is payable except as specifically provided by this section.

(c) Upon receipt of a written medical report indicating that the employee has reached maximum medical improvement, the employer or insurer shall serve a copy of the report upon the employee and shall file a copy with the division. The beginning of the 90-day period described in clause (a) shall commence on the day this report is served on the employee for the purpose of determining whether a job offer consistent with the requirements of this subdivision is made. A job offer may be made before the employee reaches maximum medical improvement.

(d) The job which is offered or procured by the employer or accepted by the employee under clause (b) does not necessarily have to commence immediately but shall commence within a reasonable period after the end of the 90-day period described in clause (a). Temporary total compensation shall not cease under this subdivision until the job commences.

(e) If the job offered under clause (a) is offered or procured by the employer and is not the job the employee had at the time of injury it shall be offered and described in writing and. The written description shall state the nature of the job, the rate of pay, the physical requirements of the job, and any other information necessary to fully and completely inform the employee of the job duties and responsibilities. The written description and the written offer need not be contained in the same document.

The employee has 14 calendar days after receipt of the written description and offer to accept or reject the job offer. If the employee does not respond within this period it is deemed a refusal of the offer. Where there is an administrative conference to determine suitability under section 176.101, subdivision 3v, or 176.242, the period begins to run on the date of the commissioner's decision.

(f) Self-employment may be an appropriate job under this subdivision.

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The commissioner shall monitor application of this subdivision and may adopt rules to assure its proper application.

Sec. 9. Minnesota Statutes 1984, section 176.101, subdivision 3f, is amended to read:

Subd. 3f. **LIGHT-DUTY JOB PRIOR TO MAXIMUM MEDICAL IMPROVEMENT THE END OF TEMPORARY TOTAL COMPENSATION.** If the employer offers a job prior to the employee reaching maximum medical improvement the end of the 90-day period referred to in subdivision 3e, paragraph (a) and the job is consistent with an approved plan of rehabilitation or if no rehabilitation plan has been approved and the job is within the employee's physical limitations; or the employer procures a job for the employee with another employer which meets the requirements of this subdivision; or the employee accepts a job with another employer which meets the requirements of this subdivision, the employee's temporary total compensation shall cease. In this case the employee shall receive impairment compensation for the permanent partial disability which is ascertainable at that time. This impairment compensation shall be paid at the same rate that temporary total compensation was last paid. Upon reaching maximum medical improvement the end of temporary total compensation under subdivision 3e, paragraph (a), the provisions of subdivisions 3e or 3p apply, whichever is appropriate, and economic recovery compensation or impairment compensation is payable accordingly except that the compensation shall be offset by impairment compensation received under this subdivision.

Sec. 10. Minnesota Statutes 1984, section 176.103, subdivision 2, is amended to read:

Subd. 2. **SCOPE.** (a) The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. The commissioner may penalize, disqualify, or suspend a provider from receiving payment for services rendered under this chapter, if the commissioner determines that the provider has violated any part of this chapter or rule adopted under this chapter. The commissioner's authority under this section also includes the authority to make determinations regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section.

Except as provided in paragraph (b) of this subdivision, the commissioner has the sole authority to make determinations under this section with a right of appeal to the medical services review board as provided in subdivision 3 and the

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workers' compensation court of appeals. A compensation judge has no jurisdiction in making determinations under this section.

(b) The commissioner has authority under this section to make determinations regarding medical causation. Objections to these determinations shall be referred to the chief administrative law judge for a de novo hearing before a compensation judge, with a right to review by the workers' compensation court of appeals, as provided in this chapter.

Sec. 11. Minnesota Statutes 1984, section 176.104, subdivision 1, is amended to read:

Subdivision 1. **DISPUTE.** If there exists a dispute regarding medical causation or whether an injury arose out of and in the course and scope of employment and an employee has been disabled for the requisite time under section 176.102, subdivision 4, prior to determination of liability, the employee shall be referred by the commissioner to the division of vocational rehabilitation which shall provide rehabilitation consultation if appropriate. The services provided by the division of vocational rehabilitation and the scope and term of the rehabilitation are governed by section 176.102 and rules adopted pursuant to that section. Rehabilitation costs and services under this subdivision shall be monitored by the commissioner.

Sec. 12. Minnesota Statutes 1984, section 176.105, subdivision 4, is amended to read:

Subd. 4. **LEGISLATIVE INTENT; RULES; LOSS OF MORE THAN ONE BODY PART.** (a) For the purpose of establishing a disability schedule pursuant to clause (b) of this subdivision, the legislature declares its intent that the commissioner establish a disability schedule which, assuming the same number and distribution of severity of injuries, the aggregate total of impairment compensation and economic recovery compensation benefits under section 176.101, subdivisions 3a to 3u, be approximately equal to the total aggregate amount payable for permanent partial disabilities under section 176.101, subdivision 3, provided, however, that awards for specific injuries under the proposed schedule need not be the same as they were for the same injuries under the schedule pursuant to section 176.101, subdivision 3. The schedule shall be determined by sound actuarial evaluation and shall be based on the benefit level which exists on January 1, 1983.

(b) The commissioner shall by rulemaking adopt procedures setting forth rules for the evaluation and rating of functional disability and the schedule for permanent partial disability and to determine the percentage of loss of function of a part of the body based on the body as a whole, including internal organs, described in section 176.101, subdivision 3, and any other body part not listed in section 176.101, subdivision 3, which the commissioner deems appropriate.

~~Emergency rules shall be adopted for this purpose not later than January 1, 1984. Prior to the adoption of these rules, at least one public hearing shall be~~

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held by the commissioner, in addition to the requirements of sections ~~14.29 to 14.36~~. Notwithstanding sections ~~14.29 to 14.36~~, the emergency rules adopted under this subdivision shall be effective until superseded by permanent rules. The rules shall promote objectivity and consistency in the evaluation of permanent functional impairment due to personal injury and in the assignment of a numerical rating to the functional impairment.

Prior to adoption of emergency rules the commissioner shall conduct an analysis of the current permanent partial disability schedule for the purpose of determining the number and distribution of permanent partial disabilities and the average compensation for various permanent partial disabilities. The commissioner shall consider setting the compensation under the proposed schedule for the most serious conditions higher in comparison to the current schedule and shall consider decreasing awards for minor conditions in comparison to the current schedule.

The commissioner may consider, among other factors, and shall not be limited to the following factors in developing rules for the evaluation and rating of functional disability and the schedule for permanent partial disability benefits:

(1) the workability and simplicity of the procedures with respect to the evaluation of functional disability;

(2) the consistency of the procedures with accepted medical standards;

(3) rules, guidelines, and schedules that exist in other states that are related to the evaluation of permanent partial disability or to a schedule of benefits for functional disability provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of clause (a);

(4) rules, guidelines, and schedules that have been developed by associations of health care providers or organizations provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of clause (a);

(5) the effect the rules may have on reducing litigation;

(6) the treatment of preexisting disabilities with respect to the evaluation of permanent functional disability provided that any preexisting disabilities must be objectively determined by medical evidence; and

(7) symptomatology and loss of function and use of the injured member.

The factors in paragraphs (1) to (7) shall not be used in any individual or specific workers' compensation claim under this chapter but shall be used only in the adoption of rules pursuant to this section.

Nothing listed in paragraphs (1) to (7) shall be used to dispute or challenge a disability rating given to a part of the body so long as the whole schedule conforms with the expressed intent of clause (a).

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(c) If an employee suffers a permanent functional disability of more than one body part due to a personal injury incurred in a single occurrence, the percent of the whole body which is permanently partially disabled shall be determined by the following formula so as to ensure that the percentage for all functional disability combined does not exceed the total for the whole body:

$$A + B(1 - A)$$

where: A is the greater percentage whole body loss of the first body part; and B is the lesser percentage whole body loss otherwise payable for the second body part. $A + B(1-A)$ is equivalent to $A + B - AB$.

For permanent partial disabilities to three body parts due to a single occurrence or as the result of an occupational disease, the above formula shall be applied, providing that A equals the result obtained from application of the formula to the first two body parts and B equals the percentage for the third body part. For permanent partial disability to four or more body parts incurred as described above, A equals the result obtained from the prior application of the formula, and B equals the percentage for the fourth body part or more in arithmetic progressions.

Sec. 13. Minnesota Statutes 1984, section 176.111, subdivision 6, is amended to read:

Subd. 6. **SPOUSE, NO DEPENDENT CHILD.** If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the daily weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

Sec. 14. Minnesota Statutes 1984, section 176.111, subdivision 12, is amended to read:

Subd. 12. **ORPHANS.** If the deceased employee leave a dependent orphan, there shall be paid 55 percent of the daily weekly wage at the time of the injury of the deceased, for two or more orphans there shall be paid 66 2/3 percent of the wages.

Sec. 15. Minnesota Statutes 1984, section 176.111, subdivision 15, is amended to read:

Subd. 15. **REMOTE DEPENDENTS.** If the deceased employee leave no widow or child or husband or parent entitled to any payment under this chapter, but leaves a grandparent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, 30 percent of the daily weekly wage at the time of injury of the deceased, or if more than one, 35 percent of the daily weekly wage at the time of the injury of the deceased, divided among them share and share alike.

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Sec. 16. Minnesota Statutes 1984, section 176.111, subdivision 20, is amended to read:

Subd. 20. **ACTUAL DEPENDENTS, COMPENSATION.** Actual dependents are entitled to take compensation in the order named in subdivision 3 during dependency until 66 2/3 percent of the ~~daily~~ weekly wage of the deceased at the time of injury is exhausted. The total weekly compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate an amount equal to the maximum weekly compensation for a temporary total disability.

Sec. 17. Minnesota Statutes 1984, section 176.129, subdivision 8, is amended to read:

Subd. 8. **COMMISSIONER AS ADMINISTRATOR.** The commissioner is the administrator of the special compensation fund. The special fund shall be designated a party in an action regarding any right, obligation, and liability of the special fund. The state treasurer, as custodian, does not have standing in an action determining any right, obligation, or liability of the special fund. As requested by the commissioner, the attorney general shall represent the special fund in all legal matters in which the special fund has an interest. The commissioner may designate one or more division employees to appear on behalf of the special fund in proceedings under this chapter. The division employees so designated need not be attorneys-at-law.

Sec. 18. Minnesota Statutes 1984, section 176.131, subdivision 1a, is amended to read:

Subd. 1a. If an employee is employed in an on the job ~~retraining~~ training program pursuant to an approved rehabilitation plan under section 176.102 and the employee incurs a personal injury that aggravates the personal injury for which the employee has been certified to enter the on the job ~~retraining~~ training program, the on the job training employer shall pay the medical expenses and compensation required by this chapter, and shall be reimbursed from the special compensation fund for the compensation and medical expense that is attributable to the aggravated injury. The employer, at the time of the personal injury for which the employee has been ~~certified~~ approved for ~~retraining on the job training~~, is liable for the portion of the disability that is attributable to that injury.

Sec. 19. Minnesota Statutes 1984, section 176.131, subdivision 3, is amended to read:

Subd. 3. To entitle the employer to secure reimbursement from the special compensation fund, the following provisions must be complied with:

(a) Provisions of section 176.181, subdivisions 1 and 2.

(b) The employee with a pre-existing physical impairment must have been registered with the commissioner prior to the employee's personal injury or

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within 180 days after notice of the employee's personal injury is received by the employer. Registration subsequent to the injury shall be based on a medical report or record made prior to the injury indicating the pre-existing physical impairment.

Sec. 20. Minnesota Statutes 1984, section 176.135, subdivision 1, is amended to read:

Subdivision 1. **MEDICAL, CHIROPRACTIC, PODIATRIC, SURGICAL, HOSPITAL.** (a) The employer shall furnish any medical, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. This treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. In case of the employer's inability or refusal seasonably to do so the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same. The employer shall pay for the reasonable value of nursing services by a member of the employee's family in cases of permanent total disability. Except as provided in paragraph (b) of this subdivision, orders of the commissioner with respect to this subdivision may be reviewed by the medical services review board pursuant to section 176.103. Orders of the medical services review board with respect to this subdivision may be reviewed by the workers' compensation court of appeals on petition of an aggrieved party pursuant to section 176.103. Orders of the court of appeals may be reviewed by writ of certiorari to the supreme court.

(b) The commissioner has authority to make determinations regarding medical causation and regarding the question whether the medical condition, which required the furnished treatment or supplies, is a consequence of the injury. Objections to any order of the commissioner with respect to this paragraph shall be referred to the chief administrative law judge for a de novo hearing before a compensation judge, with a right to review by the workers' compensation court of appeals, as provided in this chapter.

Sec. 21. Minnesota Statutes 1984, section 176.135, subdivision 1a, is amended to read:

Subd. 1a. **NON-EMERGENCY SURGERY; SECOND SURGICAL OPINION.** The employer is required to furnish surgical treatment pursuant to subdivision 1 only after the employee has obtained two surgical opinions concerning whether the surgery is reasonably required to cure and relieve the effects of the

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personal injury or occupational disease. If at least one of the opinions affirms that the surgery is reasonably required, the employee may choose to undergo the surgery at the employer's expense. The employer is required to pay the reasonable value of the surgery unless the commissioner determines that the surgery is not reasonably required. A second surgical opinion is not required in cases of emergency surgery or when the employer and employee agree that the opinion is not necessary.

Sec. 22. Minnesota Statutes 1985 Supplement, section 176.138, is amended to read:

176.138 MEDICAL DATA; ACCESS.

Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the department of labor and industry, shall not require prior approval of any party to the claim. This section does not preclude the release of medical data under section 175.10 or 176.231, subdivision 9. Requests for pertinent data shall be made in writing to the person or organization that collected or currently possesses the data. The data shall be provided by the collector or possessor within seven working days of receiving the request. In all cases of a request for the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made. This data shall be treated as private data by the party who requests or receives the data and the party receiving the data shall provide the employee or the employee's attorney ~~shall be provided~~ with a copy of all data requested by the requester.

Medical data which is not directly related to a current injury or disability shall not be released without prior authorization of the employee.

The commissioner may impose a penalty of up to \$200 payable to the special compensation fund against a party who does not release the data in a timely manner. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor. This section applies only to written medical data which exists at the time the request is made.

Sec. 23. Minnesota Statutes 1984, section 176.179, is amended to read:

176.179 PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH.

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to

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an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or the employee's survivors, and received in good faith by the employee or the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken as a full credit against future lump sum benefit entitlement; ~~provided, however, that~~ and as a partial credit against future weekly benefits. The credit applied against further payments of temporary total disability, temporary partial disability, permanent total disability, retraining benefits ~~or~~, death benefits, or weekly payments of economic recovery or impairment compensation shall not exceed 20 percent of the amount that would otherwise be payable.

Sec. 24. Minnesota Statutes 1984, section 176.225, subdivision 1, is amended to read:

Subdivision 1. **GROUND**S. Upon reasonable notice and hearing or opportunity to be heard, the division, a compensation judge, or upon appeal, the workers' compensation court of appeals or the supreme court may award compensation, in addition to the total amount of compensation award, of up to 25 percent of that total amount where an employer or insurer has:

- (a) instituted a proceeding or interposed a defense which does not present a real controversy but which is frivolous or for the purpose of delay; or,
- (b) unreasonably or vexatiously delayed payment; or,
- (c) neglected or refused to pay compensation; or,
- (d) intentionally underpaid compensation; or
- (e) unreasonably or vexatiously discontinued compensation in violation of section 176.242.

Sec. 25. Minnesota Statutes 1984, section 176.231, subdivision 1, is amended to read:

Subdivision 1. **TIME LIMITATION**. Where death or serious injury occurs to an employee during the course of employment, the employer shall report the injury or death to the commissioner and insurer within 48 hours after its occurrence. Where any other injury occurs which wholly or partly incapacitates the employee from performing labor or service for more than three calendar days ~~or longer~~, the employer shall report the injury to the insurer on a form prescribed by the commissioner within ten days from its occurrence. An insurer and self-insured employer shall report the injury to the commissioner no later than 14 days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commissioner and insurer within 48 hours after the employer receives notice of this fact.

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

Sec. 26. Minnesota Statutes 1984, section 176.231, subdivision 10, is amended to read:

Subd. 10. **FAILURE TO FILE REQUIRED REPORT, PENALTY.** If an employer, physician, chiropractor, or other health provider fails to file with the commissioner any report required by this section in the manner and within the time limitations prescribed, or otherwise fails to provide a report required by this section in the manner provided by this section, the commissioner may impose a penalty of up to \$200 for each failure.

~~The attorney general shall sue in a civil action to collect this penalty upon notification of the matter by the commissioner. The commissioner shall certify to the attorney general each failure to report immediately upon its occurrence. The imposition of a penalty may be appealed to a compensation judge within 30 days of notice of the penalty.~~

Penalties collected by the state under this subdivision shall be paid into the state treasury special compensation fund.

Sec. 27. Minnesota Statutes 1984, section 176.242, subdivision 2, is amended to read:

Subd. 2. **CONFERENCE, REQUEST.** (a) The employee has ten calendar days from the date the notice was filed with the commissioner to request that the commissioner schedule an administrative conference to determine the appropriateness of the proposed discontinuance. The employer or insurer may request an administrative conference under this section at any time whether or not a notice of intent to discontinue is filed. If a notice of intent to discontinue has been filed, the commissioner shall schedule an administrative conference within ten calendar days after the commissioner receives timely notice of the request for an administrative conference. If no notice of intent to discontinue has been filed and the employer or insurer has requested a conference, the commissioner shall schedule an administrative conference to be held within 30 calendar days after the commissioner receives the employer's or insurer's request for a conference.

(b) If the employee does not, in a timely manner, request that the commissioner schedule an administrative conference, or fails to appear, without good cause, at a scheduled conference, compensation may be discontinued, subject to the employer's right under section 176.241.

(c) An employee, employer, or insurer may request a continuance of a scheduled administrative conference. If the commissioner determines that good cause exists for granting a continuance, the commissioner may grant the continuance which shall not exceed ten calendar days unless the parties agree to a longer continuance. If the employee is granted a continuance, compensation need not be paid during the period of continuance but shall recommence upon the date of the conference unless the commissioner orders otherwise. If the employer or insurer is granted a continuance, compensation shall continue to be

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paid during the continuance. There is no limit to the number of continuances the commissioner may grant provided that the payment of compensation is subject to this clause during the continuance.

(d) If the insurer's stated reason for the discontinuance is that the employee has reached maximum medical improvement, the employee may request a continuance under paragraph (c) for the purpose of obtaining a medical report. The continuance under this paragraph may at the discretion of the commissioner exceed ten days and benefits shall not cease until the expiration of the 90-day period following maximum medical improvement.

~~(d)~~ (e) The purpose of an administrative conference is to determine whether reasonable grounds exist for a discontinuance.

Sec. 28. Minnesota Statutes 1984, section 176.243, subdivision 3, is amended to read:

Subd. 3. **EMPLOYEE REQUEST FOR ADMINISTRATIVE CONFERENCE.** If the employee objects to the action of the insurer regarding payment of compensation upon the cessation of work by the employee or regarding the payment of temporary partial disability benefits, the employee may request an administrative conference with the commissioner to resolve disputed issues. A request for an administrative conference shall be made within ten calendar days after ~~service~~ filing of the notice ~~on the employee with the department.~~ If the employee requests an administrative conference the commissioner shall schedule a conference to be held within 14 calendar days after the commissioner receives the request.

Sec. 29. **[176.244] ADMINISTRATIVE CONFERENCE SCHEDULED BY COMMISSIONER, FILING.**

(a) The commissioner may schedule an administrative conference under sections 176.242, 176.2421, or 176.243 if it appears to the commissioner that the employer or insurer has not properly or timely filed or served a notice required by those sections and the employee requests the conference within 40 days of the date the employer or insurer should have filed the notice. The commissioner may, if appropriate, order that compensation be paid through the date of the conference where compensation is discontinued.

(b) Where an employer or insurer is required to file a notice under section 176.242, 176.2421, or 176.243, service on the employee by mail or in person must occur on or before the date of filing.

Sec. 30. Minnesota Statutes 1984, section 176.361, subdivision 1, is amended to read:

Subdivision 1. **RIGHT TO INTERVENE.** A person who has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge such that the person may either gain or lose by an order

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or decision may intervene in the proceeding by filing an application in writing stating the facts which show the interest. The commissioner is considered to have an interest and shall be permitted to intervene at the appellate level when a party relies in its claim or defense upon any statute or rule administered by the commissioner, or upon any rule, order, requirement, or agreement issued or made under the statute or rule.

The commissioner may adopt rules, not inconsistent with this section to govern intervention. The workers' compensation court of appeals shall adopt rules to govern the procedure for intervention in matters before it.

If the department of human services or the department of economic security seeks to intervene in any matter before the division, a compensation judge or the workers' compensation court of appeals, a nonattorney employee of the department, acting at the direction of the staff of the attorney general, may prepare, sign, serve and file motions for intervention and related documents ~~and~~, appear at prehearing conferences, and participate in matters before a compensation judge or the workers' compensation court of appeals. Any other interested party may intervene using a nonattorney and may participate in any proceeding to the same extent an attorney could. This activity shall not be considered to be the unauthorized practice of law. An intervenor represented by a nonattorney shall be deemed to be represented by an attorney for the purposes of the conclusive presumption of section 176.521, subdivision 2.

Subdivisions 3 to 6 do not apply to matters pending in the mediation or rehabilitation and medical services sections.

Sec. 31. Minnesota Statutes 1984, section 176.361, subdivision 2, is amended to read:

Subd. 2. **WRITTEN APPLICATION.** A person desiring to intervene in a workers' compensation case as a party, including but not limited to a health care provider who has rendered services to an employee or an insurer who has paid benefits under section 176.191, shall submit a timely written application to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the application shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office or to the mediation or rehabilitation and medical services section if the matter is pending in that section.

(a) The application must be served on all parties either personally, by first class mail, or registered mail, return receipt requested. An application to intervene must be served and filed within ~~60~~ 30 days after a person has received notice that a ~~petition claim~~ petition claim has been filed ~~as provided in this section or a request for mediation made.~~ as provided in this section or a request for mediation made. An untimely ~~motion~~ application is subject to denial under subdivision 7.

(b) In any other situation, timeliness will be determined by the judge or awarding authority in each case based on circumstances at the time of filing.

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The application must show how the ~~moving party's~~ applicant's legal rights, duties, or privileges may be determined or affected by the case; state the grounds and purposes for which intervention is sought; and indicate the ~~moving party's~~ statutory right to intervene. The application must be accompanied by the following, if applicable, except that if the action is pending in the mediation or rehabilitation and medical services section, clause (6) is not required and the information listed in clauses (1) to (5) may be brought to the conference rather than attached to the application:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by the division of vocational rehabilitation, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) a proposed order allowing intervention with sufficient copies to serve on all parties;

(7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(8) proof of service or copy of the registered mail receipt;

(9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Sec. 32. Minnesota Statutes 1984, section 176.421, subdivision 6, is amended to read:

Subd. 6. **POWERS OF WORKERS' COMPENSATION COURT OF APPEALS ON APPEAL.** On an appeal taken under this section, the workers'

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compensation court of appeals' review is limited to the issues raised by the parties in the notice of appeal or by a cross-appeal. In these cases, on those issues raised by the appeal, the workers' compensation court of appeals may:

(1) grant an oral argument based on the record before the compensation judge;

(4) (2) examine the record;

(2) (3) substitute for the findings of fact made by the compensation judge findings based on the total evidence; ~~and;~~

(3) (4) sustain, reverse, make or modify an award or disallowance of compensation or other order based on the facts ~~and~~ findings, and law; and,

(5) remand or make other appropriate order.

Sec. 33. Minnesota Statutes 1984, section 176.521, subdivision 3, is amended to read:

Subd. 3. **SETTING ASIDE AWARD UPON SETTLEMENT.** Notwithstanding the provisions of section 176.521, subdivision 1, 2, or 2a, or any provision in the agreement of settlement to the contrary, upon the filing of a petition by any party to the settlement ~~and after a hearing on the petition,~~ the workers' compensation court of appeals may set aside an award made upon a settlement, pursuant to this chapter. In these appropriate cases, the workers' compensation court of appeals ~~shall~~ may refer the matter to the chief administrative law judge for assignment to a compensation judge for hearing.

Sec. 34. Minnesota Statutes 1984, section 176.603, is amended to read:

176.603 COST OF ADMINISTERING CHAPTER, PAYMENT.

The annual cost to the commissioner of the department of labor and industry of administering this chapter in relation to state employees and the necessary expenses which the department of labor and industry or the attorney general incurs in investigating, administering, and defending a claim against the state for compensation shall be paid from ~~the moneys biennially appropriated to the department and not from~~ the state compensation revolving fund.

Sec. 35. Minnesota Statutes 1984, section 176.611, subdivision 2, is amended to read:

Subd. 2. **SELF-SUSTAINING STATE DEPARTMENTS.** ~~Except that the transportation department~~ Every department of the state, including the University of Minnesota, shall reimburse the fund for moneys paid ~~to its employees or their dependents for the administration of its claims~~ at such times and in such amounts as the commissioner of the department of labor and industry orders; ~~every self-sustaining department of the state shall pay into such fund at the end of every fiscal year such amounts as the commissioner of the department of~~

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labor and industry shall certify has been paid out of the fund for on its employees or their dependents behalf. For the purposes of this section, a "self-sustaining department" is one in which the income and revenue from its activities substantially offsets its cost of operation. The heads of the departments shall anticipate these payments by including them in their budgets.

Sec. 36. Minnesota Statutes 1984, section 176.83, subdivision 2, is amended to read:

Subd. 2. **REHABILITATION.** Rules necessary to implement and administer section 176.102, including the establishment of qualifications necessary to be a qualified rehabilitation consultant and the requirements to be an approved registered vendor of rehabilitation services.

~~In this regard, the commissioner shall impose fees under section 16A.128 sufficient to cover the cost of approving, registering and monitoring qualified rehabilitation consultants and approved vendors of rehabilitation services. The rules may also provide for penalties to be imposed by the commissioner against insurers or self-insured employers who fail to provide rehabilitation consultation to employees pursuant to section 176.102.~~

These rules may also establish criteria for determining "reasonable moving expenses" under section 176.102.

The rules shall also establish criteria, guidelines, methods, or procedures to be met by an employer or insurer in providing the initial rehabilitation consultation required under this chapter which would permit the initial consultation to be provided by an individual other than a qualified rehabilitation consultant. In the absence of rules regarding an initial consultation this consultation shall be conducted pursuant to section 176.102.

Sec. 37. **REPEALER.**

Minnesota Statutes 1984, sections 176.265; 176.431; 176.441; and 176.611, subdivisions 3 and 4, are repealed.

Sec. 38. **EFFECTIVE DATE.**

Sections 10 and 20 are effective the day following final enactment. Sections 34 and 35 are effective July 1, 1986.

Approved March 25, 1986

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