

payments under the contract must make progress payments monthly as the work progresses. Payments shall be based upon estimates of work completed as approved by the owner or the owner's agent. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

(b) Unless the building and construction contract provides otherwise, an owner or owner's agent may reserve as retainage from any progress payment on a building and construction contract an amount not to exceed five percent of the payment. An owner or owner's agent may reduce the amount of retainage and may eliminate retainage on any monthly contract payment if, in the owner's opinion, the work is progressing satisfactorily.

(c) This subdivision does not apply to construction of or improvements to residential real estate, as defined in section 326.83, subdivision 17, or to construction of or improvements to attached single-family dwellings, if those dwellings are used for residential purposes and have fewer than 13 units per structure.

Subd. 5. DEFINITION. For the purpose of this section, "building and construction contract" has the meaning given the term in section 337.01.

#### Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1997, and applies to contracts or agreements entered into on or after that date.

Presented to the governor May 8, 1997

Signed by the governor May 9, 1997, 8:15 a.m.

### CHAPTER 128—S.F.No. 1807

*An act relating to workers' compensation; changing certain reporting deadlines; modifying certain workers' compensation procedures; adding state correctional officers to the presumption of occupational disease; amending Minnesota Statutes 1996, sections 79.55, subdivisions 9 and 10; 176.011, subdivision 15; and 176.191, subdivisions 1 and 5.*

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

Section 1. Minnesota Statutes 1996, section 79.55, subdivision 9, is amended to read:

Subd. 9. **ANALYSIS BY RATE OVERSIGHT COMMISSION.** Not later than November December 1 of each year, the rate oversight commission may submit to the commissioner a report concerning the completeness of the filing and compliance of the filing with the standards for excessiveness, inadequacy, and unfair discrimination set forth in this chapter.

Sec. 2. Minnesota Statutes 1996, section 79.55, subdivision 10, is amended to read:

Subd. 10. **DUTIES OF COMMISSIONER.** The commissioner shall issue a report by January March 1 of each year, comparing the average rates charged by workers' com-

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pensation insurers in the state to the pure premium base rates filed by the association, as reviewed by the rate oversight commission. The rate oversight commission shall review the commissioner's report and if the experience indicates that rates have not reasonably reflected changes in pure premiums, the rate oversight commission shall recommend to the legislature appropriate legislative changes to this chapter.

Sec. 3. Minnesota Statutes 1996, section 176.011, subdivision 15, is amended to read:

Subd. 15. **OCCUPATIONAL DISEASE.** (a) "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.

(b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota state patrol, conservation officer service, state crime bureau, as a forest officer by the department of natural resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota state patrol, conservation officer service, state crime bureau, department of natural resources, department of corrections, or sheriff's department of any county, which examination and report negated any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment and the presumption may be rebutted by substantial factors brought by the employer or insurer.

(c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by ex-

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posure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer.

Sec. 4. Minnesota Statutes 1996, section 176.191, subdivision 1, is amended to read:

Subdivision 1. **ORDER; EMPLOYER, INSURER, OR SPECIAL COMPENSATION FUND PAYMENT.** Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers or the special compensation fund as to which is liable for payment, the commissioner, compensation judge, or court of appeals upon appeal shall direct that one or more of the employers or insurers or the special compensation fund make payment of the benefits pending a determination of which has liability. The special compensation fund may be ordered to make payment only if it has been made a party to the claim because the petitioner has alleged that one or more of the employers is uninsured for workers' compensation under section 176.183. A temporary order may be issued under this subdivision whether or not the employers, insurers, or special compensation fund agree to pay under the order, and whether or not they agree that benefits are payable under this chapter. A temporary order shall be issued if the commissioner or compensation judge determines based on evidence submitted by the employee that benefits are payable under this chapter and if two or more employers, insurers, or the special compensation fund deny liability based on an assertion that another employer, insurer, or the special compensation fund is liable. A temporary order shall not be withheld where the denials of liability are frivolous as defined in section 176.225, subdivision 1, or nonspecific as defined in section 176.84, subdivision 1.

If the parties do not agree to a temporary order, the commissioner or compensation judge shall summarily hear and determine the issues and issue an order without the need for a formal evidentiary hearing. At any time after a temporary order is issued, the paying party may request to discontinue payment of benefits based on new evidence that benefits are not payable under this chapter by following the procedures of section 176.238 or 176.239.

At any time after a temporary order is issued, the paying party may also petition for a formal hearing before a compensation judge for a determination of liability among the parties. If the petition is filed within one year after a temporary order was issued, the hearing shall be held within 45 days after the petition was filed. Payments under a temporary order shall continue pending the determination of the compensation judge. The compensation judge shall have jurisdiction to resolve all issues properly raised, including equitable apportionment. The procedures and monetary thresholds contained in section 176.191, subdivisions 1a and 5 shall not apply to these proceedings. This subdivision applies to all dates of injury.

When liability has been determined, the party held liable for the benefits shall be ordered to reimburse any other party for payments which the latter has made, including interest at the rate of 12 percent a year. The claimant shall also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

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An order directing payment of benefits pending a determination of liability may not be used as evidence before a compensation judge, the workers' compensation court of appeals, or court in which the dispute is pending.

Sec. 5. Minnesota Statutes 1996, section 176.191, subdivision 5, is amended to read:

Subd. 5. **ARBITRATION.** Where a dispute exists between an employer, insurer, the special compensation fund, or the workers' compensation reinsurance association, regarding apportionment of liability for benefits payable under this chapter, and the requesting party has expended over \$10,000 in medical or 52 weeks worth of indemnity benefits and made the request within one year thereafter, a party may require submission of the dispute as to apportionment of liability among employers and insurers to binding arbitration. However, these monetary thresholds shall not apply in any case where the employers and insurers agree to submit the apportionment dispute to arbitration. The decision of the arbitrator shall be conclusive on the issue of apportionment among employers and insurers. Consent of the employee is not required for submission of a dispute to arbitration pursuant to this section and the employee is not bound by the results of the arbitration. An arbitration award shall not be admissible in any other proceeding under this chapter. Notice of the proceeding shall be given to the employee.

The employee, or any person with material information to the facts to be arbitrated, shall attend the arbitration proceeding if any party to the proceeding deems it necessary. Nothing said by an employee in connection with any arbitration proceeding may be used against the employee in any other proceeding under this chapter. Reasonable expenses of meals, lost wages, and travel of the employee or witnesses in attending shall be reimbursed on a pro rata basis. Arbitration costs shall be paid by the parties, except the employee, on a pro rata basis.

#### Sec. 6. **EFFECTIVE DATE.**

Section 3 is effective the day following final enactment and applies to injuries on or after that date. Section 4 is effective the day following final enactment.

Presented to the governor May 8, 1997

Signed by the governor May 9, 1997, 8:17 a.m.

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### CHAPTER 129—S.F.No. 277

*An act relating to alcoholic beverages; providing for permits for alcoholic beverage manufacturer warehouses, central distribution centers, or holding facilities; allowing a municipality to authorize a holder of an on-sale intoxicating liquor license to dispense intoxicating liquor at community festivals; allowing uniform licensing periods for holders of multiple on-sale licenses; modifying liability insurance requirements for liquor retailers; modifying shipping restrictions for certain wineries; allowing municipalities to authorize on-sale of 3.2 percent malt liquor at 10 a.m. on Sundays; authorizing the sale of intoxicating liquor at professional athletic events in the St. Paul civic center; authorizing the issuance of intoxicating liquor licenses to the division of parks and recreation of the city of St. Paul; authorizing the city of Moorhead to issue additional on-sale licenses; modifying*

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