

CHAPTER 359—S.F.No. 785

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CHAPTER 360—S.F.No. 544

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CHAPTER 361—S.F.No. 176

An act relating to insurance; workers' compensation; regulating distributions of excess surplus made by the workers' compensation reinsurance association; clarifying the law regulating distributions of excess surplus; amending Minnesota Statutes 1992, sections 45.027, subdivision 1; and 79.34, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 79.

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

Section 1. **LEGISLATIVE FINDINGS.**

The intent and public purpose of the legislature in creating the workers' compensation reinsurance association was to benefit employers by lowering their costs for mandated workers' compensation insurance through a low cost, compulsory, nonprofit reinsurance mechanism. In 1992 the reinsurance association declared and distributed a \$100,000,000 excess surplus to insurers and self-insured employers. That excess surplus was not refunded to employer policyholders, whom the legislature intended to benefit when it created the reinsurance association. An orderly process with state assistance is required to ensure that employer policyholders receive their intended rightful share of the original \$100,000,000 excess surplus and a second \$302,000,000 excess surplus declared in March 1993, that is being held by the reinsurance association. An orderly process requires balancing fairness to employers with administrative feasibility. Sections 1 to 11 are the legislature's determination of that proper balance. The public purpose for creating the nonprofit reinsurance association requires that this surplus be refunded to Minnesota employers, who are the ultimate payors of the premiums that helped create this excess surplus.

Sec. 2. **1992 WORKERS' COMPENSATION REINSURANCE ASSOCIATION EXCESS SURPLUS DISTRIBUTION.**

Subdivision 1. SCOPE. This section governs any distribution of excess surplus made by the workers' compensation reinsurance association in 1992 other than distributions to self-insured members of the association. No distribution of that excess surplus other than that provided by this section may be made. For the purpose of this section, a distribution is made upon the actual distribution

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of excess surplus from the association. For the purpose of this section, "policyholder" means a workers' compensation insurance policyholder in 1992.

Subd. 2. STATE FUND MUTUAL INSURANCE COMPANY. Any distribution of excess surplus of the workers' compensation reinsurance association received by the state fund mutual insurance company in 1992 must be refunded to policyholders. Each policyholder shall receive a share of the state fund mutual's distribution equal to the policyholder's proportionate share of the state fund mutual's 1992 earned Minnesota workers' compensation insurance premium, as reported in its annual statement for 1992 to the commissioner of commerce.

In no case shall the refund exceed the policyholder's earned premium for 1992. If any portion of the distribution remains after the refund required under this subdivision has been made, a further refund based upon 1991 earned premiums, or such additional years' earned premiums as necessary to fully refund the distribution, shall be made by applying the method of calculation set forth in this subdivision.

Subd. 3. ASSIGNED RISK PLAN. Any distribution of excess surplus of the workers' compensation reinsurance association in 1992 received by the assigned risk plan must be returned to policyholders. Each policyholder shall receive a share of the distribution equal to the policyholder's proportionate share of the assigned risk plan's 1992 earned Minnesota workers' compensation premium as reported in its annual statement for 1992 to the commissioner of commerce.

In no case shall the refund exceed the policyholder's earned premium for 1992. If any portion of the distribution remains after the refund required under this subdivision has been made, a further refund based upon 1991 earned premiums, or such additional years' earned premiums as necessary to fully refund the distribution, shall be made by applying the method of calculation set forth in this subdivision.

Subd. 4. INSURED EMPLOYERS. Any distribution of excess surplus of the workers' compensation reinsurance association in 1992 received by insurers and not governed by subdivisions 2 and 3 must be returned to policyholders. Each policyholder shall receive a share of the distribution equal to the policyholder's proportionate share of its company's 1992 earned Minnesota workers' compensation premium, as reported in its annual statement for 1992 to the commissioner of commerce.

In no case shall the refund exceed the policyholder's earned premium for 1992. If any portion of the distribution remains after the refund required under this subdivision has been made, a further refund based upon 1991 earned premiums, or such additional years' earned premiums as necessary to fully refund the distribution, shall be made by applying the method of calculation set forth in this subdivision.

Subd. 5. DISTRIBUTION DEADLINE. Except as provided in subdivision

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6, an insurer shall refund its portion of the 1992 workers' compensation reinsurance association surplus distribution to its policyholders according to this section within 60 days of the effective date of this act.

Subd. 6. UNCLAIMED REFUNDS. Any part of the refund not distributed within one year after it is required to be distributed under subdivision 5 due to the inability to identify or locate policyholders shall be returned to the workers' compensation reinsurance association.

Subd. 7. COSTS. The state fund mutual insurance company, the assigned risk plan, and any insurer member of the reinsurance association may retain the lesser of five percent of the amount it refunds to policyholders or actual costs as administrative costs of complying with this section apportioned as an equal percentage of each refund.

Sec. 3. Minnesota Statutes 1992, section 45.027, subdivision 1, is amended to read:

Subdivision 1. **GENERAL POWERS.** In connection with the administration of chapters 45 to 83, 309, and 332, and sections 2 and 326.83 to 326.98, the commissioner of commerce may:

(1) make public or private investigations within or without this state as the commissioner considers necessary to determine whether any person has violated or is about to violate chapters 45 to 83, 309, and 332, sections 326.83 to 326.98, or any rule adopted or order issued under those chapters, or to aid in the enforcement of chapters 45 to 83, 309, and 332, sections 326.83 to 326.98, or in the prescribing of rules or forms under those chapters;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the administration of chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98;

(4) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, to the legislature;

(5) examine the books, accounts, records, and files of every licensee under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, and of every person who is engaged in any activity regulated under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business;

(6) publish information which is contained in any order issued by the commissioner; and

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(7) require any person subject to chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, to report all sales or transactions that are regulated under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98. The reports must be made within ten days after the commissioner has ordered the report. The report is accessible only to the respondent and other governmental agencies unless otherwise ordered by a court of competent jurisdiction.

Sec. 4. [79.361] POST 1992 DISTRIBUTION OF WORKERS' COMPENSATION REINSURANCE ASSOCIATION SURPLUS.

Subdivision 1. SCOPE. This section governs the distribution of excess surplus of the workers' compensation reinsurance association declared after January 1, 1993. A distribution of excess surplus is declared on the date the board votes to make a distribution. No distribution of excess surplus other than that provided by this section may be made.

Subd. 2. SELF-INSURED. A self-insurer shall receive a distribution of excess surplus in an amount equal to the self-insurer's share of the premiums paid to the workers' compensation reinsurance association for the period and for each retention layer for which the distribution is made.

Subd. 3. INSURED EMPLOYERS. A policyholder, other than a policyholder insured by the assigned risk plan or the state fund mutual insurance company, shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner of commerce in the most recent annual statements of insurers, including the assigned risk plan and the state fund mutual insurance company.

Subd. 4. ASSIGNED RISK PLAN. A policyholder of the assigned risk plan shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner of commerce in the most recent annual statements of insurers, including the assigned risk plan and the state fund mutual insurance company.

Subd. 5. STATE FUND MUTUAL INSURANCE COMPANY. A policyholder of the state fund mutual insurance company shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner of commerce in the most recent annual statements of insurers, including the assigned risk plan and the state fund mutual insurance company.

Subd. 6. DISTRIBUTION DEFINED. For the purpose of subdivisions 3 to 5, "distribution" means a distribution described in subdivision 1 minus a distribution to self-insurers under subdivision 2.

Subd. 7. POLICYHOLDER. For the purpose of this section "policyholder" means a workers' compensation insurance policyholder in the calendar year pre-

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ceding a declaration of excess surplus by the board of the reinsurance association.

Subd. 8. INFORMATION REQUIRED. Insurers and the workers' compensation insurers rating association of Minnesota must provide the workers' compensation reinsurance association with information necessary to administer and calculate the refunds to policyholders governed by this section within 60 days of a request by the association. For the purpose of this subdivision, "insurer" includes the assigned risk plan.

Subd. 9. REFUND DUE DATE. Policyholders must receive the refund within 60 days of the day the reinsurance association receives the information required to be provided by subdivision 8.

Subd. 10. UNCLAIMED REFUND. Any part of the refund not distributed within one year after the due date of a refund under this section due to the inability to identify or locate policyholders remains with the workers' compensation reinsurance association.

Subd. 11. COSTS OF DISTRIBUTION. The reinsurance association may pay the actual and reasonable costs of the refunds made under this section from earnings on a declared excess surplus prior to its distribution.

Sec. 5. Minnesota Statutes 1992, section 79.34, is amended by adding a subdivision to read:

Subd. 2a. DEFICIENCY. If the board determines that a distribution of excess surplus resulted in inadequate funds being available to pay claims that arose during the period upon which that distribution was calculated, the board shall determine the amount of the deficiency. The deficiency shall be made up by imposing an assessment rate against self-insured members and policyholders of insurer members. The board shall notify the commissioner of commerce of the amount of the deficiency and recommend an assessment rate. The commissioner shall order an assessment at a rate and for the time period necessary to eliminate the deficiency. The assessment rate shall be applied to the exposure base of self-insured employers and insured employers. The assessment may not be retroactive and applies only prospectively. The assessment may be spread over a period of time that will cause the least financial hardship to employers. All assessments under this subdivision are payable to the association. The commissioner may issue orders necessary to administer this section. The orders are not rules subject to chapter 14.

Sec. 6. [79.362] WORKERS' COMPENSATION REINSURANCE ASSOCIATION EXCESS SURPLUS DISTRIBUTION.

An order of the commissioner of the department of labor and industry relating to the distribution of excess surplus of the workers' compensation reinsurance association shall be reviewed by the commissioner of commerce. The commissioner of commerce may amend, approve, or reject an order or issue further orders to accomplish the purposes of sections 2 and 4. The commissioner

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may not change the amount of the distribution ordered by the commissioner of labor and industry without agreement of the commissioner of labor and industry. An order of the commissioner of commerce under this section is not subject to chapter 14.

Sec. 7. RESOLUTIONS AND ORDER NULLIFIED.

Any resolution or plan of operation of the workers' compensation reinsurance association or order of the commissioner of labor and industry that purports to grant any claim to excess surplus to insurer members of the association that conflicts with sections 1 to 11 is nullified to the extent of the conflict.

Sec. 8. [79.363] DISTRIBUTION OF EXCESS SURPLUS.

The distribution of excess surplus of the workers' compensation reinsurance association is not a distribution of excess premiums to members. Any excess surplus not refunded according to section 2 must be returned to the association and must not be distributed to its members. Any excess surplus not distributed or refunded according to section 4 must be retained by the association and must not be distributed to members.

Sec. 9. DISTRIBUTION EARNINGS.

For the purpose of section 2, the refund to policyholders of excess surplus shall include any earnings on a distribution of excess surplus while the distribution was in the possession of an insurer.

Sec. 10. COSTS OF LITIGATION.

The workers' compensation reinsurance association shall reimburse the state for any and all costs, disbursements, and attorney fees in any way incurred by the state as part of or resulting from any litigation, including administrative or civil actions, involving the enforcement or validity of sections 1 to 11.

Sec. 11. ORIGINAL JURISDICTION.

The Minnesota supreme court has original jurisdiction over any action challenging the constitutionality or validity of this act and shall expedite the resolution of the action.

Sec. 12. EFFECTIVE DATE.

This act is effective the day following final enactment and applies retroactively to August 1, 1992.

Presented to the governor May 20, 1993

Signed by the governor May 24, 1993, 5:44 p.m.

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