CHAPTER 509—S.F.No. 1230

VETOED

CHAPTER 510—S.F.No. 2107

An act relating to workers' compensation; providing for comprehensive reform; regulating benefits; providing for medical cost control; requiring improved safety measures; regulating attorneys; providing for more efficient administrative procedures; eliminating the second injury fund; regulating insurance; reforming the assigned risk plan; regulating fraud; imposing penalties; amending Minnesota Statutes 1990, sections 79.251, by adding subdivisions; 79.252, subdivisions 1 and 3; 79.58, by adding a subdivision; 79A.02, by adding subdivisions; 79A.03, subdivisions 3, 4, 7, and 9; 79A.04, subdivision 2; 79A.06, subdivision 5; 175.007; 176.011, subdivisions 9 and 11a; 176.081, subdivisions 1, 2, and 3; 176.101, subdivisions 1, 2, 5, 6, and 8; 176.102, subdivisions 1, 2, 4, 6, 9, and 11; 176.103, subdivisions 2, 3, and by adding a subdivision; 176.105, subdivision 1; 176.106, subdivision 6; 176.111, subdivision 18; 176.129, subdivision 10; 176.130, subdivisions 8 and 9; 176.132, subdivision 1; 176.135, subdivisions 1, 5, 6, and 7; 176.136, subdivisions 1, 2, and by adding subdivisions; 176.137, subdivision 5; 176.138; 176.139, subdivision 2; 176.155, subdivision 1; 176.179; 176.181, subdivision 3, and by adding a subdivision; 176.182; 176.183; 176.185, subdivision 5a; 176.194, subdivisions 4 and 5; 176.221, subdivisions 3 and 3a; 176.231, subdivision 10; 176.261; 176.421, subdivision 1; 176.461; 176.645, subdivisions 1 and 2; 176.83, subdivision 5, and by adding a subdivision; 176A.03, by adding a subdivision; 480B.01, subdivisions 1 and 10; 609.52, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 79; 79A; and 176; repealing Minnesota Statutes 1990, sections 176.131; 176.135, subdivision 3; and 176.136, subdivision 5.

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

ARTICLE 1

BENEFITS

Section 1. Minnesota Statutes 1990, section 176.011, subdivision 9, is amended to read:

Subd. 9. **EMPLOYEE.** "Employee" means any person who performs services for another for hire including the following:

(1) an alien;

(2) a minor;

(3) a sheriff, deputy sheriff, constable, marshal, police officer, firefighter,

county highway engineer, and peace officer while engaged in the enforcement of peace or in the pursuit or capture of a person charged with or suspected of crime;

(4) a person requested or commanded to aid an officer in arresting or retaking a person who has escaped from lawful custody, or in executing legal process, in which cases, for purposes of calculating compensation under this chapter, the daily wage of the person shall be the prevailing wage for similar services performed by paid employees;

(5) a county assessor;

(6) an elected or appointed official of the state, or of a county, city, town, school district, or governmental subdivision in the state. An officer of a political subdivision elected or appointed for a regular term of office, or to complete the unexpired portion of a regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;

(7) an executive officer of a corporation, except those executive officers excluded by section 176.041;

(8) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioners of human services and corrections similar to those of officers and employees of the institutions, and whose services have been accepted or contracted for by the commissioner of human services or corrections as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(9) a voluntary uncompensated worker engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision of it. The daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed by paid employees;

(10) a voluntary uncompensated worker participating in a program established by a county welfare board. In the event of injury or death of the worker, the wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid in the county at the time of the injury or death for similar services performed by paid employees working a normal day and week;

(11) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 84.089. The daily wage of the worker for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(12) a voluntary uncompensated worker in the building and construction industry who renders services for joint labor-management nonprofit community service projects. The daily wage of the worker for the purpose of calculating compensation under this chapter shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

~~(12)~~ (13) a member of the military forces, as defined in section 190.05, while in state active service, as defined in section 190.05, subdivision 5a. The daily wage of the member for the purpose of calculating compensation under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

~~(13)~~ (14) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138. The daily wage of the worker, for the purposes of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

~~(14)~~ (15) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota state academy for the deaf or the Minnesota state academy for the blind, and whose services have been accepted or contracted for by the state board of education, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

~~(15)~~ (16) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

~~(16)~~ (17) a worker who renders in-home attendant care services to a physically handicapped person, and who is paid directly by the commissioner of human services for these services, shall be an employee of the state within the meaning of this subdivision, but for no other purpose;

~~(17)~~ (18) students enrolled in and regularly attending the medical school of the University of Minnesota in the graduate school program or the postgraduate program. The students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation under this chapter, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits under this chapter;

~~(18)~~ (19) a faculty member of the University of Minnesota employed for an academic year is also an employee for the period between that academic year and the succeeding academic year if:

(a) the member has a contract or reasonable assurance of a contract from the University of Minnesota for the succeeding academic year; and

(b) the personal injury for which compensation is sought arises out of and in the course of activities related to the faculty member's employment by the University of Minnesota;

~~(19)~~ (20) a worker who performs volunteer ambulance driver or attendant services is an employee of the political subdivision, nonprofit hospital, nonprofit corporation, or other entity for which the worker performs the services. The daily wage of the worker for the purpose of calculating compensation under this chapter shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

~~(20)~~ (21) a voluntary uncompensated worker, accepted by the commissioner of administration, rendering services as a volunteer at the department of administration. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

~~(21)~~ (22) a voluntary uncompensated worker rendering service directly to the pollution control agency. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees; and

~~(22)~~ (23) a voluntary uncompensated worker while volunteering services as a first responder or as a member of a law enforcement assistance organization while acting under the supervision and authority of a political subdivision. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees.

If it is difficult to determine the daily wage as provided in this subdivision, the trier of fact may determine the wage upon which the compensation is payable.

Sec. 2. Minnesota Statutes 1990, section 176.011, subdivision 11a, is amended to read:

Subd. 11a. **FAMILY FARM.** (a) "Family farm" means any farm operation which pays or is obligated to pay ~~less than $8,000 in~~ cash wages, exclusive of machine hire, to farm laborers for services rendered during the preceding calendar year in an amount:

New language is indicated by underline, deletions by ~~strikeout~~.

(1) less than $8,000; or

(2) less than the statewide average annual wage as described in subdivision 20 when the farm operation has total liability and medical payment coverage equal to $300,000 and $5,000, respectively, under a farm liability insurance policy, and the policy covers injuries to farm laborers.

(b) For purposes of this subdivision, farm laborer does not include any spouse, parent or child, regardless of age, of a farmer employed by the farmer, or any executive officer of a family farm corporation as defined in section 500.24, subdivision 2, or any spouse, parent or child, regardless of age, of such an officer employed by that family farm corporation, or other farmers in the same community or members of their families exchanging work with the employer. Notwithstanding any law to the contrary, a farm laborer shall not be considered as an independent contractor for the purposes of this chapter; provided that a commercial baler or commercial thresher shall be considered an independent contractor.

Sec. 3. Minnesota Statutes 1990, section 176.101, subdivision 1, is amended to read:

Subdivision 1. **TEMPORARY TOTAL DISABILITY.** (a) For injury producing temporary total disability, the compensation is 66-2/3 percent of the weekly wage at the time of injury.

~~(1) provided that~~ (b) During the year commencing on October 1, ~~1979~~ 1992, and each year thereafter, ~~commencing on October 1,~~ the maximum weekly compensation payable is 105 percent of the statewide average weekly wage for the period ending December 31, of the preceding year.

~~(2)~~ (c) The minimum weekly compensation ~~benefits for temporary total disability shall be not less than 50~~ payable is 20 percent of the statewide average weekly wage for the period ending December 31 of the preceding year or the injured employee's actual weekly wage, whichever is less. ~~In no case shall a weekly benefit be less than 20 percent of the statewide average weekly wage.~~

(d) Subject to subdivisions 3a to 3u this compensation shall be paid during the period of disability, payment to be made at the intervals when the wage was payable, as nearly as may be.

Sec. 4. Minnesota Statutes 1990, section 176.101, subdivision 2, is amended to read:

Subd. 2. **TEMPORARY PARTIAL DISABILITY.** (a) In all cases of temporary partial disability the compensation shall be 66-2/3 percent of the difference between the weekly wage of the employee at the time of injury and the wage the employee is able to earn in the employee's partially disabled condition. This compensation shall be paid during the period of disability except as provided in this section, payment to be made at the intervals when the wage was

payable, as nearly as may be, and subject to ~~a~~ the maximum ~~compensation equal to the statewide average weekly wage~~ rate for temporary total compensation.

(b) Except as provided under subdivision 3k, temporary partial compensation may be paid only while the employee is employed, earning less than the employee's weekly wage at the time of the injury, and the reduced wage the employee is able to earn in the employee's partially disabled condition is due to the injury. Except as provided in section 176.102, subdivision 11, paragraph (b), temporary partial compensation may not be paid for more than 225 weeks, or after 450 weeks after the date of injury, whichever occurs first.

(c) Temporary partial compensation must be reduced to the extent that the wage the employee is able to earn in the employee's partially disabled condition plus the temporary partial disability payment otherwise payable under this subdivision exceeds 500 percent of the statewide average weekly wage.

Sec. 5. Minnesota Statutes 1990, section 176.101, subdivision 5, is amended to read:

Subd. 5. ~~**TOTAL DISABILITY**~~ **DEFINITION.** (a) For purposes of subdivision 4, permanent total disability means only:

(1) the total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties~~;~~; or

(2) any other injury which totally and permanently incapacitates the employee from working at an occupation which brings the employee an income ~~constitutes total disability~~.

(b) For purposes of paragraph (a), clause (2), "totally and permanently incapacitated" means that the employee's physical disability, in combination with the employee's age, education, training, and experience, causes the employee to be unable to secure anything more than sporadic employment resulting in an insubstantial income.

Sec. 6. Minnesota Statutes 1990, section 176.101, subdivision 6, is amended to read:

Subd. 6. **MINORS; APPRENTICES.** (a) If any employee entitled to the benefits of this chapter is ~~a minor or is~~ an apprentice of any age and sustains a personal injury arising out of and in the course of employment resulting in permanent total or a compensable permanent partial disability, for the purpose of computing the compensation to which the employee is entitled for the injury, the compensation rate for temporary total, temporary partial, a permanent total disability or economic recovery compensation shall be the ~~statewide average weekly wage~~ maximum rate for temporary total disability under subdivision 1.

(b) If any employee entitled to the benefits of this chapter is a minor and

sustains a personal injury arising out of and in the course of employment resulting in permanent total disability, for the purpose of computing the compensation to which the employee is entitled for the injury, the compensation rate for a permanent total disability shall be the maximum rate for temporary total disability under subdivision 1.

Sec. 7. Minnesota Statutes 1990, section 176.101, subdivision 8, is amended to read:

Subd. 8. **RETIREMENT ~~PRESUMPTION~~.** Temporary total disability payments shall cease at retirement. "Retirement" means that a preponderance of the evidence supports a conclusion that an employee has retired. The subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement but may be considered along with other evidence.

For injuries occurring after the effective date of this subdivision an employee who receives social security old age and survivors insurance retirement benefits is presumed retired from the labor market. This presumption is rebuttable by a preponderance of the evidence.

Sec. 8. Minnesota Statutes 1990, section 176.102, subdivision 11, is amended to read:

Subd. 11. **RETRAINING; COMPENSATION.** (a) Retraining is limited to 156 weeks. An employee who has been approved for retraining may petition the commissioner or compensation judge for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner or compensation judge determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount ~~the commissioner determines is appropriate,~~ not to exceed the employee's request. This additional compensation shall cease at any time the commissioner or compensation judge determines the special circumstances are no longer present.

(b) If the employee is not employed during a retraining plan that has been specifically approved under this section, temporary total compensation is payable for up to 90 days after the end of the retraining plan; except that, payment during the 90-day period is subject to cessation in accordance with section 176.101. If the employee is employed during the retraining plan but earning less than at the time of injury, temporary partial compensation is payable at the rate of 66-2/3 percent of the difference between the employee's weekly wage at the time of injury and the weekly wage the employee is able to earn in the employee's partially disabled condition, subject to the maximum rate for temporary total compensation. Temporary partial compensation is not subject to the 225-week or 450-week limitations provided by section 176.101, subdivision 2, during the retraining plan, but is subject to those limitations before and after the plan.

Sec. 9. Minnesota Statutes 1990, section 176.111, subdivision 18, is amended to read:

Subd. 18. **BURIAL EXPENSE.** In all cases where death results to an employee from a personal injury arising out of and in the course of employment, the employer shall pay the expense of burial, not exceeding in amount ~~$2,500~~ $7,500. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, its reasonable value shall be determined and approved by the commissioner, a compensation judge, or workers' compensation court of appeals, in cases upon appeal, before payment, after reasonable notice to interested parties as is required by the commissioner. If the deceased leaves no dependents, no compensation is payable, except as provided by this chapter.

Sec. 10. Minnesota Statutes 1990, section 176.132, subdivision 1, is amended to read:

Subdivision 1. **ELIGIBLE RECIPIENTS.** (a) An employee who has suffered personal injury prior to October 1, 1983 for which benefits are payable under section 176.101 and who has been totally disabled for more than 104 weeks shall be eligible for supplementary benefits as prescribed in this section after 104 weeks have elapsed and for the remainder of the total disablement. Regardless of the number of weeks of total disability, no totally disabled person who has suffered personal injury prior to October 1, 1983, is ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, ~~except as provided by clause (b),~~ provided that all periods of disability are caused by the same injury.

(b) An employee who has suffered personal injury after October 1, 1983, and before October 1, 1992, is eligible to receive supplementary benefits after the employee has been receiving temporary total or permanent total benefits for 208 weeks. Regardless of the number of weeks of total disability, no person who has suffered personal injury on or after October 1, 1983, and before October 1, 1992, who is receiving temporary total compensation shall be ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, provided that all periods of disability are caused by the same injury.

(c) An employee who has suffered a personal injury on or after October 1, 1992, and is permanently totally disabled as defined in section 176.101, subdivisions 4 and 5, is eligible to receive supplementary benefits after the employee has been receiving temporary total or permanent total benefits for 208 weeks. Regardless of the number of weeks of total disability, no person who is receiving permanent total compensation shall be ineligible for supplementary benefits after four years have elapsed since the first date of the total disability, provided that all periods of disability are caused by the same injury.

Sec. 11. Minnesota Statutes 1990, section 176.179, is amended to read:

176.179 ~~**PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH**~~ **RECOVERY OF OVERPAYMENTS.**

New language is indicated by underline, deletions by ~~strikeout~~.

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 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 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, death benefits, or weekly payments of economic recovery or impairment compensation shall not exceed 20 percent of the amount that would otherwise be payable.

A credit may not be applied against medical expenses due or payable.

Where the commissioner or compensation judge determines that the mistaken compensation was not received in good faith, the commissioner or compensation judge may order reimbursement of the compensation. For purposes of this section, a payment is not received in good faith if it is obtained through fraud, or if the employee knew that the compensation was paid under mistake of fact or law, and the employee has not refunded the mistaken compensation.

Sec. 12. Minnesota Statutes 1990, section 176.645, subdivision 1, is amended to read:

Subdivision 1. **AMOUNT.** For injuries occurring after October 1, 1975 for which benefits are payable under section 176.101, subdivisions 1, 2 and 4, and section 176.111, subdivision 5, the total benefits due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1981, and thereafter on the anniversary of the date of the employee's injury the total benefits due shall be adjusted by multiplying the total benefits due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, of the year two years previous to the adjustment and the numerator of which is the statewide average weekly wage for December 31, of the year previous to the adjustment. For injuries occurring after October 1, 1975, all adjustments provided for in this section shall be included in computing any benefit due under this section. Any limitations of amounts due for daily or weekly compensation under this chapter shall not apply to adjustments made under this section. No adjustment increase made on or after October 1, 1977 ~~or thereafter,~~ but prior to October 1, 1992, under this section shall exceed six percent a year~~.~~; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be six per-

cent. No adjustment increase made on or after October 1, 1992, under this section shall exceed four percent a year; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be four percent.

Sec. 13. Minnesota Statutes 1990, section 176.645, subdivision 2, is amended to read:

Subd. 2. **TIME OF FIRST ADJUSTMENT.** For injuries occurring on or after October 1, 1981, the initial adjustment made pursuant to subdivision 1 ~~shall be~~ is deferred until the first anniversary of the date of the injury. For injuries occurring on or after October 1, 1992, the initial adjustment under subdivision 1 is deferred until the second anniversary of the date of the injury.

Sec. 14. **EFFECTIVE DATE.**

Section 2 is effective January 1, 1993. The rest of the article is effective October 1, 1992.

ARTICLE 2

LEGAL AND JUDICIAL

Section 1. Minnesota Statutes 1990, section 176.081, subdivision 1, is amended to read:

Subdivision 1. **APPROVAL.** (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~~ $60,000 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).~~ paragraph (d). All fees must be calculated according to the formula under this subdivision, or earned in hourly fees for representation at discontinuance conferences under section 176.239, or earned in hourly fees for representation on rehabilitation or medical issues under section 176.102, 176.135, or 176.136. Attorney fees for recovery of medical or rehabilitation benefits or services shall be assessed against the employer or insurer if these fees exceed the contingent fee under this section in connection with benefits currently in dispute. The amount of the fee that the employer or insurer is liable for is the amount determined under subdivision 5, minus the contingent fee.

(b) All fees for legal services related to the same injury are cumulative and may not exceed $13,000, except as provided by subdivision 2. If multiple injuries are the subject of a dispute, the commissioner, compensation judge, or court of appeals shall specify the attorney fee attributable to each injury.

(c) 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 claims or 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 section 176.239 shall be determined on an hourly basis, according to the criteria in subdivision 5.

~~(b)~~ (d) An attorney who is claiming legal fees ~~under this section~~ for representing an employee in a workers' compensation matter shall file a statement of ~~attorney's~~ attorney 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, shall report the number of hours spent on the case, 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.

(e) Employers and insurers may not pay attorney fees or wages for legal services of more than $13,000 per case unless the additional fees or wages are approved under subdivision 2.

(f) Each insurer and self-insured employer shall file annual statements with the commissioner detailing the total amount of legal fees and other legal costs incurred by the insurer or employer during the year. The statement shall include the amount paid for outside and in-house counsel, deposition and other witness fees, and all other costs relating to litigation.

Sec. 2. Minnesota Statutes 1990, section 176.081, subdivision 2, is amended to read:

Subd. 2. An application for attorney fees in excess of the amount authorized in subdivision 1 shall be made to the commissioner, compensation judge, or district judge, before whom the matter was heard. An appeal of a decision by the commissioner, a compensation judge, or district court judge on additional

fees may be made to the workers' compensation court of appeals. The application shall set forth the fee requested ~~and~~, the number of hours spent on the case, the basis for the request, and whether or not a hearing is requested. The application, with affidavit of service upon the employee, shall be filed by the attorney requesting the fee. If a hearing is requested by an interested party, a hearing shall be set with notice of the hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

Sec. 3. Minnesota Statutes 1990, section 176.081, subdivision 3, is amended to read:

Subd. 3. **REVIEW.** ~~An employee who~~ A party that is dissatisfied with its attorney fees~~,~~ may file an application for review by the workers' compensation court of appeals. ~~Such~~ The application shall state the basis for the need of review and whether or not a hearing is requested. A copy of ~~such~~ the application shall be served upon the party's attorney ~~for the employee~~ by the court administrator and if a hearing is requested by either party, the matter shall be set for hearing. The notice of hearing shall be served upon known interested parties. ~~The attorney for the employee shall be served with a notice of the hearing.~~ The workers' compensation court of appeals shall have the authority to raise ~~the question of~~ the issue of the attorney fees at any time upon its own motion and shall have continuing jurisdiction over attorney fees.

Sec. 4. Minnesota Statutes 1990, section 176.105, subdivision 1, is amended to read:

Subdivision 1. **SCHEDULE; RULES.** (a) The commissioner of labor and industry shall by rule establish a schedule of degrees of disability resulting from different kinds of injuries. Disability ratings under the schedule for permanent partial disability must be based on objective medical evidence. The commissioner, in consultation with the medical services review board, shall periodically review the rules adopted under this paragraph to determine whether any injuries omitted from the schedule should be included and amend the rules accordingly.

(b) No permanent partial disability compensation shall be payable except in accordance with the disability ratings established under this subdivision, except as provided in paragraph (c). The schedule may provide that minor impairments receive a zero rating.

(c) If an injury for which there is objective medical evidence is not rated by the permanent partial disability schedule, the unrated injury must be assigned and compensated for at the rating for the most similar condition that is rated.

Sec. 5. **[176.1311] SECOND INJURY FUND DATA.**

No person shall, directly or indirectly, provide the names of persons who have registered a preexisting physical impairment under section 176.131 to an employer with the intent of assisting the employer to discriminate against those persons who have so registered with respect to hiring or other terms and conditions of employment.

A violation of this section is a gross misdemeanor.

Sec. 6. **[176.178] FRAUD.**

Any person who, with intent to defraud, receives workers' compensation benefits to which the person is not entitled by knowingly misrepresenting, misstating, or failing to disclose any material fact is guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3.

Sec. 7. **[176.2615] SMALL CLAIMS COURT.**

Subdivision 1. **PURPOSE.** There is established in the department of labor and industry a small claims court, to be presided over by settlement judges for the purpose of settling small claims.

Subd. 2. **ELIGIBILITY.** The claim is eligible for determination in the small claims court if all parties agree to submit to its jurisdiction; and

(1) the claim is for rehabilitation benefits only under section 176.102 or medical benefits only under section 176.135; or

(2) the claim in its total amount does not equal more than $5,000; or

(3) where the claim is for apportionment or for contribution or reimbursement, no counterclaim in excess of $5,000 is asserted.

Subd. 3. **TESTIMONY; EXHIBITS.** At the hearing a settlement judge shall hear the testimony of the parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

Subd. 4. **APPEARANCE OF PARTIES.** A party may appear on the party's own behalf without an attorney, or may retain and be represented by a duly admitted attorney who may participate in the hearing to the extent and in the manner that the settlement judge considers helpful. Attorney fees awarded under this subdivision are included in the overall limit allowed under section 176.081, subdivision 1.

Subd. 5. **EVIDENCE ADMISSIBLE.** At the hearing the settlement judge shall receive evidence admissible under the rules of evidence. In addition, in the interest of justice and summary determination of issues before the court, the settlement judge may receive, in the judge's discretion, evidence not otherwise admissible. The settlement judge, on the judge's own motion, may receive into evidence any documents which have been filed with the department.

Subd. 6. **SETTLEMENT.** A settlement judge may attempt to conciliate the parties. If the parties agree on a settlement, the judge shall issue an order in accordance with that settlement.

Subd. 7. **DETERMINATION.** If the parties do not agree to a settlement, the settlement judge shall summarily hear and determine the issues and issue an order in accordance with section 176.305, subdivision 1a. There is no appeal

from the order. Any determination by a settlement judge may not be considered as evidence in any other proceeding and the issues decided are not res judicata in any other proceeding.

Subd. 8. **COSTS.** The prevailing party is entitled to costs and disbursements as in any other workers' compensation case.

Sec. 8. **[176.307] COMPENSATION JUDGES; BLOCK SYSTEM.**

The chief administrative law judge must assign workers' compensation cases to compensation judges using a block system type of assignment that, among other things, ensures that a case will remain with the same judge from commencement to conclusion unless the judge is removed from the case by exercise of a legal right of a party or by incapacity. The block system must be the principal means of assigning cases, but it may be supplemented by other systems of case assignment to ensure that cases are timely decided.

Sec. 9. **[176.325] CERTIFIED QUESTION.**

Subdivision 1. **WHEN CERTIFIED.** The chief administrative law judge or commissioner may certify a question of workers' compensation law to the supreme court as important and doubtful under the following circumstances:

(1) all parties to the case have stipulated in writing to the facts; and

(2) the issue to be resolved is a question of workers' compensation law that has not been resolved by the Minnesota supreme court.

Subd. 2. **EXPEDITED DECISION.** It is the legislature's intent that the Minnesota supreme court resolve the certified question as expeditiously as possible, after compliance by the parties with any requirements of the Minnesota supreme court regarding submission of legal memoranda, oral argument, or other matters, and after the participation of amicus curiae, should the workers' compensation court of appeals or Minnesota supreme court consider such participation advisable.

Subd. 3. **NOTICE.** The commissioner or chief administrative law judge shall notify all persons who request to be notified of a certification under this section.

Sec. 10. Minnesota Statutes 1990, section 176.421, subdivision 1, is amended to read:

Subdivision 1. **TIME FOR TAKING; GROUNDS.** When a petition has been heard before a compensation judge, within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case, the party may appeal to the workers' compensation court of appeals on any of the following grounds:

(1) the order does not conform with this chapter; or

(2) the compensation judge committed an error of law; or

(3) the findings of fact and order were clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted; or

(4) the findings of fact and order were procured by fraud, or coercion, or other improper conduct of a party in interest.

Sec. 11. Minnesota Statutes 1990, section 176.461, is amended to read:

176.461 **SETTING ASIDE AWARD.**

Except when a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or if as a matter of law the determination of the supreme court cannot be subsequently modified, the workers' compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five working days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief administrative law judge for assignment to a compensation judge, who shall make findings of fact, conclusions of law, and an order of award or disallowance of compensation or other order based on the pleadings and the evidence produced and as required by the provisions of this chapter or rules adopted under it.

As used in this section, the phrase "for cause" is limited to the following:

(1) a mutual mistake of fact;

(2) newly discovered evidence;

(3) fraud; or

(4) a substantial change in medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated at the time of the award.

Sec. 12. Minnesota Statutes 1990, section 480B.01, subdivision 1, is amended to read:

Subdivision 1. **JUDICIAL VACANCIES.** If a judge of the district court or workers' compensation court of appeals dies, resigns, retires, or is removed during the judge's term of office, or if a new district or workers' compensation court of appeals judgeship is created, the resulting vacancy must be filled by the governor as provided in this section.

Sec. 13. Minnesota Statutes 1990, section 480B.01, subdivision 10, is amended to read:

Subd. 10. **NOTICE TO THE PUBLIC.** Upon receiving notice from the governor that a judicial vacancy has occurred or will occur on a specified date, the chair shall provide notice of the following information:

(1) the office that is or will be vacant;

(2) that applications from qualified persons or on behalf of qualified persons are being accepted by the commission;

(3) that application forms may be obtained from the governor or the commission at a named address; and

(4) that application forms must be returned to the commission by a named date.

For a district court vacancy, the notice must be made available to attorney associations in the judicial district where the vacancy has occurred or will occur and to at least one newspaper of general circulation in each county in the district. For a workers' compensation court of appeals vacancy, the notice must be given to state attorney associations and all forms of the public media.

Sec. 14. Minnesota Statutes 1990, section 609.52, subdivision 2, is amended to read:

Subd. 2. **ACTS CONSTITUTING THEFT.** Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property; or

(2) having a legal interest in movable property, intentionally and without consent, takes the property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(a) the issuance of a check, draft, or order for the payment of money, except a forged check as defined in section 609.631, or the delivery of property knowing that the actor is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) a promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence; or

(c) the preparation or filing of a claim for reimbursement, a rate application, or a cost report used to establish a rate or claim for payment for medical care

provided to a recipient of medical assistance under chapter 256B, which intentionally and falsely states the costs of or actual services provided by a vendor of medical care; or

(d) the preparation or filing of a claim for reimbursement for providing treatment or supplies required to be furnished to an employee under section 176.135 which intentionally and falsely states the costs of or actual treatment or supplies provided; or

(e) the preparation or filing of a claim for reimbursement for providing treatment or supplies required to be furnished to an employee under section 176.135 for treatment or supplies that the provider knew were medically unnecessary, inappropriate, or excessive; or

(4) by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person; or

(5) intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and:

(a) the control exercised manifests an indifference to the rights of the owner or the restoration of the property to the owner; or

(b) the actor pledges or otherwise attempts to subject the property to an adverse claim; or

(c) the actor intends to restore the property only on condition that the owner pay a reward or buy back or make other compensation; or

(6) finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to the finder's own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to the owner; or

(7) intentionally obtains property or services, offered upon the deposit of a sum of money or tokens in a coin or token operated machine or other receptacle, without making the required deposit or otherwise obtaining the consent of the owner; or

(8) intentionally and without claim of right converts any article representing a trade secret, knowing it to be such, to the actor's own use or that of another person or makes a copy of an article representing a trade secret, knowing it to be such, and intentionally and without claim of right converts the same to the actor's own use or that of another person. It shall be a complete defense to any prosecution under this clause for the defendant to show that information comprising the trade secret was rightfully known or available to the defendant from a source other than the owner of the trade secret; or

(9) leases or rents personal property under a written instrument and who with intent to place the property beyond the control of the lessor conceals or

aids or abets the concealment of the property or any part thereof, or any lessee of the property who sells, conveys, or encumbers the property or any part thereof without the written consent of the lessor, without informing the person to whom the lessee sells, conveys, or encumbers that the same is subject to such lease and with intent to deprive the lessor of possession thereof. Evidence that a lessee used a false or fictitious name or address in obtaining the property or fails or refuses to return the property to lessor within five days after written demand for the return has been served personally in the manner provided for service of process of a civil action or sent by certified mail to the last known address of the lessee, whichever shall occur later, shall be evidence of intent to violate this clause. Service by certified mail shall be deemed to be complete upon deposit in the United States mail of such demand, postpaid and addressed to the person at the address for the person set forth in the lease or rental agreement, or, in the absence of the address, to the person's last known place of residence; or

(10) alters, removes, or obliterates numbers or symbols placed on movable property for purpose of identification by the owner or person who has legal custody or right to possession thereof with the intent to prevent identification, if the person who alters, removes, or obliterates the numbers or symbols is not the owner and does not have the permission of the owner to make the alteration, removal, or obliteration; or

(11) with the intent to prevent the identification of property involved, so as to deprive the rightful owner of possession thereof, alters or removes any permanent serial number, permanent distinguishing number or manufacturer's identification number on personal property or possesses, sells or buys any personal property with knowledge that the permanent serial number, permanent distinguishing number or manufacturer's identification number has been removed or altered; or

(12) intentionally deprives another of a lawful charge for cable television service by:

(i) making or using or attempting to make or use an unauthorized external connection outside the individual dwelling unit whether physical, electrical, acoustical, inductive, or other connection, or by

(ii) attaching any unauthorized device to any cable, wire, microwave, or other component of a licensed cable communications system as defined in chapter 238. Nothing herein shall be construed to prohibit the electronic video rerecording of program material transmitted on the cable communications system by a subscriber for fair use as defined by Public Law Number 94-553, section 107; or

(13) except as provided in paragraphs (12) and (14), obtains the services of another with the intention of receiving those services without making the agreed or reasonably expected payment of money or other consideration; or

(14) intentionally deprives another of a lawful charge for telecommunications service by:

(i) making, using, or attempting to make or use an unauthorized connection whether physical, electrical, by wire, microwave, radio, or other means to a component of a local telecommunication system as provided in chapter 237; or

(ii) attaching an unauthorized device to a cable, wire, microwave, radio, or other component of a local telecommunication system as provided in chapter 237.

The existence of an unauthorized connection is prima facie evidence that the occupier of the premises:

(i) made or was aware of the connection; and

(ii) was aware that the connection was unauthorized; or

(15) with intent to defraud, diverts corporate property other than in accordance with general business purposes or for purposes other than those specified in the corporation's articles of incorporation; or

(16) with intent to defraud, authorizes or causes a corporation to make a distribution in violation of section 302A.551, or any other state law in conformity with it; or

(17) intentionally takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner.

Sec. 15. **HEARINGS AT THE OFFICE OF ADMINISTRATIVE HEARINGS; REPORT OF CHIEF ADMINISTRATIVE LAW JUDGE.**

The chief administrative law judge shall reduce the formality and length of hearings in workers' compensation cases at the office of administrative hearings, with a goal of completing 50 percent of the hearings in less than two hours, 75 percent in less than four hours, and nearly all of the hearings in less than one day. Before January 1, 1993, the chief administrative law judge shall report to the legislature on the success in meeting these goals, including any recommendations for legislation needed to achieve these goals.

Sec. 16. **EFFECTIVE DATE.**

Section 4 is effective the day following final enactment. The rest of the article is effective July 1, 1992.

ARTICLE 3

ADMINISTRATIVE, SAFETY, INSURANCE

Section 1. **[79.081] MANDATORY DEDUCTIBLES.**

Subdivision 1. **PREMIUM REDUCTION.** Each insurer, including the assigned risk plan, issuing a policy of insurance, must make available to an employer, upon request, the option to agree to pay an amount per claim selected by the employer and specified in the policy toward the total of any claim payable under chapter 176. The amount of premium to be paid by an employer who selects a policy with a deductible shall be reduced based upon a rating schedule or rating plan filed with and approved by the commissioner of commerce. Administration of claims shall remain with the insurer as provided in the terms and conditions of the policy. Each insurer shall notify its agents authorized to write workers' compensation insurance about the availability and terms and conditions of deductibles required by this section, using a brochure in a format approved by the commissioner.

Subd. 2. **PROCEDURE FOR PAYING DEDUCTIBLE.** If an insured employer chooses a deductible, the insured employer is liable for the amount of the deductible. The insurer shall administer the claim as provided in the terms and conditions of the insurance policy and seek reimbursement from the insured employer for the deductible. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers' compensation in the same manner as payment or nonpayment of premiums.

Subd. 3. **CREDIT RISK; EXCEPTION.** An insurer is not required to offer a deductible to an employer if, as a result of a credit investigation, the insurer determines that the employer is not sufficiently financially stable to be responsible for the payment of deductible amounts.

Subd. 4. **REPORTING REQUIREMENT.** The existence of an insurance contract with a deductible or the fact of payment as a result of a deductible does not affect the requirement of an employer to report an injury or death to an insurer or the commissioner of labor and industry.

Subd. 5. **NO EMPLOYEE LIABILITY.** Nothing in this section alters the obligation of the employer to provide the benefits required by this chapter. An employee is not responsible to pay all or a part of the deductible chosen by an employer.

Sec. 2. **[79.085] SAFETY PROGRAMS.**

All insurers writing workers' compensation insurance in this state shall provide safety consultation services to each of their policyholders requesting the services in writing. Insurers shall notify each policyholder of the availability of those services and the telephone number and address where such services can be

requested. The notification may be delivered with the policy of workers' compensation insurance.

Sec. 3. **[79.096] ACCESS TO RATE MAKING DATA.**

The rating association must make available for inspection on request of any person any data it possesses related to the calculation of indicated pure premium rates.

Sec. 4. Minnesota Statutes 1990, section 79.251, is amended by adding a subdivision to read:

Subd. 4a. **MEDICAL COST CONTAINMENT.** The assigned risk plan must consider utilizing managed care plans certified under section 176.1351 with respect to its covered employees. In addition, the assigned risk plan must implement a medical cost containment program. The program must, at a minimum, include:

(1) billings review to determine if claims are compensable under chapter 176;

(2) utilization of cost management specialists familiar with billing practice guidelines;

(3) review of treatment to determine if it is reasonable and necessary and has a reasonable chance to cure and relieve the employee's injury;

(4) a system to reduce billed charges to the maximum permitted by law or rule;

(5) review of medical care utilization; and

(6) reporting of health care providers suspected of providing unnecessary, inappropriate, or excessive services to the commissioner of labor and industry.

Sec. 5. Minnesota Statutes 1990, section 79.251, is amended by adding a subdivision to read:

Subd. 4b. **GROUPS.** The assigned risk plan must create a program that attempts to group employers in the same or similar risk classification for purposes of group premium underwriting and claims management. The assigned risk plan must engage in extensive safety consultation with group members to reduce the extent and severity of injuries of group members. The consultation should include on-site inspections and specific recommendations as to safety improvements.

Sec. 6. Minnesota Statutes 1990, section 79.252, subdivision 1, is amended to read:

Subdivision 1. **PURPOSE.** The purpose of the assigned risk plan is to provide workers' compensation coverage to employers rejected by ~~a~~ two nonaf-

filiated licensed insurance ~~company~~ companies, pursuant to subdivision 2. Each rejection must be in writing and must be obtained within 60 days before the date of application to the assigned risk plan. In addition, the rejections must also show the name of the insurance company and the representative contacted.

Sec. 7. Minnesota Statutes 1990, section 79.252, subdivision 3, is amended to read:

Subd. 3. **COVERAGE.** (a) Policies and contracts of coverage issued pursuant to section 79.251, subdivision 4, shall contain the usual and customary provisions of workers' compensation insurance policies, and shall be deemed to meet the mandatory workers' compensation insurance requirements of section 176.181, subdivision 2.

(b) Policies issued by the assigned risk plan pursuant to this chapter may also provide workers' compensation coverage required under the laws of states other than Minnesota, including coverages commonly known as "all states coverage." The assigned risk plan review board may apply for and obtain any licensure required in any other state to issue that coverage.

Sec. 8. **[79.253] ASSIGNED RISK SAFETY ACCOUNT.**

Subdivision 1. **CREATION OF ACCOUNT.** There is created the assigned risk safety account as a separate account in the special compensation fund in the state treasury. Income earned by funds in the account must be credited to the account. Principal and income of the account are annually appropriated to the commissioner of labor and industry and must be used for grants and loans under this section.

Subd. 2. **USE OF FUNDS; SAFETY ASSESSMENTS.** The assigned risk plan shall, through persons under contract with the plan, perform on-site surveys of employers insured by the assigned risk plan and recommend practices and equipment to employers designed to reduce the risk of injury to employees. The recommendations may include that the employer form a joint labor-management safety committee. The plan shall generally survey employers in the following priority:

(1) employers with poor safety records for their industry based on their premium modification factor or other factors;

(2) employers whose workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a premium rate in the top 25 percent of premium rates for all classes; and

(3) all other employers.

Subd. 3. **INCENTIVES AND PENALTIES.** The assigned risk plan shall develop a premium rating system subject to approval by the commissioner of commerce that provides a reduction in premium rates for employers that follow safety recommendations made under this section and an increase in rates for

employers that do not. The system must be sensitive to the economic ability of an employer to implement particular recommendations.

Subd. 4. **GRANTS AND LOANS.** The commissioner of labor and industry may make grants or loans to employers for the cost of implementing safety recommendations made under this section.

Subd. 5. **RULES.** The commissioner of labor and industry may adopt rules necessary to implement this section.

Sec. 9. **[79.255] WORKERS' COMPENSATION INSURANCE; LESSORS OF EMPLOYEES.**

Subdivision 1. **REGISTRATION REQUIRED.** A corporation, partnership, sole proprietorship, or other business entity which provides staff, personnel, or employees to be employed in this state to other businesses pursuant to a lease arrangement or agreement shall, before becoming eligible to be issued a policy of workers' compensation insurance or becoming eligible to secure coverage on a multiple coordinated policies basis, register with the commissioner of commerce. The registration shall:

(1) identify the name of the lessor;

(2) identify the address of the principal place of business of the lessor and the address of each office it maintains within this state;

(3) include the lessor's taxpayer or employer identification number;

(4) include a list by jurisdiction of each and every name that the lessor has operated under in the preceding five years including any alternative names and names of predecessors and, if known, successor business entities;

(5) include a list of each person or entity who owns a five percent or greater interest in the employee leasing business at the time of application and a list of each person who formerly owned a five percent or greater interest in the employee leasing company or its predecessors, successors, or alter egos in the preceding five years; and

(6) include a list of each and every cancellation or nonrenewal of workers' compensation insurance which has been issued to the lessor or any predecessor in the preceding five years. The list shall include the policy or certificate number, name of insurer or other provider of coverage, date of cancellation, and reason for cancellation. If coverage has not been canceled or nonrenewed, the registration shall include a sworn affidavit signed by the chief executive officer of the lessor attesting to that fact.

Subd. 2. **INELIGIBILITY TO REGISTER.** Any lessor of employees whose workers' compensation insurance has been terminated within the past five years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premium otherwise payable by lessees shall be ineli-

gible to register with the commissioner or to remain registered, if previously registered.

Subd. 3. **NOTICE OF CHANGE.** Persons filing registration statements pursuant to this section shall notify the commissioner as to any changes in any information required to be provided under this section.

Subd. 4. **LIST MAINTAINED.** The commissioner shall maintain a list of those lessors of employees who are registered with the commissioner.

Subd. 5. **FORMS OF REGISTRATION.** The commissioner may prescribe forms necessary to promote the efficient administration of this section.

Subd. 6. **ADVERTISING PROHIBITION.** No organization registered under this section shall directly or indirectly reference that registration in any advertisements, marketing material, or publications.

Subd. 7. **CRIMINAL PENALTIES.** Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, director, general partner, agent, representative, or employee of theirs who knowingly utilizes or participates in any employee leasing agreement, arrangement, or mechanism for the purpose of depriving one or more insurers of premium otherwise properly payable is guilty of a misdemeanor.

Subd. 8. **APPLICATION OF SECTION.** Any lessor of employees that was doing business in this state prior to enactment of this section shall register with the commissioner within 30 days of the effective date of this section.

Sec. 10. Minnesota Statutes 1990, section 175.007, is amended to read:

175.007 **ADVISORY COUNCIL ON WORKERS' COMPENSATION; CREATION.**

Subdivision 1. **CREATION; COMPOSITION.** ~~The commissioner shall appoint an advisory council on workers' compensation, which consists of five representatives of employers and five representatives of employees; five nonvoting members representing the general public; two persons who have received or are currently receiving workers' compensation benefits under chapter 176 and the chairs of the rehabilitation review panel and the medical services review board. The council may consult with any party it desires.~~ (a) There is created a permanent council on workers' compensation consisting of 12 voting members as follows: the presidents of the largest statewide Minnesota business and organized labor organizations as measured by the number of employees of its business members and in its affiliated labor organizations in Minnesota on July 1, 1992, and every five years thereafter; five additional members representing business, and five additional members representing organized labor. The commissioner of labor and industry shall serve as chair of the council and shall be a nonvoting member.

(b) The governor, the majority leader of the senate, the speaker of the house

of representatives, the minority leader of the senate, and the minority leader of the house of representatives shall each select a business and a labor representative. At least four of the labor representatives shall be chosen from the affiliated membership of the Minnesota AFL-CIO. At least two of the business representatives shall be representatives of small employers as defined in section 177.24, subdivision 1, paragraph (a), clause (2). None of the council members shall represent attorneys, health care providers, qualified rehabilitation consultants, or insurance companies. If the appointing officials cannot agree on a method of appointing the required number of Minnesota AFL-CIO and small business representatives by the second Monday in June of the year in which appointments are made, they shall notify the secretary of state. The distribution of appointments shall then be determined publicly by lot by the secretary of state or a designee in the presence of the appointing officials or their designees on the third Monday in June.

(c) Each council member shall appoint an alternate. Alternates shall serve in the absence of the member they replace.

(d) The ten appointed voting members shall serve for terms of five years and may be reappointed.

(e) The council shall designate liaisons to the council representing workers' compensation insurers; medical, hospital, and rehabilitation providers; and the legal profession. The speaker and minority leader of the house of representatives shall each appoint a caucus member as a liaison to the council. The majority and minority leaders of the senate shall each appoint a caucus member to serve as a liaison to the council.

(f) The ~~terms~~ compensation and removal of members shall be as provided in section 15.059. ~~The council expires as provided in section 15.059, subdivision 5.~~

Subd. 2. The advisory council shall ~~study and present to the legislature and the governor, on or before November 15 of each even numbered year, its findings relative to the costs, methods of financing, and the formula to be used to provide supplementary compensation to workers who have been determined permanently and totally disabled prior to July 1, 1969, and its findings relative to alterations in the scheduled benefits for permanent partially disabled, and other aspects of the workers' compensation act. The council shall also study and present to the legislature and the governor on or before November 15 of 1981 and by November 15 of each even-numbered year thereafter a report on the financial, administrative and personnel needs of the workers' compensation division.~~ advise the department in carrying out the purposes of chapter 176. The council shall submit its recommendations with respect to amendments to chapter 176 by February 1 of each year to each regular session of the legislature and shall report its views upon any pending bill relating to chapter 176 to the proper legislative committee. A recommendation may not be made by the council unless it is supported by a majority of the employer members and a majority of

the labor members. At the request of the chairs of the senate and house of representatives committees that hear workers' compensation matters, the department shall schedule a meeting of the council with the members of the committees to discuss matters of legislative concern arising under chapter 176.

Subd. 3. **MEETINGS; VOTING.** (a) The council shall meet as frequently as necessary to carry out its duties and responsibilities. The council may also conduct public hearings throughout the state as may be necessary to give interested persons an opportunity to comment and make suggestions on the operation of the state's workers' compensation law.

(b) The meetings of the council are subject to the state's open meeting law, section 471.705; except that the six employer voting members and the six labor voting members may meet in separate closed caucuses for the purpose of deliberating on matters before the council. All votes of the council must be public and recorded.

Subd. 4. **EXECUTIVE DIRECTOR.** (a) The assistant commissioner for workers' compensation at the department of labor and industry shall serve as executive director of the council.

(b) The executive director shall provide administrative support and information to the council in order to allow it to monitor all elements of Minnesota's workers' compensation system. Specific duties of the executive director shall include:

(1) examining the activities of the various entities involved in Minnesota's workers' compensation system and identifying problem areas for the council's consideration;

(2) identifying trends and developments in the workers' compensation law of other states, and reporting to the council on issues that are developing and solutions that are being proposed or attempted;

(3) monitoring the decisions of Minnesota courts, including the workers' compensation court of appeals and the supreme court, to determine the impact of court decisions on the workers' compensation system;

(4) monitoring workers' compensation research activities and bringing important research findings and recommendations to the attention of the council; and

(5) conducting other activities and duties as may be requested by the council.

Subd. 5. **ADMINISTRATIVE SUPPORT.** The commissioner of labor and industry shall supply necessary office space, supplies, and staff support to assist the council and its executive director in their duties.

Sec. 11. Minnesota Statutes 1990, section 176.106, subdivision 6, is amended to read:

Subd. 6. **PENALTY.** At a conference, if the insurer does not provide a specific reason for nonpayment of the items in dispute, the commissioner may assess a penalty of $300 payable to the ~~special compensation fund~~ assigned risk safety account, unless it is determined that the reason for the lack of specificity was the failure of the insurer, upon timely request, to receive information necessary to remedy the lack of specificity. This penalty is in addition to any penalty that may be applicable for nonpayment.

Sec. 12. Minnesota Statutes 1990, section 176.129, subdivision 10, is amended to read:

Subd. 10. **PENALTY.** Sums paid to the commissioner pursuant to this section shall be in the manner prescribed by the commissioner. The commissioner may impose a penalty payable to the assigned risk safety account of up to 15 percent of the amount due under this section but not less than $500 in the event payment is not made in the manner prescribed.

Sec. 13. Minnesota Statutes 1990, section 176.130, subdivision 8, is amended to read:

Subd. 8. **PENALTIES; WOOD MILLS.** If the assessment provided for in this chapter is not paid on or before February 15 of the year when due and payable, the commissioner may impose penalties as provided in section 176.129, subdivision 10, payable to the assigned risk safety account.

Sec. 14. Minnesota Statutes 1990, section 176.130, subdivision 9, is amended to read:

Subd. 9. **FALSE REPORTS.** Any person or entity that, for the purpose of evading payment of the assessment or avoiding the reimbursement, or any part of it, makes a false report under this section shall pay to the ~~special compensation fund~~ assigned risk safety account, in addition to the assessment, a penalty of 50 percent of the amount of the assessment. A person who knowingly makes or signs a false report, or who knowingly submits other false information, is guilty of a misdemeanor.

Sec. 15. Minnesota Statutes 1990, section 176.138, is amended to read:

176.138 **MEDICAL DATA; ACCESS.**

(a) Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release in writing, by telephone discussion, or otherwise 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, and the date of discussions with medical providers about medical data shall be confirmed, in writing to the person or organi-

zation that collected or currently possesses the data. Written medical data that exists at the time the request is made shall be provided by the collector or possessor within seven working days of receiving the request. Nonwritten medical data may be provided, but is not required to be provided, by the collector or possessor. In all cases of a request for the data or discussion with a medical provider about 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 or a written confirmation of the discussion. 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 with a copy of all data requested by the requester.

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

(c) The commissioner may impose a penalty of up to $200 payable to the ~~special compensation fund~~ assigned risk safety account against a party who does not timely release data as required in this section. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor. This paragraph applies only to written medical data which exists at the time the request is made.

(d) Workers' compensation insurers and self-insured employers may, for the sole purpose of identifying duplicate billings submitted to more than one insurer, disclose to health insurers, including all insurers writing insurance described in section 60A.06, subdivision 1, clause (5)(a), nonprofit health service plan corporations subject to chapter 62C, health maintenance organizations subject to chapter 62D, and joint self-insurance employee health plans subject to chapter 62H, computerized information about dates, coded items, and charges for medical treatment of employees and other medical billing information submitted to them by an employee, employer, health care provider, or other insurer in connection with a current claim for compensation under this chapter, without prior approval of any party to the claim. The data may not be used by the health insurer for any other purpose whatsoever and must be destroyed after verification that there has been no duplicative billing. Any person who is the subject of the data which is used in a manner not allowed by this section has a cause of action for actual damages and punitive damages for a minimum of $5,000.

Sec. 16. Minnesota Statutes 1990, section 176.139, subdivision 2, is amended to read:

Subd. 2. **FAILURE TO POST; PENALTY.** The commissioner may assess a penalty of $300 against the employer payable to the ~~special compensation fund~~ assigned risk safety account if, after notice from the commissioner, the employer violates the posting requirement of this section.

Sec. 17. Minnesota Statutes 1990, section 176.181, subdivision 3, is amended to read:

Subd. 3. **FAILURE TO INSURE, PENALTY.** ~~Any employer who fails to comply with the provisions of subdivision 2 to secure payment of compensation is liable to the state of Minnesota for a penalty of $750, if the number of uninsured employees is less than five and for a penalty of $1,500 if the number of such uninsured employees is five or more. If the commissioner determines that the failure to comply with the provisions of subdivision 2 was willful and deliberate, the employer shall be liable to the state of Minnesota for a penalty of $2,500, if the number of uninsured employees is less than five, and for a penalty of $5,000 if the number of uninsured employees is five or more. If the employer continues noncompliance, the employer is liable for five times the lawful premium for compensation insurance for such employer for the period the employer fails to comply with such provisions, commencing ten days after notice has been served upon the employer by the commissioner of the department of labor and industry by certified mail. These penalties may be recovered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction. Whenever any such failure occurs the commissioner of the department of labor and industry shall immediately certify that fact to the attorney general. Upon receipt of such certification the attorney general shall forthwith commence and prosecute the action. All penalties recovered by the state in any such action shall be paid into the state treasury and credited to the special compensation fund. If an employer fails to comply with the provisions of subdivision 2, to secure payment of compensation after having been notified of the employer's duty, the attorney general, upon request of the commissioner, may proceed against the employer in any court having jurisdiction for an order restraining the employer from having any person in employment at any time when the employer is not complying with the provisions of subdivision 2 or for an order compelling the employer to comply with subdivision 2.~~ (a) If the commissioner has reason to believe that an employer is in violation of subdivision 2, he may issue an order directing the employer to comply with subdivision 2, to refrain from employing any person at any time without complying with subdivision 2, and to pay a penalty of up to $1,000 per employee per week during which the employer was not in compliance.

(b) An employer shall have ten working days to contest such an order by filing a written objection with the commissioner, stating in detail its reasons for objecting. If the commissioner does not receive an objection within ten working days, the commissioner's order shall constitute a final order not subject to further review, and violation of that order shall be enforceable by way of civil contempt proceedings in district court. If the commissioner does receive a timely objection, the commissioner shall refer the matter to the office of administrative hearings for an expedited hearing before a compensation judge. The compensation judge shall issue a decision either affirming, reversing, or modifying the commissioner's order within ten days of the close of the hearing. If the compensation judge affirms the commissioner's order, the compensation judge may order the employer to pay an additional penalty if the employer continued to employ persons without complying with subdivision 2 while the proceedings were pending.

New language is indicated by underline, deletions by ~~strikeout~~.

(c) All penalties assessed under this subdivision shall be paid into the state treasury and credited to the assigned risk safety account. Penalties assessed under this section shall constitute a lien for government services pursuant to section 514.67, on all the employer's property and shall be subject to the revenue recapture act in chapter 270A.

(d) For purposes of this subdivision, the term "employer" includes any owners or officers of a corporation who direct and control the activities of employees.

Sec. 18. Minnesota Statutes 1990, section 176.181, is amended by adding a subdivision to read:

Subd. 8. **DATA SHARING.** (a) The departments of labor and industry, jobs and training, and revenue are authorized to share information regarding the employment status of individuals, including but not limited to payroll and withholding and income tax information, and may use that information for purposes consistent with this section.

(b) The commissioner is authorized to inspect and to order the production of all payroll and other business records and documents of any alleged employer in order to determine the employment status of persons and compliance with this section. If any person or employer refuses to comply with such an order, the commissioner may apply to the district court of the county where the person or employer is located for an order compelling production of the documents.

Sec. 19. Minnesota Statutes 1990, section 176.182, is amended to read:

176.182 **BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.**

Every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2, by providing the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure. The commissioner shall assess a penalty to the employer of $1,000 payable to the ~~special compensation fund~~ assigned risk safety account, if the information is not reported or is falsely reported.

Neither the state nor any governmental subdivision of the state shall enter into any contract for the doing of any public work before receiving from all other contracting parties acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

This section shall not be construed to create any liability on the part of the state or any governmental subdivision to pay workers' compensation benefits or to indemnify the special compensation fund, an employer, or insurer who pays workers' compensation benefits.

Sec. 20. Minnesota Statutes 1990, section 176.183, is amended to read:

176.183 **UNINSURED AND SELF-INSURED EMPLOYERS; BENEFITS TO EMPLOYEES AND DEPENDENTS; LIABILITY OF EMPLOYER.**

Subdivision 1. When any employee sustains an injury arising out of and in the course of employment while in the employ of an employer, other than the state or its political subdivisions, not insured or self-insured as provided for in this chapter, the employee or the employee's dependents shall nevertheless receive benefits as provided for in this chapter from the special compensation fund~~, and the commissioner has a cause of action against the employer for reimbursement for all moneys paid out or to be paid out, and, in the discretion of the court, as punitive damages an additional amount not exceeding 50 percent of all moneys paid out or to be paid out~~. As used in ~~this subdivision~~ subdivision 1 or 2, "employer" includes any owners or officers of ~~corporations~~ a corporation who ~~have legal~~ direct and control~~, either individually or jointly with another or others, of the payment of wages~~ the activities of employees. An action to recover ~~the moneys~~ benefits paid shall be instituted unless the commissioner determines that no recovery is possible. All moneys recovered shall be deposited in the general fund. There shall be no payment from the special compensation fund if there is liability for the injury under the provisions of section 176.215, by an insurer or self-insurer.

Subd. 2. Prior to issuing an order against the special compensation fund to pay compensation benefits to an employee, a compensation judge shall first make findings regarding the insurance status of the employer and its liability. The special compensation fund shall not be found liable in the absence of a finding of liability against the employer. Where the liable employer is found to be not insured or self-insured as provided for in this chapter, the compensation judge shall assess and order the employer to pay all compensation benefits to which the employee is entitled and a penalty in the amount of 60 percent of all compensation benefits ordered to be paid. An award issued against an employer shall constitute a lien for government services pursuant to section 514.67 on all property of the employer and shall be subject to the provisions of the revenue recapture act in chapter 270A. The special compensation fund may enforce the terms of that award in the same manner as a district court judgment. The commissioner of labor and industry, in accordance with the terms of the order awarding compensation, shall pay compensation to the employee or the employee's dependent from the special compensation fund. The commissioner of labor and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivision 1. The commissioner of finance shall upon proper certification reimburse the special compensation fund from the general fund appropriation provided for this purpose. The amount reimbursed shall be limited to the certified amount paid under this section or the appropriation made for this purpose, whichever is the lesser amount. Compensation paid under this section which is not reimbursed by the general fund shall remain a liability of the special compensation fund and shall be financed by the percentage assessed under section 176.129.

Subd. 3. (a) Notwithstanding subdivision 2, the commissioner may direct payment from the special compensation fund for compensation payable pursuant to subdivision 1, including benefits payable under sections 176.102 and 176.135, prior to issuance of an order of a compensation judge or the workers' compensation court of appeals directing payment or awarding compensation. Where payment is issued pursuant to a petition for a temporary order, the terms of any resulting order shall have the same status and be governed by the same provisions as an award issued pursuant to subdivision 2.

(b) The commissioner may suspend or terminate an order under clause (a) for good cause as determined by the commissioner.

Subd. 4. If the commissioner authorizes the special fund to commence payment ~~under this section~~ without the issuance of a temporary order, the commissioner shall serve by certified mail notice upon the employer and other interested parties of the intention to commence payment. This notice shall be served at least ten calendar days before commencing payment and shall be mailed to the last known address of the parties. The notice shall include a statement that failure of the employer to respond within ten calendar days of the date of service will be deemed acceptance by the employer of the proposed action by the commissioner and will be deemed a waiver of defenses the employer has to a subrogation or indemnity action by the commissioner. At any time prior to final determination of liability, the employer may appear as a party and present defenses the employer has, whether or not an appearance by the employer has previously been made in the matter. The commissioner has a cause of action against the employer to recover compensation paid by the special fund under this section.

Sec. 21. Minnesota Statutes 1990, section 176.185, subdivision 5a, is amended to read:

Subd. 5a. **PENALTY FOR IMPROPER WITHHOLDING.** An employer who violates subdivision 5 after notice from the commissioner is subject to a penalty of 200 percent of the amount withheld from or charged the employee. The penalty shall be imposed by the commissioner. Fifty percent of this penalty is payable to the ~~special compensation fund~~ assigned risk safety account and 50 percent is payable to the employee.

Sec. 22. Minnesota Statutes 1990, section 176.194, subdivision 4, is amended to read:

Subd. 4. **PENALTIES.** The penalties for violations of clauses (1) through (6) are as follows:

1st through 5th violation of each paragraph	written warning
6th through 10th violation of each paragraph	$2,500 per violation in excess of five
11th through 30th violation of each paragraph	$5,000 per violation in excess of ten

For violations of clauses (7) and (8), the penalties are:

1st through 5th violation of each paragraph	$2,500 per violation
6th through 30th violation of each paragraph	$5,000 per violation in excess of five

The penalties under this section may be imposed in addition to other penalties under this chapter that might apply for the same violation. The penalties under this section are assessed by the commissioner and are payable to the ~~special compensation fund~~ assigned risk safety account. A party may object to the penalty and request a formal hearing under section 176.85. If an entity has more than 30 violations within any 12-month period, in addition to the monetary penalties provided, the commissioner may refer the matter to the commissioner of commerce with recommendation for suspension or revocation of the entity's (a) license to write workers' compensation insurance; (b) license to administer claims on behalf of a self-insured, the assigned risk plan, or the Minnesota insurance guaranty association; (c) authority to self-insure; or (d) license to adjust claims. The commissioner of commerce shall follow the procedures specified in section 176.195.

Sec. 23. Minnesota Statutes 1990, section 176.194, subdivision 5, is amended to read:

Subd. 5. **RULES.** The commissioner may, by rules adopted in accordance with chapter 14, specify additional illegal, misleading, deceptive, ~~or~~ fraudulent practices or conduct which are subject to the penalties under this section.

Sec. 24. Minnesota Statutes 1990, section 176.221, subdivision 3, is amended to read:

Subd. 3. **PENALTY.** If the employer or insurer does not begin payment of compensation within the time limit prescribed under subdivision 1 or 8, the commissioner may assess a penalty, payable to the ~~special compensation fund~~ assigned risk safety account, which shall be a percentage of the amount of compensation to which the employee is entitled to receive up to the date compensation payment is made.

The amount of penalty shall be determined as follows:

Numbers of days late	Penalty
1 - 15	25 percent of compensation due, not to exceed $375,
16 - 30	50 percent of compensation due, not to exceed $1,140,
31 - 60	75 percent of compensation due, not to exceed $2,878,

61 or more	100 percent of compensation due, not to exceed $3,838.

The penalty under this section is in addition to any penalty otherwise provided by statute.

Sec. 25. Minnesota Statutes 1990, section 176.221, subdivision 3a, is amended to read:

Subd. 3a. **PENALTY.** In lieu of any other penalty under this section, the commissioner may assess a penalty of up to $1,000 payable to the assigned risk safety account for each instance in which an employer or insurer does not pay benefits or file a notice of denial of liability within the time limits prescribed under this section.

Sec. 26. **[176.222] REPORT ON COLLECTION AND ASSESSMENT OF FINES AND PENALTIES.**

The commissioner shall annually, by January 30, submit a report to the legislature detailing the assessment and collection of fines and penalties under this chapter on a fiscal year basis for the immediately preceding fiscal year and for as many prior years as the data is available.

Sec. 27. Minnesota Statutes 1990, section 176.231, subdivision 10, is amended to read:

Subd. 10. **FAILURE TO FILE REQUIRED REPORT, PENALTY.** If an employer, insurer, 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 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 ~~special compensation fund~~ assigned risk safety account.

Sec. 28. **[176.232] SAFETY COMMITTEES.**

Every public or private employer of more than 25 employees shall establish and administer a joint labor-management safety committee.

Every public or private employer of 25 or fewer employees shall establish and administer a safety committee if:

(1) the employer has a lost workday cases incidence rate in the top ten percent of all rates for employers in the same industry; or

(2) the workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a pure premium rate as reported by the workers' compensation rating association in the top 25 percent of premium rates for all classes.

The commissioner may adopt rules regarding the training of safety committee members and the operation of safety committees.

Sec. 29. Minnesota Statutes 1990, section 176.261, is amended to read:

176.261 **EMPLOYEE OF COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MAY ACT FOR AND ADVISE A PARTY TO A PROCEEDING.**

When requested by an employer or an employee or an employee's dependent, the commissioner of the department of labor and industry may designate one or more of the division employees to advise that party of rights under this chapter, and as far as possible to assist in adjusting differences between the parties. The person so designated may appear in person in any proceedings under this chapter as the representative or adviser of the party. In such case, the party need not be represented by an attorney at law.

Prior to advising an employee or employer to seek assistance outside of the department, the department must refer employers and employees seeking advice or requesting assistance in resolving a dispute to an attorney or rehabilitation and medical specialist employed by the department, whichever is appropriate.

The department must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers, and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively.

Sec. 30. **[176.86] FRAUD UNIT.**

The department shall establish a workers' compensation fraud unit to investigate fraudulent and other illegal practices of health care providers, employers, insurers, attorneys, employees, and others related to workers' compensation. The unit shall review files of the department and may conduct field investigations. If the department determines there is illegal activity, the commissioner must refer the case to the attorney general or other appropriate prosecuting authority. The attorney general and other prosecuting authorities must give high priority to reviewing and prosecuting cases referred to them by the commissioner under this section.

The attorney general shall train personnel of the department of labor and industry in effective investigative practices and in the requisites for successful prosecution of illegal activity under chapter 176.

Sec. 31. Minnesota Statutes 1990, section 176A.03, is amended by adding a subdivision to read:

Subd. 3. **COVERAGE OUTSIDE STATE.** Policies issued by the fund pursuant to this chapter may also provide workers' compensation coverage required under the laws of states other than Minnesota, including coverages commonly known as "all states coverage." The fund may apply for and obtain any licensure required in any other state in order to issue the coverage.

Sec. 32. **DEPARTMENT STUDY; DATA SHARING ON UNINSURED EMPLOYERS.**

The commissioner of labor and industry shall study the issue of whether there is data in the possession of other state or private entities that would assist the department in identifying employers that are not complying with the insurance requirements of Minnesota Statutes, chapter 176. The department shall report the results of its studies to the legislature by January 30, 1993, together with proposed legislation that would enable the department to obtain that information.

Sec. 33. **REPETITIVE MOTION STUDY; DEPARTMENT OF EMPLOYEE RELATIONS.**

The department of employee relations shall assess the number and severity of work-related repetitive motion injuries incurred by state employees. The assessment shall include carpal tunnel and related injuries. The department shall report the results of the assessment to the legislature by January 30, 1993.

In addition, the department shall develop a plan for a pilot project to reduce repetitive motion injuries for which it shall seek funding from the 1993 legislature.

Sec. 34. **INDEPENDENT CONTRACTORS; LEASED EMPLOYEES.**

The commissioner of labor and industry shall study the practice of employee leasing and declaration of independent contract status as devices to evade or reduce premiums for workers' compensation insurance.

The commissioner shall submit a report to the legislature by January 15, 1993, with the results of the study and proposals for legislative action.

Sec. 35. **MANDATED REDUCTIONS.**

(a) As a result of the workers' compensation law changes in this act and the resulting savings to the costs of Minnesota's workers' compensation system, an insurer's approved schedule of workers' compensation rates in effect on October 1, 1992, must be reduced by 16 percent and applied by the insurer to all policies with an effective date between October 1, 1992, and March 31, 1993. For purposes of this section, "insurer" includes the assigned risk plan, and "rates" include the rates approved by the commissioner of commerce for the assigned risk plan. The reduction mandated by this section must also be applied on a prorated basis to the unexpired portion of all workers' compensation policies on October 1, 1992. An insurer shall provide a written notice by November 1, 1992, to all workers' compensation policyholders having an unexpired policy

with the insurer as of October 1, 1992, that reads as follows: "As a result of the changes in the workers' compensation system enacted by the 1992 legislature, you are entitled to a prorated reduction of 16 percent on your current policy premium."

(b) No rate increases may be filed between April 1, 1992, and April 1, 1993.

(c) The commissioner of labor and industry shall survey Minnesota employers to determine if the mandated workers' compensation insurance rate reductions required under this section have been implemented by insurers, both as to amount and in a manner that is uniform and nondiscriminatory between employers having similar risks with respect to a particular occupational classification. The commissioner shall present a report detailing the findings and conclusions to the legislature by March 1, 1993.

Sec. 36. **REPEALER.**

Minnesota Statutes 1990, section 176.131, is repealed. The special compensation fund shall not reimburse an employer under Minnesota Statutes, section 176.131, for a subsequent injury occurring after June 30, 1992. The special compensation fund shall continue to reimburse employers for subsequent injuries occurring prior to July 1, 1992, and the commissioner of labor and industry shall continue to assess for those reimbursements under Minnesota Statutes, section 176.129.

Sec. 37. **EFFECTIVE DATE.**

Section 35 is effective the day following final enactment retroactive to April 1, 1992. Section 1 is effective for policies insuring liability for workers' compensation that are effective on or after October 1, 1992. The rest of this article is effective July 1, 1992.

ARTICLE 4

MEDICAL AND REHABILITATION

Section 1. Minnesota Statutes 1990, section 176.102, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** (a) This section applies only to vocational rehabilitation of injured employees and their spouses as provided under subdivision 1a. Physical rehabilitation of injured employees is considered treatment subject to section 176.135.

(b) Rehabilitation is intended to restore the injured employee~~, through physical and vocational rehabilitation,~~ so the employee may return to a job related to the employee's former employment or to a job in another work area which pro-

duces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.

Sec. 2. Minnesota Statutes 1990, section 176.102, subdivision 2, is amended to read:

Subd. 2. **ADMINISTRATORS.** The commissioner shall hire a director of rehabilitation services in the classified service. The commissioner shall monitor and supervise rehabilitation services, including, but not limited to, making determinations regarding the selection and delivery of rehabilitation services and the criteria used to approve qualified rehabilitation consultants and rehabilitation vendors. The commissioner may also make determinations regarding fees for rehabilitation services and shall by rule establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors. The commissioner shall annually review the fees and give notice of any adjustment in the State Register. An annual adjustment is not subject to chapter 14. By March 1, 1993, the commissioner shall report to the legislature on the status of the commission's monitoring of rehabilitation services. The commissioner may hire qualified personnel to assist in the commissioner's duties under this section and may delegate the duties and performance.

Sec. 3. Minnesota Statutes 1990, section 176.102, subdivision 4, is amended to read:

Subd. 4. **REHABILITATION PLAN; DEVELOPMENT.** (a) ~~An employer or insurer shall provide rehabilitation consultation by a qualified rehabilitation consultant or by another person permitted by rule to provide consultation to an injured employee within five days after the employee has 60 days of lost work time due to the personal injury, except as otherwise provided in this subdivision. Where an employee has incurred an injury to the back, the consultation shall be made within five days after the employee has 30 days of lost work time due to the injury. The lost work time in either case may be intermittent lost work time. If an employer or insurer has medical information at any time prior to the time specified in this subdivision that the employee will be unable to return to the job the employee held at the time of the injury rehabilitation consultation shall be provided immediately after receipt of this information.~~

~~For purposes of this section "lost work time" means only those days during which the employee would actually be working but for the injury. In the case of the construction industry, mining industry, or other industry where the hours and days of work are affected by seasonal conditions, "lost work time" shall be computed by using the normal schedule worked when employees are working full time.~~ A rehabilitation consultation must be provided by the employer to an injured employee upon request of the employee, the employer, or the commissioner. When the commissioner has received notice or information that an

New language is indicated by underline, deletions by ~~strikeout~~.

employee has sustained an injury that may be compensable under this chapter, the commissioner must notify the injured employee of the right to request a rehabilitation consultation to assist in return to work. The notice may be included in other information the commissioner gives to the employee under section 176.235, and must be highlighted in a way to draw the employee's attention to it. If a rehabilitation consultation is requested, the employer shall provide a qualified rehabilitation consultant. If the injured employee objects to the employer's selection, the employee may select a qualified rehabilitation consultant of the employee's own choosing within 60 days following the filing of a copy of the employee's rehabilitation plan with the commissioner. If the consultation indicates that rehabilitation services are appropriate under subdivision 1, the employer shall provide the services. If the consultation indicates that rehabilitation services are not appropriate under subdivision 1, the employer shall notify the employee of this determination within 14 days after the consultation.

(b) In order to assist the commissioner in determining whether or not to request rehabilitation consultation for an injured employee, an employer shall notify the commissioner whenever the employee's temporary total disability will likely exceed 13 weeks. The notification must be made within 90 days from the date of the injury or when the likelihood of at least a 13-week disability can be determined, whichever is earlier, and must include a current physician's report.

(c) The qualified rehabilitation consultant ~~appointed by the employer or insurer~~ shall disclose in writing at the first meeting or written communication with the employee any ownership interest or affiliation between the firm which employs the qualified rehabilitation consultant and the employer, insurer, adjusting or servicing company, including the nature and extent of the affiliation or interest.

The consultant shall also disclose to all parties any affiliation, business referral or other arrangement between the consultant or the firm employing the consultant and any other party ~~to~~, attorney, or health care provider involved in the case ~~, including any attorneys, doctors, or chiropractors~~.

~~If the employee objects to the employer's selection of a qualified rehabilitation consultant, the employee shall notify the employer and the commissioner in writing of the objection. The notification shall include the name, address, and telephone number of the qualified rehabilitation consultant chosen by the employee to provide rehabilitation consultation.~~

(d) After the initial provision or selection of a qualified rehabilitation consultant as provided under paragraph (a), the employee may ~~choose~~ request a different qualified rehabilitation consultant ~~as follows:~~

~~(1) once during the first 60 days following the first in-person contact between the employee and the original consultant;~~

~~(2) once after the 60-day period referred to in clause (1); and~~

~~(3) subsequent requests~~ which shall be ~~determined~~ granted or denied by the commissioner or compensation judge according to the best interests of the parties.

(e) The employee and employer shall enter into a program if one is prescribed in a rehabilitation plan within 30 days of the rehabilitation consultation if the qualified rehabilitation consultant determines that rehabilitation is appropriate. A copy of the plan, including a target date for return to work, shall be submitted to the commissioner within 15 days after the plan has been developed.

~~(b)~~ (f) If the employer does not provide rehabilitation consultation ~~as required by this section~~ requested under paragraph (a), the commissioner or compensation judge shall notify the employer that if the employer fails to ~~appoint~~ provide a qualified rehabilitation consultant ~~or other persons as permitted by clause (a)~~ within 15 days to conduct a rehabilitation consultation, the commissioner or compensation judge shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer unless the commissioner or compensation judge determines the consultation is not required.

~~(c)~~ (g) In developing a rehabilitation plan consideration shall be given to the employee's qualifications, including but not limited to age, education, previous work history, interest, transferable skills, and present and future labor market conditions.

~~(d)~~ (h) The commissioner or compensation judge may waive rehabilitation services under this section if the commissioner or compensation judge is satisfied that the employee will return to work in the near future or that rehabilitation services will not be useful in returning an employee to work.

Sec. 4. Minnesota Statutes 1990, section 176.102, subdivision 6, is amended to read:

Subd. 6. **PLAN, ELIGIBILITY FOR REHABILITATION, APPROVAL AND APPEAL.** (a) The commissioner or a compensation judge shall determine eligibility for rehabilitation services and shall review, approve, modify, or reject rehabilitation plans developed under subdivision 4. The commissioner or a compensation judge shall also make determinations regarding rehabilitation issues not necessarily part of a plan including, but not limited to, determinations regarding whether an employee is eligible for further rehabilitation and the benefits under subdivisions 9 and 11 to which an employee is entitled.

(b) A rehabilitation consultant must file a progress report on the plan with the commissioner six months after the plan is filed. The progress report must include a current estimate of the total cost and the expected duration of the plan. The commissioner may require additional progress reports. Based on the progress reports and available information, the commissioner may take actions including, but not limited to, redirecting, amending, suspending, or terminating the plan.

Sec. 5. Minnesota Statutes 1990, section 176.102, subdivision 9, is amended to read:

Subd. 9. **PLAN, COSTS.** (a) An employer is liable for the following rehabilitation expenses under this section:

~~(a)~~ (1) Cost of rehabilitation evaluation and preparation of a plan;

~~(b)~~ (2) Cost of all rehabilitation services and supplies necessary for implementation of the plan;

~~(c)~~ (3) Reasonable cost of tuition, books, travel, and custodial day care; and, in addition, reasonable costs of board and lodging when rehabilitation requires residence away from the employee's customary residence;

~~(d)~~ (4) Reasonable costs of travel and custodial day care during the job interview process;

~~(e)~~ (5) Reasonable cost for moving expenses of the employee and family if a job is found in a geographic area beyond reasonable commuting distance after a diligent search within the present community. Relocation shall not be paid more than once during any rehabilitation program, and relocation shall not be required if the new job is located within the same standard metropolitan statistical area as the employee's job at the time of injury. An employee shall not be required to relocate and a refusal to relocate shall not result in a suspension or termination of compensation under this chapter; and

~~(f)~~ (6) Any other expense agreed to be paid.

(b) Charges for services provided by a rehabilitation consultant or vendor must be submitted on a billing form prescribed by the commissioner. No payment for the services shall be made until the charges are submitted on the prescribed form.

(c) Except as provided in this paragraph, an employer is not liable for charges for services provided by a rehabilitation consultant or vendor unless the employer or its insurer receives a bill for those services within 45 days of the provision of the services. The commissioner or a compensation judge may order payment for charges not timely billed under this paragraph if the rehabilitation consultant or vendor can prove that the failure to submit the bill as required by this paragraph was due to circumstances beyond the control of the rehabilitation consultant or vendor. A rehabilitation consultant or vendor may not collect payment from any other person, including the employee, for bills that an employer is relieved from liability for paying under this paragraph.

Sec. 6. Minnesota Statutes 1990, 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. Insurers and self-insurers must assist the commissioner in this monitoring by reporting to the commissioner cases of suspected excessive, inappropriate, or unnecessary treatment. The commissioner shall report ~~the results of the monitoring~~ specific cases of suspected inappropriate, unnecessary, and excessive treatment to the medical services review board. ~~The commissioner may, either as a result of the monitoring or as a result of an investigation following receipt of a complaint, if the commissioner believes that any provider of health care services has violated any provision of this chapter or rules adopted under this chapter, initiate a contested case proceeding under chapter 14. In these cases,~~ The medical services review board shall ~~make the final decision following receipt of the report of an administrative law judge~~ review those cases and make a determination of whether there is inappropriate, unnecessary, or excessive treatment based on rules adopted by the commissioner in consultation with the medical services review board. The determination of the board is not subject to the contested case provisions of the administrative procedure act in chapter 14. An affected provider shall be given notice and an opportunity to be heard before the board prior to the board reporting its findings and conclusions. The board shall report its findings and conclusions to the commissioner. The findings and conclusions of the board are binding on the commissioner. The commissioner shall order a sanction if the board has concluded there was inappropriate, unnecessary, or excessive treatment. The commissioner in consultation with the medical services review board shall adopt rules defining standards of treatment including inappropriate, unnecessary, or excessive treatment and the sanctions to be imposed for inappropriate, unnecessary, or excessive treatment. The sanctions imposed may include, without limitation, a warning, a restriction on providing treatment, requiring preauthorization by the board for a plan of treatment, and suspension from receiving compensation for the provision of treatment under chapter 176. 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, but does not include the authority to make the initial determination of primary liability, except as provided by section 176.305.

Sec. 7. Minnesota Statutes 1990, section 176.103, is amended by adding a subdivision to read:

Subd. 2a. **APPEALS, EFFECT OF DECISION.** An order imposing sanctions on a health care provider under subdivision 2 may be appealed and has the effect provided by this subdivision.

A sanction becomes effective at the time the commissioner notifies the pro-

vider of the order of sanction. The notice shall advise the provider of the right to obtain review as provided in this subdivision. If mailed, the notice of order of sanction is deemed received three days after mailing to the last known address of the provider.

Within 30 days of receipt of a notice of order of sanction, a provider may request in writing a review by the commissioner of the order. Upon receiving a request the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. Within 15 days of receiving the request the commissioner shall report in writing the results of the review. The review provided in this subdivision is not subject to the contested case provisions of the administrative procedure act in chapter 14.

Within 30 days following receipt of the commissioner's decision on review, a provider may petition the workers' compensation court of appeals for review. The petition shall be filed with the court, together with proof of service of a copy on the commissioner, and accompanied by the standard filing fee for appeals from decisions of compensation judges. No responsive pleading shall be required of the commissioner, and no fees shall be charged for the appearance of the commissioner in the matter.

The petition shall be captioned in the full name of the provider making the petition as petitioner and the commissioner as respondent. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order of sanction.

The filing of the petition shall not stay the sanction. The court may order a stay of the balance of the sanction if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. To the extent applicable, review shall be conducted according to the rules of the court for review of decisions of compensation judges.

The scope of the hearing shall be limited to the issues of whether the medical services review board's findings were supported by substantial evidence in view of the record before the board and whether the sanction imposed by the commissioner was authorized by law or rule.

The workers' compensation court of appeals may adopt rules necessary to implement this subdivision.

Sec. 8. Minnesota Statutes 1990, section 176.103, subdivision 3, is amended to read:

Subd. 3. **MEDICAL SERVICES REVIEW BOARD; SELECTION; POWERS.** (a) There is created a medical services review board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person representing hospital administrators, one

physical therapist, and six physicians representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers or insurers, and one person representing the general public. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board may appoint from its members whatever subcommittees it deems appropriate.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one chiropractor, one physical therapist, one hospital administrator, three physicians, one employee representative, one employer or insurer representative, and one representative of the general public.

The board shall review clinical results for adequacy and recommend to the commissioner scales for disabilities and apportionment.

The board shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The board shall assist the commissioner in accomplishing public education.

In evaluating the clinical consequences of the services provided to an employee by a clinical health care provider, the board shall consider the following factors in the priority listed:

(1) the clinical effectiveness of the treatment;

(2) the clinical cost of the treatment; and

(3) the length of time of treatment.

The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

(b) The medical services review board may upon petition from the commissioner and after hearing, issue a penalty of $200 per violation, disqualify, or suspend a provider from receiving payment for services rendered under this chapter if a provider has violated any part of this chapter or rule adopted under this chapter. The hearings are initiated by the commissioner under the contested case procedures of chapter 14. The board shall make the final decision following receipt of the recommendation of the administrative law judge. The board's decision is appealable to the workers' compensation court of appeals in the manner provided by section 176.421.

(c) The board may adopt rules of procedure. The rules may be joint rules with the rehabilitation review panel.

Sec. 9. Minnesota Statutes 1990, section 176.135, subdivision 1, is amended to read:

Subdivision 1. **MEDICAL, PSYCHOLOGICAL, CHIROPRACTIC, PODIATRIC, SURGICAL, HOSPITAL.** (a) The employer shall furnish any medical, psychological, 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.

(b) The employer shall pay for the reasonable value of nursing services provided by a member of the employee's family in cases of permanent total disability.

(c) Exposure to rabies is an injury and an employer shall furnish preventative treatment to employees exposed to rabies.

(d) 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. For the purpose of this paragraph, "injury" includes damage wholly or in part to an artificial member. In case of the employer's inability or refusal seasonably to ~~do so~~ provide the items required to be provided under this paragraph, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same, including costs of copies of any medical records or medical reports that are in existence, obtained from health care providers, and that directly relate to the items for which payment is sought under this chapter, limited to the charges allowed by subdivision 7, and attorney fees incurred by the employee. ~~No action to recover the cost of copies may be brought until the commissioner adopts a schedule of reasonable charges under subdivision 7.~~ Attorney's fees shall be determined on an hourly basis according to the criteria in section 176.081, subdivision 5. ~~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.~~

~~(b)~~ (e) Both the commissioner and the compensation judges have authority to make determinations under this section in accordance with sections 176.106 and 176.305.

(f) An employer may require that the treatment and supplies required to be provided by an employer by this section be received in whole or in part from a managed care plan certified under section 176.1351 except as otherwise provided by that section.

Sec. 10. Minnesota Statutes 1990, section 176.135, subdivision 5, is amended to read:

Subd. 5. **OCCUPATIONAL DISEASE MEDICAL ELIGIBILITY.** Notwithstanding section 176.66, an employee who has contracted an occupational disease is eligible to receive compensation under this section even if the employee is not disabled from earning full wages at the work at which the employee was last employed.

Payment of compensation under this section shall be made by the employer and insurer on the date of the employee's last exposure to the hazard of the occupational disease. Reimbursement for medical benefits paid under this subdivision or subdivision 1a is allowed from the employer and insurer liable under section 176.66, subdivision 10, only in the case of disablement.

Sec. 11. Minnesota Statutes 1990, section 176.135, subdivision 6, is amended to read:

Subd. 6. **COMMENCEMENT OF PAYMENT.** As soon as reasonably possible, and no later than 30 calendar days after receiving the bill, the employer or insurer shall pay the charge or any portion of the charge which is not denied, or deny all or a part of the charge ~~on the basis of excessiveness or noncompensability, or specify the additional data needed,~~ with written notification to the employee and the provider explaining the basis for denial. All or part of a charge must be denied if any of the following conditions exists:

(1) the injury or condition is not compensable under this chapter;

(2) the charge or service is excessive under this section or section 176.136;

(3) the charges are not submitted on the prescribed billing form; or

(4) additional medical records or reports are required under subdivision 7 to substantiate the nature of the charge and its relationship to the work injury.

If payment is denied under clause (3) or (4), the employer or insurer shall reconsider the charges in accordance with this subdivision within 30 calendar days after receiving additional medical data, a prescribed billing form, or documentation of enrollment or certification as a provider.

Sec. 12. Minnesota Statutes 1990, section 176.135, subdivision 7, is amended to read:

Subd. 7. **MEDICAL BILLS AND RECORDS.** Health care providers shall submit to the insurer an itemized statement of charges on a billing form prescribed by the commissioner. Health care providers ~~other than hospitals~~ shall also submit copies of medical records or reports that substantiate the nature of the charge and its relationship to the work injury~~, provided, however, that hospitals must submit any copies of records or reports requested under subdivision 6~~. Health care providers may charge for copies of any records or reports that are in existence and directly relate to the items for which payment is sought under this chapter. ~~Charges for copies provided under this subdivision shall be reasonable.~~ The commissioner shall adopt a schedule of reasonable charges by ~~emergency rules~~ rule.

A health care provider shall not collect, attempt to collect, refer a bill for collection, or commence an action for collection against the employee, employer, or any other party until the information required by this section has been furnished.

A United States government facility rendering health care services to veterans is not subject to the uniform billing form requirements of this subdivision.

Sec. 13. **[176.1351] MANAGED CARE.**

Subdivision 1. **APPLICATION.** Any person or entity, other than a workers' compensation insurer or an employer for its own employees, may make written application to the commissioner to have a plan certified that provides management of quality treatment to injured workers for injuries and diseases compensable under this chapter. Specifically, and without limitation, an entity licensed under chapter 62C or 62D or a preferred provider organization that is subject to chapter 72A is eligible for certification under this section. Each application for certification shall be accompanied by a reasonable fee prescribed by the commissioner. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the commissioner prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the commissioner may prescribe. The information shall include, but not be limited to:

(1) a list of the names of all health care providers who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

(2) a description of the places and manner of providing services under the plan.

Subd. 2. **CERTIFICATION.** The commissioner shall certify a managed care plan if the commissioner finds that the plan:

(1) proposes to provide quality services that meet uniform treatment standards prescribed by the commissioner and all medical and health care services that may be required by this chapter in a manner that is timely, effective, and convenient for the worker;

(2) is reasonably geographically convenient to employees it serves;

(3) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(4) provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment, and excludes participation in the plan by those individuals who violate these treatment standards;

(5) provides a procedure for the resolution of medical disputes;

(6) provides aggressive case management for injured workers and provides a program for early return to work and cooperative efforts by the workers, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(7) provides a timely and accurate method of reporting to the commissioner necessary information regarding medical and health care service cost and utilization to enable the commissioner to determine the effectiveness of the plan;

(8) authorizes workers to receive compensable treatment from a health care provider who is not a member of the managed care plan, if that provider maintains the employee's medical records and has a documented history of treatment with the employee and agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the health care provider agrees to comply with all the rules, terms, and conditions of the managed care plan;

(9) authorizes necessary emergency medical treatment for an injury provided by a health care provider not a part of the managed care plan;

(10) does not discriminate against or exclude from participation in the plan any category of health care provider and includes an adequate number of each category of health care providers to give workers convenient geographic accessibility to all categories of providers and adequate flexibility to choose health care providers from among those who provide services under the plan;

(11) provides an employee the right to change health care providers under the plan at least once; and

(12) complies with any other requirement the commissioner determines is necessary to provide quality medical services and health care to injured workers.

The commissioner may accept findings, licenses, or certifications of other state agencies as satisfactory evidence of compliance with a particular requirement of this subdivision.

Subd. 3. **DISPUTE RESOLUTION.** An employee must exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the commissioner or a compensation judge on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan on the issue of a rating for a disability, the employee may seek a disability rating from a health care provider outside of the managed care organization. The employer is liable for the reasonable fees of the outside provider as limited by the medical fee schedule adopted under this chapter.

Subd. 4. **ACCESS TO ALL HEALTH CARE DISCIPLINES.** The commissioner may refuse to certify or may revoke or suspend the certification of a

managed care plan that unfairly restricts direct access within the managed care plan to any health care provider profession. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the commissioner has adopted standards of treatment, the standards adopted by the commissioner.

Subd. 5. **REVOCATION, SUSPENSION, AND REFUSAL TO CERTIFY.** The commissioner shall refuse to certify or shall revoke or suspend the certification of a managed care plan if the commissioner finds that the plan for providing medical or health care services fails to meet the requirements of this section, or service under the plan is not being provided in accordance with the terms of a certified plan.

Subd. 6. **RULES.** The commissioner may adopt emergency or permanent rules necessary to implement this section.

Sec. 14. Minnesota Statutes 1990, section 176.136, subdivision 1, is amended to read:

Subdivision 1. **SCHEDULE.** (a) The commissioner shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups.

(b) The procedures established by the commissioner ~~shall~~ must limit, in accordance with subdivisions 1a, 1b, and 1c, the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135~~, based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing~~. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive ~~shall~~ must be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures ~~shall~~ must incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to insure that quality hospital care is available to injured employees.

Sec. 15. Minnesota Statutes 1990, section 176.136, is amended by adding a subdivision to read:

Subd. 1a. **RELATIVE VALUE FEE SCHEDULE.** The liability of an employer for services included in the medical fee schedule is limited to the maximum fee allowed by the schedule in effect on the date of the medical service, or the provider's actual fee, whichever is lower. The medical fee schedule effective

on October 1, 1991, shall remain in effect until the commissioner adopts a new schedule by permanent rule. The commissioner shall adopt permanent rules regulating fees allowable for medical, chiropractic, podiatric, surgical, and other health care provider treatment or service, including those provided to hospital outpatients, by implementing a relative value fee schedule to be effective on October 1, 1993. The commissioner may adopt by reference the relative value fee schedule adopted for the federal Medicare program or a relative value fee schedule adopted by other federal or state agencies. The relative value fee schedule shall contain reasonable classifications including, but not limited to, classifications that differentiate among health care provider disciplines. The conversion factors for the original relative value fee schedule must reasonably reflect a 15 percent overall reduction from the medical fee schedule most recently in effect. The reduction need not be applied equally to all treatment or services, but must represent a gross 15 percent reduction.

After permanent rules have been adopted to implement this section, the conversion factors must be adjusted annually on October 1 by no more than the percentage change computed under section 176.645, but without the annual cap provided by that section. The commissioner shall annually give notice in the State Register of the adjusted conversion factors. This notice shall be in lieu of the requirements of chapter 14.

Sec. 16. Minnesota Statutes 1990, section 176.136, is amended by adding a subdivision to read:

Subd. 1b. **LIMITATION OF LIABILITY.** (a) The liability of the employer for treatment, articles, and supplies provided to an employee while an inpatient or outpatient at a small hospital shall be the hospital's usual and customary charge, unless the charge is determined by the commissioner or a compensation judge to be unreasonably excessive. A "small hospital," for purposes of this paragraph, is a hospital which has 100 or fewer licensed beds.

(b) The liability of the employer for the treatment, articles, and supplies that are not limited by subdivision 1a or 1c or paragraph (a) shall be limited to 85 percent of the provider's usual and customary charge, or 85 percent of the prevailing charges for similar treatment, articles, and supplies furnished to an injured person when paid for by the injured person, whichever is lower. On this basis, the commissioner or compensation judge may determine the reasonable value of all treatment, services, and supplies, and the liability of the employer is limited to that amount.

Sec. 17. Minnesota Statutes 1990, section 176.136, is amended by adding a subdivision to read:

Subd. 1c. **CHARGES FOR INDEPENDENT MEDICAL EXAMINATIONS.** The commissioner shall adopt rules that reasonably limit amounts which may be charged for, or in connection with, independent or adverse medical examinations requested by any party, including the amount that may be charged for depositions, witness fees, or other expenses. No party may pay fees above the amount in the schedule.

Sec. 18. Minnesota Statutes 1990, section 176.136, subdivision 2, is amended to read:

Subd. 2. **EXCESSIVE FEES.** If the employer or insurer determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in excess of the amount payable under this chapter unless the commissioner, compensation judge, or court of appeals determines otherwise. In such a case, the health care provider may initiate an action under this chapter for recovery of the amounts deemed excessive by the employer or insurer, but the employer or insurer shall have the burden of proving excessiveness.

A charge for a health service or medical service is excessive if it:

(1) exceeds the maximum permissible charge pursuant to subdivision 1, 1a, 1b, or 1c;

(2) is for a service provided at a level, duration, or frequency that is excessive, based upon accepted medical standards for quality health care and accepted rehabilitation standards;

(3) is for a service that is outside the scope of practice of the particular provider or is not generally recognized within the particular profession of the provider as of therapeutic value for the specific injury or condition treated; or

(4) is otherwise deemed excessive or inappropriate pursuant to rules adopted pursuant to this chapter.

Sec. 19. Minnesota Statutes 1990, section 176.137, subdivision 5, is amended to read:

Subd. 5. An employee is limited to ~~$30,000~~ $60,000 under this section for each personal injury.

Sec. 20. Minnesota Statutes 1990, section 176.155, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYER'S PHYSICIAN.** The injured employee must submit to examination by the employer's physician, if requested by the employer, and at reasonable times thereafter upon the employer's request. The examination must be scheduled at a location within 150 miles of the employee's residence unless the employer can show cause to the department to order an examination at a location further from the employee's residence. The employee is entitled upon request to have a personal physician present at any such examination. Each party shall defray the cost of that party's physician. Any report or written statement made by the employer's physician as a result of an examination of the employee, regardless of whether the examination preceded the injury or was made subsequent to the injury, shall be made available, upon request and

without charge, to the injured employee or representative of the employee. The employer shall pay reasonable travel expenses incurred by the employee in attending the examination including mileage, parking, and, if necessary, lodging and meals. The employer shall also pay the employee for any lost wages resulting from attendance at the examination. A self-insured employer or insurer who is served with a claim petition pursuant to section 176.271, subdivision 1, or 176.291, shall schedule any necessary examinations of the employee, if an examination by the employer's physician or health care provider is necessary to evaluate benefits claimed. The examination shall be completed and the report of the examination shall be served on the employee and filed with the commissioner within 120 days of service of the claim petition.

No evidence relating to the examination or report shall be received or considered by the commissioner, a compensation judge, or the court of appeals in determining any issues unless the report has been served and filed as required by this section, unless a written extension has been granted by the commissioner or compensation judge. The commissioner or a compensation judge shall extend the time for completing the adverse examination and filing the report upon good cause shown. The extension must not be for the purpose of delay and the insurer must make a good faith effort to comply with this subdivision. Good cause shall include but is not limited to:

(1) that the extension is necessary because of the limited number of physicians or health care providers available with expertise in the particular injury or disease, or that the extension is necessary due to the complexity of the medical issues, or

(2) that the extension is necessary to gather additional information which was not included on the petition as required by section 176.291.

Sec. 21. Minnesota Statutes 1990, section 176.83, subdivision 5, is amended to read:

Subd. 5. ~~EXCESSIVE~~ TREATMENT STANDARDS FOR MEDICAL SERVICES. In consultation with the medical services review board or the rehabilitation review panel, the commissioner shall adopt emergency and permanent rules establishing standards and procedures for ~~determining~~ health care provider treatment. The rules shall apply uniformly to all providers including those providing managed care under section 176.1351. The rules shall be used to determine whether a provider of health care services and rehabilitation services, including a provider of medical, chiropractic, podiatric, surgical, hospital or other services, is performing procedures or providing services at a level or with a frequency that is excessive, unnecessary, or inappropriate based upon accepted medical standards for quality health care and accepted rehabilitation standards.

The rules shall include, but are not limited to, the following:

(1) criteria for diagnosis and treatment of the most common work-related injuries including, but not limited to, low back injuries and upper extremity repetitive trauma injuries;

(2) criteria for surgical procedures including, but not limited to, diagnosis, prior conservative treatment, supporting diagnostic imaging and testing, and anticipated outcome criteria;

(3) criteria for use of appliances, adoptive equipment, and use of health clubs or other exercise facilities;

(4) criteria for diagnostic imaging procedures;

(5) criteria for inpatient hospitalization; and

(6) criteria for treatment of chronic pain.

If it is determined by the payer that the level, frequency or cost of a procedure or service of a provider is excessive, unnecessary, or inappropriate according to the standards established by the rules, the provider shall not be paid for the ~~excessive~~ procedure, service, or cost by an insurer, self-insurer, or group self-insurer, and the provider shall not be reimbursed or attempt to collect reimbursement for the ~~excessive~~ procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program unless the commissioner or compensation judge determines at a hearing or administrative conference that the level, frequency, or cost was not excessive in which case the insurer, self-insurer, or group self-insurer shall make the payment deemed reasonable.

A ~~health or~~ rehabilitation provider who is determined by the rehabilitation review panel ~~or medical services review~~ board, after hearing, to be consistently performing procedures or providing services at an excessive level or cost may be prohibited from receiving any further reimbursement for procedures or services provided under this chapter. A prohibition imposed on a provider under this subdivision may be grounds for revocation or suspension of the provider's license or certificate of registration to provide health care or rehabilitation service in Minnesota by the appropriate licensing or certifying body. The medical services review board shall review excessive, inappropriate, or unnecessary health care provider treatment under section 176.103, subdivision 2.

~~The rules adopted under this subdivision shall require insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this clause.~~

Sec. 22. Minnesota Statutes 1990, section 176.83, is amended by adding a subdivision to read:

Subd. 5a. **REPORTING.** Rules requiring insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this chapter.

Sec. 23. **UTILIZATION OF HIGH TECHNOLOGY MEDICAL PROCEDURES.**

The commissioner of labor and industry shall appoint a committee to study the utilization of high technology medical procedures for treatment of injuries under Minnesota Statutes, chapter 176. The committee must include physicians, hospital representatives, medical device manufacturers, purchasers, consumers, and ethicists. The study must specifically examine excessive use of technology. The commissioner shall report the results of the study together with any proposals for legislation to the legislature by January 30, 1993.

Sec. 24. **MEDICAL COVERAGE STUDY.**

The commissioners of commerce and labor and industry shall study the feasibility of providing medical coverage currently furnished through the workers' compensation system through other health insurance mechanisms including group health and universal health coverage plans. The study shall particularly focus on the concept known as 24-hour coverage. The commissioners shall report the results of their study with specific recommendations to the legislature by February 1, 1993.

Sec. 25. **MANAGED CARE; LEGISLATIVE INTENT.**

It is the intent of the legislature that the commissioner of labor and industry proceed with certifying managed care organizations as expeditiously as possible. Any rules or procedures the commissioner adopts must be designed to assist in the formation of managed care organizations while ensuring quality managed care to injured employees.

Sec. 26. **REPEALER.**

Minnesota Statutes 1990, sections 176.135, subdivision 3; and 176.136, subdivision 5, are repealed.

Sec. 27. **EFFECTIVE DATE.**

Section 13 is effective the day following final enactment. The authority to adopt emergency rules granted under section 21 is effective the day following final enactment and expires January 1, 1994. The rest of this article is effective October 1, 1992.

ARTICLE 5

SELF-INSURANCE

Section 1. Minnesota Statutes 1990, section 79A.02, is amended by adding a subdivision to read:

Subd. 3. **AUDIT OF SELF-INSURANCE APPLICATION.** (a) The self-insurer's security fund shall retain a certified public accountant who shall perform services for, and report directly to, the commissioner of commerce. The

certified public accountant shall review each application to self-insure, including the applicant's financial data. The certified public accountant shall provide a report to the commissioner of commerce indicating whether the applicant has met the requirements of section 79A.03, subdivisions 2 and 3. Additionally, the certified public accountant shall provide advice and counsel to the commissioner about relevant facts regarding the applicant's financial condition.

(b) If the report of the certified public accountant is used by the commissioner as the basis for the commissioner's determination regarding the applicant's self-insurance status, the certified public accountant shall be made available to the commissioner for any hearings or other proceedings arising from that determination.

(c) The commissioner shall provide the advisory committee with the summary report by the certified public accountant and any financial data in possession of the department of commerce that is otherwise available to the public.

The cost of the review shall be the obligation of the self-insurer's security fund.

Sec. 2. Minnesota Statutes 1990, section 79A.02, is amended by adding a subdivision to read:

Subd. 4. **RECOMMENDATIONS TO COMMISSIONER REGARDING REVOCATION.** After each fifth anniversary from the date each individual and group self-insurer becomes certified to self-insure, the committee shall review all relevant financial data filed with the department of commerce that is otherwise available to the public and make a recommendation to the commissioner about whether each self-insurer's certificate should be revoked.

Sec. 3. Minnesota Statutes 1990, section 79A.03, subdivision 3, is amended to read:

Subd. 3. **NET WORTH.** ~~Each individual self-insurer shall have and maintain a net worth at least equal to the greater of ten times the retention limit selected with the workers' compensation reinsurance association or one-third the amount of the self-insurer's current annual modified premium. The requirements of this subdivision shall be modified if the self-insurer can demonstrate through a reinsurance program, other than coverage provided by the workers' compensation reinsurance association, that it can pay expected losses without endangering the financial stability of the company.~~ Each individual self-insurer's net worth, as presented on its audited balance sheet filed with the department of commerce, shall equal at least ten percent of the entity's total assets and shall equal at least ten times the retention level selected with the workers' compensation reinsurance association.

Sec. 4. Minnesota Statutes 1990, section 79A.03, subdivision 4, is amended to read:

Subd. 4. **ASSETS, NET WORTH, AND LIQUIDITY.** (a) Each individual self-insurer shall have and maintain sufficient assets, net worth, and liquidity to promptly and completely meet all of its obligations that may arise under chapter 176 or this chapter. In determining whether a self-insurer meets this requirement, the commissioner shall consider the self-insurer's current ratio; its long-term and short-term debt to equity ratios; its net worth; financial characteristics of the particular industry in which the self-insurer is involved; any recent changes in the management and ownership of the ~~company~~ self-insurer; any excess insurance purchased by the self-insurer from a licensed company or an authorized surplus line carrier, other than excess insurance from the workers' compensation reinsurance association; any other financial data submitted to the commissioner by the ~~company~~ self-insurer; and the ~~company's~~ self-insurer's workers' compensation experience for the last four years. Notwithstanding any other provision of this chapter, the commissioner may deny an application for self-insurance authority or terminate existing self-insurance authority if the applicant or self-insurer does not have sufficient assets, net worth, and liquidity to promptly and completely meet all of its self-insurance obligations.

(b) An individual self-insurer must have had positive net income as shown on audited income statements filed with the department of commerce during three of the last five years and cumulatively over the five-year period. If the self-insurer has been in existence less than five years, it must have had cumulative net income during the period of existence and in the most recent year.

(c) An individual self-insurer must have had cash generated from operations as shown on the audited statements of cash flows filed with the department of commerce during three of the last five years and cumulatively over the five-year period. If the self-insurer has been in existence less than five years, it shall have had cumulative cash generated from operations during the period of existence and in the most recent year.

(d) No entity shall be admitted as an individual self-insurer, or be allowed to continue its self-insurance authority, if the audit report for the most recent year includes an explanatory paragraph stating that the auditor has concluded that there is substantial doubt about the entity's ability to continue as a going concern.

Sec. 5. Minnesota Statutes 1990, section 79A.03, subdivision 7, is amended to read:

Subd. 7. **FINANCIAL STANDARDS.** A group proposing to self-insure shall have and maintain:

(a) A combined net worth of all of the members of an amount at least equal to the greater of ten times the retention selected with the workers' compensation reinsurance association or one-third of the current annual modified premium of the members. ~~The requirements of this paragraph shall be modified if the self-insurer can demonstrate that through excess insurance, other than coverage provided by the workers' compensation reinsurance association, it can pay expected losses.~~

(b) Sufficient assets, net worth, and liquidity to promptly and completely meet all obligations of its members under chapter 176 or this chapter. In determining whether a group is in sound financial condition, consideration shall be given to the combined net worth of the member companies; the consolidated long-term and short-term debt to equity ratios of the member companies; any excess insurance other than reinsurance with the workers' compensation reinsurance association, purchased by the group from an insurer licensed in Minnesota or from an authorized surplus line carrier; other financial data requested by the commissioner or submitted by the group; and the combined workers' compensation experience of the group for the last four years.

Sec. 6. Minnesota Statutes 1990, section 79A.03, subdivision 9, is amended to read:

Subd. 9. **FILING REPORTS.** (a) Incurred losses, paid and unpaid, specifying indemnity and medical losses by classification, payroll by classification, and current estimated outstanding liability for workers' compensation shall be reported to the commissioner by each self-insurer on a calendar year basis, in a manner and on forms available from the commissioner. Payroll information must be filed by April 1 of the following year, and loss information and total workers' compensation liability must be filed by August 1 of the following year.

(b) Each self-insurer shall, under oath, attest to the accuracy of each report submitted pursuant to paragraph (a). Upon sufficient cause, the commissioner shall require the self-insurer to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the commissioner, based on generally accepted accounting principles and generally accepted auditing standards, and supported by an actuarial review and opinion of the future contingent liabilities. The basis for sufficient cause shall include the following factors: where the losses reported appear significantly different from similar types of businesses; where major changes in the reports exist from year to year, which are not solely attributable to economic factors; or where the commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the losses and payroll of that employer. If any discrepancy is found, the commissioner shall require changes in the self-insurer's or workers' compensation service company record keeping practices.

(c) With the annual loss report due August 1, each self-insurer shall report to the commissioner any workers' compensation claim from the previous year where the full, undiscounted value is estimated to exceed $50,000, in a manner and on forms prescribed by the commissioner.

(d) Each individual self-insurer shall, within four months after the end of its fiscal year, annually file with the commissioner its latest 10K report required by the Securities and Exchange Commission. If an individual self-insurer does not prepare a 10K report, it shall file an annual certified financial statement, together with such other financial information as the commissioner may require to substantiate data in the financial statement.

(e) ~~Each group self-insurer shall, within four months after the end of the fiscal year for that group, annually file a statement showing the combined net worth of its members based upon an accounting review performed by a certified public accountant, together with such other financial information the commissioner may require to substantiate data in the group's summary statement.~~ Each member of the group shall, within four months after the end of each fiscal year for that group, file the most recent annual financial statement, reviewed by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services, Volume 2, the American Institute of Certified Public Accountants Professional Standards, or audited in accordance with generally accepted auditing standards, together with such other financial information the commissioner may require. In addition, the group shall file, within four months after the end of each fiscal year for that group, combining financial statements of the group members, compiled by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services, Volume 2, the American Institute of Certified Public Accountants Professional Standards. The combining financial statements shall include, but not be limited to, a balance sheet, income statement, statement of changes in net worth, and statement of cash flow. Each combining financial statement shall include a column for each individual group member along with a total column.

Where a group has 50 or more members, the group shall file, in lieu of the combining financial statements, a combined financial statement showing only the total column for the entire group's balance sheet, income statement, statement of changes in net worth, and statement of cash flow. Additionally, the group shall disclose, for each member, the total assets, net worth, revenue, and income for the most recent fiscal year. The combining and combined financial statements may omit all footnote disclosures.

(f) In addition to the financial statements required by paragraphs (d) and (e), interim financial statements or 10Q reports required by the Securities and Exchange Commission may be required by the commissioner upon an indication that there has been deterioration in the self-insurer's financial condition, including a worsening of current ratio, lessening of net worth, net loss of income, the downgrading of the company's bond rating, or any other significant change that may adversely affect the self-insurer's ability to pay expected losses. Any self-insurer that files an 8K report with the Securities and Exchange Commission shall also file a copy of the report with the commissioner within 30 days of the filing with the Securities and Exchange Commission.

Sec. 7. Minnesota Statutes 1990, section 79A.04, subdivision 2, is amended to read:

Subd. 2. **MINIMUM DEPOSIT.** The minimum deposit is 110 percent of the private self-insurer's estimated future liability. Up to ten percent of that deposit may be used to secure payment of all administrative and legal costs relating to or arising from the employer's self-insuring. As used in this section, "private self-insurers' estimated future liability" means the private self-insurers'

total of estimated future liability as determined by a member of the casualty actuarial society ~~every two years for nongroup member private self-insurers, and~~ every year for group member private self-insurers and, for a nongroup member private self-insurer's authority to self-insure, every year for the first five years. After the first five years, the nongroup member's total shall be as determined by a member of the casualty actuarial society every two years, and each such actuarial study shall include a projection of future losses during the two-year period until the next scheduled actuarial study, less payments anticipated to be made during that time. Estimated future liability is determined by first taking the total amount of the self-insured's future liability of workers' compensation claims and then deducting the total amount which is estimated to be returned to the self-insurer from any specific excess insurance coverage, aggregate excess insurance coverage, and any supplementary benefits or second injury benefits which are estimated to be reimbursed by the special compensation fund. Supplementary benefits or second injury benefits will not be reimbursed by the special compensation fund unless the special compensation fund assessment pursuant to section 176.129 is paid and the reports required thereunder are filed with the special compensation fund. In the case of surety bonds, bonds shall secure administrative and legal costs in addition to the liability for payment of compensation reflected on the face of the bond. In no event shall the security be less than the last retention limit selected by the self-insurer with the workers' compensation reinsurance association. The posting or depositing of security pursuant to this section shall release all previously posted or deposited security from any obligations under the posting or depositing and any surety bond so released shall be returned to the surety. Any other security shall be returned to the depositor or the person posting the bond.

Sec. 8. Minnesota Statutes 1990, section 79A.06, subdivision 5, is amended to read:

Subd. 5. **PRIVATE EMPLOYERS WHO HAVE CEASED TO BE SELF-INSURED.** Private employers who have ceased to be private self-insurers shall discharge their continuing obligations to secure the payment of compensation which is accrued during the period of self-insurance, for purposes of Laws 1988, chapter 674, sections 1 to 21, by compliance with all of the following obligations of current certificate holders:

(1) Filing reports with the commissioner to carry out the requirements of this chapter;

(2) Depositing and maintaining a security deposit for accrued liability for the payment of any compensation which may become due, pursuant to chapter 176. However, if a private employer who has ceased to be a private self-insurer purchases an insurance policy from an insurer authorized to transact workers' compensation insurance in this state which provides coverage of all claims for compensation arising out of injuries occurring during the period the employer was self-insured, whether or not reported during that period, the policy will discharge the obligation of the employer to maintain a security deposit for the pay-

ment of the claims covered under the policy. The policy may not be issued by an insurer unless it has previously been approved as to form and substance by the commissioner; and

(3) Paying within 30 days all assessments of which notice is sent by the security fund, for a period of seven years from the last day its certificate of self-insurance was in effect. Thereafter, the private employer who has ceased to be a private self-insurer may either: (a) continue to pay within 30 days all assessments of which notice is sent by the security fund until it has no incurred liabilities for the payment of compensation arising out of injuries during the period of self-insurance; or (b) pay the security fund a cash payment equal to four percent of the net present value of all remaining incurred liabilities for the payment of compensation under sections 176.101 and 176.111 as certified by a member of the casualty actuarial society. Assessments shall be based on the benefits paid by the employer during the ~~last full~~ calendar year ~~of self-insurance on claims incurred during that year~~ immediately preceding the calendar year in which the employer's right to self-insure is terminated or withdrawn.

In addition to proceedings to establish liabilities and penalties otherwise provided, a failure to comply may be the subject of a proceeding before the commissioner. An appeal from the commissioner's determination may be taken pursuant to the contested case procedures of chapter 14 within 30 days of the commissioner's written determination.

Any current or past member of the self-insurers' security fund is subject to service of process on any claim arising out of chapter 176 or this chapter in the manner provided by section 303.13, subdivision 1, clause (3), or as otherwise provided by law. The issuance of a certificate to self-insure to the private self-insured employer shall be deemed to be the agreement that any process which is served in accordance with this section shall be of the same legal force and effect as if served personally within this state.

Sec. 9. **[79A.071] CUSTODIAL ACCOUNTS.**

Subdivision 1. **DEPOSIT.** All securities shall be deposited with the state treasurer or in a custodial account with a depository institution acceptable to the state treasurer. Surety bonds shall be filed with the commissioner. The commissioner and the state treasurer may sell or collect, in the case of default of the employer or fund, the amount that yields sufficient funds to pay compensation due under the workers' compensation act.

Subd. 2. **ASSIGNMENT.** Securities in physical form deposited with the state treasurer must bear the following assignment, which shall be signed by an officer, partner, or owner: "Assigned to the state of Minnesota for the benefit of injured employees of the self-insured employer under the Minnesota workers' compensation act." Any securities held in a custodial account, whether in physical form, book entry, or other form, need not bear the assignment language. The instrument or contract creating and governing any custodial account must contain the following assignment language: "This account is assigned to the state

treasurer by the Company to pay compensation and perform the obligations of employers imposed under Minnesota Statutes, chapter 176. A depositor or other party has no right, title, or interest in the security deposited in the account until released by the state."

Subd. 3. **CUSTODY.** All securities in physical form on deposit with the state treasurer and surety bonds on deposit shall remain in the custody of the state treasurer or the commissioner for a period of time dictated by the applicable statute of limitations provided in the workers' compensation act. All original instruments and contracts creating and governing custodial accounts shall remain with the state treasurer or the commissioner for a period of time dictated by the applicable statute of limitations provided in the workers' compensation act.

Subd. 4. **RELEASE.** No securities in physical form on deposit with the state treasurer or custodial accounts assigned to the state shall be released without an order from the commissioner.

Subd. 5. **EXCHANGING OR REPLACING.** Any securities deposited with the state treasurer or with a custodial account assigned to the state treasurer or surety bonds held by the commissioner may be exchanged or replaced by the depositor with other acceptable securities or surety bonds of like amount so long as the market value of the securities or amount of the surety bond equals or exceeds the amount of deposit required. If securities are replaced by a surety bond, the self-insurer must maintain securities on deposit in an amount sufficient to meet all outstanding workers' compensation liability arising during the period covered by the deposit of the replaced securities, subject to the limitations on maximum security deposits established in Minnesota Rules.

Sec. 10. **REPEALER.**

Minnesota Rules, part 2780.0400, subparts 2, 3, 6, 7, and 8, are repealed.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 10 are effective August 1, 1992. For self-insurers that have Minnesota self-insurance authority on August 1, 1992, section 4, paragraphs (b), (c), and (d), are effective August 1, 1995.

ARTICLE 6

INSURANCE REGULATION

Section 1. Minnesota Statutes 1990, section 79.58, is amended by adding a subdivision to read:

Subd. 3. **FLEX RATING.** (a) Whenever an insurer files a change in its existing rate level that is greater than eight percent in a 12-month period, the commissioner may hold a hearing to determine if the rate is excessive. The hearing must be conducted as provided under chapter 14. The commissioner shall give notice of intent to hold a hearing within 60 days of the filing of the change. The commissioner of labor and industry may appear as an interested party at the hearing. At the hearing, the insurer has the responsibility of showing the rate is not excessive. The rate is effective unless it is determined as a result of the hearing that the rate is excessive. The disapproval of a rate under this subdivision must be done in the same manner as provided under section 70A.11.

(b) This subdivision applies only to changes resulting from an insurer's utilization of either (1) the pure premium base rate level filed by any data service organization plus the insurer's loading for expenses and profit, or (2) the insurer's own filed rate levels. This subdivision does not apply to any changes resulting from assessments for the assigned risk plan, reinsurance association, guarantee fund, special compensation fund, benefit level changes, or other rates or rating plans utilized by an insurer.

Presented to the governor April 17, 1992

Signed by the governor April 28, 1992, 8:40 a.m.

CHAPTER 511—H.F.No. 2940

An act relating to the financing and operation of government in Minnesota; revising the operation of the local government trust fund; modifying the administration, computation, collection, and enforcement of taxes; imposing taxes; changing tax rates, bases, credits, exemptions, withholding, and payments; modifying aids to local governments; authorizing and modifying provisions relating to property tax classifications and levies; reducing the amount in the budget and cash flow reserve account; authorizing imposition of local taxes; updating references to the Internal Revenue Code; modifying provisions relating to political campaign contribution refunds; changing certain bonding and local government finance provisions; changing definitions; making technical corrections and clarifications; enacting provisions relating to certain cities, counties, school districts, special taxing districts, and watershed districts; appropriating money; amending Minnesota Statutes 1990, sections 60A.15, subdivision 1; 60A.19, subdivision 6; 103B.241; 103B.255, by adding a subdivision; 103B.335; 103F.221, subdivision 3; 124.2131, subdivision 1; 174.27; 216C.06, by adding a subdivision; 256E.06, by adding a subdivision; 270.07, subdivision 3; 270.075, subdivision 1; 270.69, by adding a sub-