

CHAPTER 176

WORKERS' COMPENSATION

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|----------|--|---------|---|
| 176.011 | Definitions. | 176.265 | Report to legislature. |
| 176.012 | Election of coverage. | 176.271 | Initiation of proceedings. |
| 176.021 | Application to employers and employees. | 176.275 | Filing of papers. |
| 176.031 | Employer's liability exclusive. | 176.281 | Orders, decisions, and awards of compensation judges, commissioner of the department of labor and industry, or workers' compensation court of appeals; filing; service. |
| 176.041 | Excluded employments; application, exceptions. | 176.285 | Service of papers and notices. |
| 176.051 | Assumption of liability. | 176.291 | Disputes and defaults; procedure. |
| 176.061 | Third party liability. | 176.295 | Nonresident employers; foreign corporation. |
| 176.071 | Joint employers; contribution. | 176.301 | Determination of issues. |
| 176.081 | Legal services or disbursements; lien; review. | 176.305 | Petitions filed with the workers' compensation division. |
| 176.091 | Minor employees. | 176.311 | Reassignment of petition for hearing. |
| 176.095 | Legislative findings. | 176.321 | Answer to petition. |
| 176.101 | Compensation schedule. | 176.331 | Award by default. |
| 176.102 | Rehabilitation. | 176.341 | Hearing on petition. |
| 176.105 | Commissioner to establish disability schedules. | 176.351 | Testimonial powers. |
| 176.111 | Dependents, allowances. | 176.361 | Intervention. |
| 176.121 | Commencement of compensation. | 176.371 | Award or disallowance of compensation. |
| 176.131 | Subsequent disability, special fund. | 176.381 | Reference of questions of fact. |
| 176.132 | Supplementary benefits. | 176.391 | Investigations. |
| 176.1321 | Effective date of benefit changes. | 176.401 | Hearings public. |
| 176.133 | Attorneys fees, supplementary benefits. | 176.411 | Rules of evidence, pleading, and procedure. |
| 176.134 | Reopened case fund. | 176.421 | Appeals to workers' compensation court of appeals. |
| 176.135 | Treatment; appliances; supplies. | 176.431 | Appeal based on error of law by compensation judge. |
| 176.136 | Medical fee review. | 176.441 | Appeal based on fraud or insufficiency of evidence. |
| 176.137 | Remodeling of residence; handicapped employees. | 176.442 | Appeals from decisions of commissioner of department of labor and industry. |
| 176.139 | Notice of rights posted. | 176.451 | Defaults. |
| 176.141 | Notice of injury. | 176.461 | Setting aside award. |
| 176.145 | Service of notice, form. | 176.471 | Review by supreme court on certiorari. |
| 176.151 | Time limitations. | 176.481 | Original jurisdiction of supreme court. |
| 176.155 | Examinations. | 176.491 | Stay of proceedings pending disposition of case. |
| 176.161 | Alien dependents. | 176.501 | Attorney general acts for workers' compensation court of appeals. |
| 176.165 | Lump sum payments. | 176.511 | Costs. |
| 176.171 | Payment to trustee. | 176.521 | Settlement of claims. |
| 176.175 | Right to compensation, award. | 176.531 | Award of compensation against a political subdivision or school district. |
| 176.179 | Payments of compensation received in good faith. | 176.541 | State departments. |
| 176.181 | Insurance. | 176.551 | Reports. |
| 176.183 | Uninsured and self-insured employers; benefits to employees and dependents; liability of employer. | 176.561 | Workers' compensation court of appeals powers and duties as to state employees; procedure for determining liability. |
| 176.185 | Policy of insurance. | 176.571 | Investigations of injuries to state employees. |
| 176.191 | Dispute between two or more employers or insurers regarding liability. | 176.581 | Findings and final order. |
| 176.195 | Revocation of insurer's license. | 176.591 | State compensation revolving fund. |
| 176.201 | Discriminatory rates. | 176.602 | Payments from state compensation revolving fund. |
| 176.205 | Person deemed employer. | 176.603 | Cost of administering chapter, payment. |
| 176.211 | Acts or omissions of third persons. | 176.611 | Maintenance of state compensation revolving fund. |
| 176.215 | Subcontractor's failure to comply with chapter. | 176.641 | Accidents or injuries arising prior to effective date. |
| 176.221 | Payment of compensation and treatment charges, commencement. | 176.645 | Adjustment of benefits. |
| 176.225 | Additional award as penalty. | 176.651 | Severability. |
| 176.231 | Report of death or injury to commissioner of the department of labor and industry. | 176.66 | Occupational diseases; how regarded. |
| 176.235 | Notice to employers and injured employee of rights and duties. | 176.669 | Expenses; rules. |
| 176.241 | Notice to division of intention to discontinue compensation payments. | 176.82 | Action for civil damages for obstructing employee seeking benefits. |
| 176.245 | Receipts for payment of compensation, filing. | | |
| 176.251 | Duties of the commissioner of the department of labor and industry. | | |
| 176.253 | Insurer, employer; performance of acts. | | |
| 176.261 | Employee of commissioner of the department of labor and industry may act for and advise a party to a proceeding. | | |

176.01 [Repealed, 1953 c 755 s 83]

176.011 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this chapter the terms described in this section have the meanings ascribed to them.

Subd. 2. **Child.** "Child" includes a posthumous child, a child entitled by law to inherit as a child of a deceased person, a child of a person adjudged by a court of competent jurisdiction to be the father of the child, and a stepchild, grandchild, or foster child who was a member of the family of a deceased employee at the time of his injury and dependent upon him for support.

Subd. 3. **Daily wage.** "Daily wage" means the daily wage of the employee in the employment in which he was engaged at the time of injury but does not include tips and gratuities paid directly to an employee by a customer of the employer and not accounted for by the employee to the employer. If the amount of the daily wage received or to be received by the employee in the employment in which he was engaged at the time of injury was irregular or difficult to determine, or if the employment was part time, the daily wage shall be computed by dividing the total amount the employee actually earned in such employment in the last 26 weeks, by the total number of days in which the employee actually performed any of the duties of such employment, provided further, that in the case of the construction industry, mining industry, or other industry where the hours of work are affected by seasonal conditions, the weekly wage shall not be less than five times the daily wage. Where board or allowances other than tips and gratuities are made to an employee in addition to wages as a part of the wage contract they are deemed a part of his earnings and computed at their value to the employee. In the case of persons performing services for municipal corporations in the case of emergency, then the normal working day shall be considered and computed as eight hours, and in cases where such services are performed gratis or without fixed compensation the daily wage of the person injured shall, for the purpose of calculating compensation payable under this chapter, be taken to be the usual going wage paid for similar services in municipalities where such services are performed by paid employees. If, at the time of injury, the employee was regularly employed by two or more employers, the employee's earnings in all such employments shall be included in the computation of daily wage.

Subd. 4. **Commercial baler.** "Commercial baler" means a person going from place to place baling hay or straw as a business, but does not include a farmer owning a baling machine not engaged in such business generally and doing his own baling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

Subd. 5. **Commercial thresherman.** "Commercial thresherman" means a person going from place to place threshing grain or shredding or shelling corn as a business, but does not include a farmer owning a threshing, shredding, or shelling machine not engaged in such business generally and doing his own threshing, shredding, or shelling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

Subd. 6. (1) "Court of appeals" means the workers' compensation court of appeals of Minnesota.

(2) "Division" means the workers' compensation division of the department of labor and industry.

(3) "Department" means the department of labor and industry.

Subd. 7. **Judge.** "Judge" means a member of the workers' compensation court of appeals.

Subd. 7a. **Compensation judge.** The title referee as used in this chapter, relating to workers' compensation is hereby changed to compensation judge.

Subd. 8. **Compensation.** "Compensation" includes all benefits provided by this chapter on account of injury or death.

Subd. 9. **Employee.** "Employee" means any person who performs services for another for hire; and includes the following:

(1) an alien;

(2) a minor;

(3) a sheriff, deputy sheriff, constable, marshal, policeman, firefighter, a county highway engineer, and a peace officer while engaged in the enforcement of peace or in and about the pursuit or capture of any person charged with or suspected of crime and any person requested or commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any legal process in which case, for purposes of calculating compensation payable under this chapter, the daily wage of the person requested or commanded to assist an officer or to execute a legal process shall be the prevailing wage for similar services where the services are performed by paid employees;

(4) a county assessor;

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

(6) an executive officer of a corporation except an officer of a family farm corporation as defined in section 500.24, subdivision 1, clause (c), nor shall it include an executive officer of a closely held corporation who is referred to in section 176.012;

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

(8) 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 thereof, shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services where the services are performed by paid employees;

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

(10) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section

84.089 shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where the services are performed by paid employees;

(11) a member of the military forces, as defined in section 190.05, while in "active service" or "on duty" as defined in section 190.05, when the service or duty is ordered by state authority. The daily wage of the member for the purpose of calculating compensation payable 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;

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

(13) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota school for the deaf or the Minnesota braille and sight-saving school, and whose services have been accepted or contracted for by the state board of education, as authorized by law, shall be an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(14) 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, is an employee within the meaning of this subdivision. In the event of injury or death of the voluntary uncompensated worker, the daily wage of the worker, for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees.

In the event it is difficult to determine the daily wage as herein provided, then the trier of fact may determine the wage upon which the compensation is payable.

Subd. 9a. **Employee.** For purposes of this chapter "employee" does not include farmers or members of their family who exchange work with other farmers in the same community.

Subd. 10. **Employer.** "Employer" means any person who employs another to perform a service for hire; and includes corporation, partnership, association, group of persons, state, county, town, city, school district, or governmental subdivision.

Subd. 11. **Executive officer of a corporation.** "Executive officer of a corporation" means any officer of a corporation elected or appointed in accordance with its charter or bylaws.

Subd. 11a. **Family farm.** "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. 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, sub-

division 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 thresherman shall be considered an independent contractor.

Subd. 12. **Farm laborer.** "Farm laborer" does not include an employee of a commercial thresherman or commercial baler.

Subd. 13. **Husband.** "Husband" includes widower.

Subd. 14. **Member.** "Member" includes leg, foot, toe, hand, finger, thumb, arm, back, eye, and ear when used with reference to the anatomy.

Subd. 15. **Occupational disease.** "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. If immediately preceding the date of his 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 highway patrol, conservation officer service, state crime bureau, as a forest officer by the department of natural resources, or sheriff or full time deputy sheriff of any county, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of his 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 highway patrol, conservation officer service, state crime bureau, department of natural resources, 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 his employment.

Subd. 16. **Personal injury.** "Personal injury" means injury arising out of and in the course of employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where his services require his presence as a part of such service at the time of the injury and during the hours of such service. Where the employer regularly furnished transportation to his employees to and from the place of employment such employees are subject to this chapter while being so transported, but shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him, and not directed against him as an employee, or because of his employment.

Subd. 17. **Physician.** "Physician" means one authorized by law to practice his profession within one of the United States and in good standing in his profession, and includes surgeon.

Subd. 18. **Weekly wage.** "Weekly wage" is arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved. If the employee normally works less than five days per week or works an irregular number of days per week, the number of days normally worked shall be computed by dividing the total number of days in which the employee actually performed any of the duties of his employment in the last 26 weeks by the number of weeks in which the employee actually performed such duties, provided that the weekly wage for part time employment during a period of seasonal or temporary layoff shall be computed on the number of days and fractional days normally worked in the business of the employer for the employment involved. If, at the time of the injury, the employee was regularly employed by two or more employers, the employee's days of work for all such employments shall be included in the computation of weekly wage. Occasional overtime is not to be considered in computing the weekly wage, but if overtime is regular or frequent throughout the year it shall be taken into consideration. The maximum weekly compensation payable to an employee, or to his dependents in the event of death, shall not exceed $66 \frac{2}{3}$ percent of the product of the daily wage times the number of days normally worked, provided that the compensation payable for permanent partial disability under section 176.101, subdivision 3, and for permanent total disability under section 176.101, subdivision 4, or death under section 176.111, shall not be computed on less than the number of hours normally worked in the employment or industry in which the injury was sustained, subject also to such maximums as are specifically otherwise provided.

Subd. 19. **Worker.** "Worker" means employee.

Subd. 20. **Average weekly wage.** The statewide average weekly wage for any year means that wage determined by the commissioner in the following manner: On or before July 1 preceding the year in which the wage is to be applicable, the total wages reported on contribution reports to the department of economic security for the preceding 12 months ending on December 31 of that year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for the year ending December 31 by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the next highest dollar.

Subd. 21. **Household worker.** "Household worker" means one who is a domestic, repairman, groundskeeper, or maintenance worker in, for, or about a private home or household, but the term shall not include independent contractors nor shall it include persons performing labor for which they may elect workers' compensation coverage under section 176.012.

Subd. 22. **Closely held corporations.** "Closely held corporation" means a corporation whose stock is held by no more than ten persons. The determination of ownership shall be made annually on the effective date of the policy issued under this chapter. In case of self-insureds the determination shall be made annually on the date of approval of self-insurance or renewal of self-insurance.

History: 1953 c 443 s 1; 1953 c 755 s 1; 1955 c 206 s 1; 1955 c 652 s 1; 1955 c 765 s 1; 1957 c 834 s 1; 1959 c 20 s 1; 1959 c 283 s 1; 1963 c 493 s 1; 1963 c 497 s 1; 1967 c 701 s 1; 1967 c 806 s 1; 1967 c 905 s 9; Ex1967 c 1 s 6; Ex1967 c 40 s 1,2; 1969 c 9 s 53; 1969 c 148 s 2; 1969 c 276 s 1; 1969 c 936 s 2; 1973 c 123 art 5 s 7; 1973 c 388 s 12; 1973 c 420 s 2; 1973 c 657 s 1; 1975 c 271 s 6; 1975 c 359 s 3,4,23; 1976 c 331 s 36; 1977 c 342 s 1,2; 1977 c 429 s 63; 1977 c 430 s 25

subd 1; 1978 c 574 s 1; 1978 c 702 s 1; 1978 c 757 s 1; 1978 c 764 s 99; 1979 c 92 s 2; Ex1979 c 3 s 28,29; 1980 c 384 s 2; 1980 c 385 s 1,2; 1980 c 414 s 2; 1980 c 556 s 12

176.012 ELECTION OF COVERAGE.

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

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

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

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

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

The persons, partnerships and corporations described in this section may also elect coverage for an employee who is a spouse, parent or child, regardless of age, of an owner, partner, or executive officer, who is eligible for coverage under this section. Coverage may be elected for a spouse, parent or child whether or not coverage is elected for the related owner, partner or executive director and whether or not the person, partnership or corporation employs any other person to perform a service for hire. Any person for whom coverage is elected pursuant to this section shall be included within the meaning of the term employee for the purposes of this chapter.

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

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

History: *1974 c 1 s 1; 1977 c 342 s 3; 1978 c 757 s 2; 1979 c 74 s 1; 1979 c 92 s 3; 1980 c 392 s 1*

176.02 [Repealed, 1953 c 755 s 83]

176.021 APPLICATION TO EMPLOYERS AND EMPLOYEES.

Subdivision 1. **Liability for compensation.** Except as excluded by this chapter all employers and employees are subject to the provisions of this chapter. Every such employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of his employee arising out of and in the course of employment without regard to the question of negligence, unless the injury was intentionally self-inflicted or when the intoxication of the employee is the proximate cause of the injury. The burden of proof of such facts is upon the employer.

Subd. 2. **Parties liable.** The liability imposed by subdivision 1 upon the employer extends to and binds those conducting the employer's business during insolvency, assignment for the benefit of creditors, and insofar as agreeable with the controlling federal law during bankruptcy.

Subd. 3. Compensation, commencement of payment. All employers shall commence payment of the compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the division. Except those of medical, burial, and other non-periodic benefits, payments shall be made as nearly as may be at the intervals when the wage was payable; provided, however, that payments for permanent partial disability in cases in which return to work occurs prior to four weeks from the date of injury shall be made by lump sum payment, and the provisions of section 176.165 shall not apply, without the necessity of any agreement, or order of the division, upon cessation of payments for temporary total disability and upon the employee's return to work. In cases in which return to work does not occur prior to four weeks after injury, payments for permanent partial disability shall be made according to the following schedule: 25 percent of the amount due after four weeks from the date of injury, 25 percent after eight weeks, 25 percent after 12 weeks and 25 percent after 16 weeks, provided that any and all payments remaining shall be paid upon the cessation of payments for temporary total disability and upon the employee's return to work. If doubt exists at that time as to the eventual permanent partial disability, payment shall be then made for the minimum permanent partial disability ascertainable in lump sum, and further lump sum payment shall be made upon any later ascertainment of greater permanent partial disability. At the time of the tender of the lump sum payment, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. Compensation for permanent partial disability is payable concurrently and in addition to compensation for temporary total disability and temporary partial disability as set forth in section 176.101, subdivisions 1 and 2, and for permanent total disability as defined in section 176.101, subdivision 5; and such compensation for permanent partial disability shall not be deferred pending completion of payment for temporary disability or permanent total disability, and no credit shall be taken for payment of permanent partial disability against liability for permanent total disability. Liability on the part of an employer or his insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or occupational disease and shall be payable accordingly. Permanent partial disability is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation. The right to receive temporary total, temporary partial, permanent partial or permanent total disability payments shall vest in the injured employee or his dependents under this chapter or, if none, in his legal heirs at the time the disability can be ascertained and the right shall not be abrogated by the employee's death prior to the making of the payment.

Subd. 4. Void agreements. Any agreement by any employee or dependent to take as compensation an amount less than that prescribed by this chapter is void.

Subd. 5. Accumulated credits, additional payments. If employees of the state or a county, city or other political subdivision of the state who are entitled to the benefits of the workers' compensation law have, at the time of compensable injury, accumulated credits under a vacation, sick leave or overtime plan or system maintained by the governmental agency by which they are employed, the appointing authority may provide for the payment of additional benefits to such employees from their accumulated vacation, sick leave or overtime credits. Such additional payments to an employee may not exceed the amount of the total sick

leave, vacation or overtime credits accumulated by the employee and shall not result in the payment of a total weekly rate of compensation that exceeds the weekly wage of the employee. Such additional payments to any employee shall be charged against the sick leave, vacation and overtime credits accumulated by such employee. The commissioner of the department of labor and industry for the state or the governing body of any county, city or other political subdivision to which the provisions of this chapter apply, may adopt rules and regulations not inconsistent with this chapter for carrying out the provisions hereof relating to payment of additional benefits to employees from accumulated sick leave, vacation or overtime credits.

Subd. 6. Compensation under city charter. Where, in any city operating under a home rule charter, a mode and manner of compensation is provided by the charter which is different from that provided by this chapter, and the amount of compensation provided by the charter would, if taken thereunder, exceed the amount the employee is entitled to under this chapter for the same period, he shall, in addition to his compensation under this chapter, receive under the charter an amount equal to the excess in compensation provided by the charter over what he is entitled to by this chapter; if the amount of compensation provided by the charter would, if taken thereunder, be equal to or less than the amount of compensation the employee is entitled to under this chapter for the same period, he shall take only under this chapter.

Subd. 7. Public officer. If an employee who is a public officer of the state or governmental subdivision continues to receive the compensation of his office during a period when he is receiving benefits under the workers' compensation law for temporary total or temporary partial disability or permanent total disability and the compensation of his office exceeds \$100 a year, the amount of that compensation attributable to the period for which benefits under the workers' compensation law are paid shall be deducted from such benefits.

History: 1953 c 755 s 2; 1967 c 701 s 2; Ex1967 c 40 s 3,5; 1973 c 123 art 5 s 7; 1973 c 388 s 13,14; 1973 c 623 s 1; 1974 c 486 s 1; 1975 c 359 s 23; 1977 c 342 s 4; Ex1979 c 3 s 30

176.03 [Repealed, 1953 c 755 s 83]

176.031 EMPLOYER'S LIABILITY EXCLUSIVE.

The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, his personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death. If an employer other than the state or any municipal subdivision thereof fails to insure or self-insure his liability for compensation to his injured employees and their dependents, an injured employee, or his legal representatives or, if death results from the injury, any dependent may elect to claim compensation under this chapter or to maintain an action in the courts for damages on account of such injury or death. In such action it is not necessary to plead or prove freedom from contributory negligence. The defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was wilful on the part of the employee. The burden of proof to establish such wilful negligence is upon the defendant. For the purposes of this chapter the state and each municipal subdivision thereof is treated as a self-insurer when not carrying insurance at the time of the injury or death of an employee.

History: 1953 c 755 s 3

176.04 [Repealed, 1953 c 755 s 83]

176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS.

Subdivision 1. **Employments excluded.** This chapter does not apply to persons employed by any common carrier by railroad engaged in interstate or foreign commerce, which persons are covered by the Federal Employers' Liability Act (45 U.S.C. 51-60) or other comparable federal law; persons employed by family farms as defined by section 176.011, subdivision 11a, the spouse, parent and child, regardless of age, of a farmer employer working for him; partners engaged in any farm operation or partners engaged in a business and the spouse, parent, and child, regardless of age, of any of the partners of the farm operation or business; an executive officer of a family farm corporation; an executive officer of a closely held corporation referred to in section 176.012; any spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, employed by that family farm corporation; any spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation referred to in section 176.012; or other farmers or members of their families exchanging work with the farmer employer or family farm corporation operator in the same community, or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession, or occupation of his employer; nor does it apply to officers or members of veteran's organizations whose employment relationship arises solely by virtue of attending meetings or conventions of their organization, unless the veteran's organizations elect by resolution to provide coverage under this chapter for the officers or members. Neither shall the chapter apply to any person employed as a household worker in, for, or about, a private home or household who earns less than \$500 in cash in any three month period from a single private home or household provided that any household worker who has earned \$500 or more from his present employer in any three month period within the previous year shall be covered by this chapter regardless of whether or not he has in the present quarter earned \$500. This chapter does not apply to those persons employed by a corporation where those persons are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to all of the officers of the corporation, and if the corporation files a written election with the commissioner of labor and industry to have those persons excluded from this chapter. This chapter does not apply to a nonprofit association which does not pay more than \$500 in salary or wages in a year.

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

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

Subd. 4. **Out-of-state employments.** If an employee who regularly performs the primary duties of his employment outside of this state or is hired to perform the primary duties of his employment outside of this state, receives an injury within this state in the employ of the same employer, such injury shall be covered within the provisions of this chapter if the employee chooses to forego any

workers' compensation claim resulting from the injury that he may have a right to pursue in some other state.

Subd. 5. [Repealed, 1974 c 486 s 6]

History: 1953 c 755 s 4; Ex1967 c 40 s 6; 1971 c 669 s 1; 1973 c 657 s 2; 1974 c 286 s 1; 1975 c 271 s 2; 1975 c 359 s 5; 1977 c 342 s 5; 1978 c 722 s 2; 1979 c 15 s 1; 1979 c 74 s 2; 1979 c 92 s 4

176.05 [Repealed, 1953 c 755 s 83]

176.051 ASSUMPTION OF LIABILITY.

An employer of workers on any farm operation or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and such employer's procurement of a workers' compensation policy constitutes an assumption by the employer of such liability unless the employer elects in writing not to have such persons covered and the policy so states the election. This assumption of liability takes effect and continues from the effective date of the policy and as long only as the policy remains in force. If during the life of any such insurance policy any employee, who is a worker on any farm operation or a household worker, suffers personal injury or death arising out of and in the course of his employment, the exclusive remedy of the employee or his dependents is under this chapter. For purposes of this section, farm worker shall not include any spouse, parent or child, regardless of age, of any farmer or of any partner in a farm operation or of any officer of a family farm corporation as defined in section 500.24, subdivision 1, nor shall it include other farmers in the same community or members of their family exchanging work with the farmer employer or family farm corporation operator.

History: 1953 c 755 s 5; 1973 c 657 s 3; 1975 c 359 s 6; 1977 c 342 s 6

176.06 [Repealed, 1953 c 755 s 83]

176.061 THIRD PARTY LIABILITY.

Subdivision 1. Election of remedies. Where an injury or death for which compensation is payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of such injury or death that party was insured or self-insured in accordance with this chapter, the employee, in case of injury, or his dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for compensation, but not against both.

Subd. 2. Action for recovery of damages. If the employee, in case of injury, or his dependents, in case of death, brings an action for the recovery of damages, the amount thereof, the manner in which, and the persons to whom the same are payable, shall be as provided in this chapter. In no case shall such party be liable to any person other than the employee or his dependents for any damages resulting from such injury or death.

Subd. 3. Election to receive compensation from employer; subrogation. If the employee or his dependents elect to receive compensation from the employer, such employer is subrogated to the right of the employee or his dependents to recover damages against the other party. The employer may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to the employee or his dependents, together with the costs, disbursements, and reasonable attorney's fees of the action.

If an action as provided in this chapter prosecuted by the employee, the employer, or both jointly against the third person, results in judgment against the third person, or settlement by the third person, the employer shall have no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

Subd. 4. Application of subdivisions 1, 2, 3. The provisions of subdivisions 1, 2, and 3 apply only where the employer liable for compensation and the other party legally liable for damages are insured or self-insured and engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof.

Subd. 5. Cumulative remedies. Where an injury or death for which compensation is payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the employee or his dependents in accordance with clause (a), or by his employer in accordance with clause (b), against the other party to recover damages, notwithstanding the payment by the employer or his liability to pay compensation.

(a) If an action against the other party is brought by the injured employee or his dependents and a judgment is obtained and paid or settlement is made with the other party, the employer may deduct from the compensation payable by him the amount actually received by the employee or dependents in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer, upon application the court may grant the employer the right to intervene in any such action for the prosecution thereof. If the injured employee or his dependents agree to receive compensation from the employer or institute proceedings to recover the same or accept from the employer any payment on account of the compensation, the employer is subrogated to the rights of the employee or his dependents. This employer may maintain an action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the dependents or in the name of the employer against such other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or his dependents the right to intervene in the action for the prosecution thereof. The proceeds of such action or settlement thereof shall be paid in accordance with subdivision 6.

(b) If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of his employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action against the other party for recovery of such premiums. This cause of action may be brought either by joining in an action described in clause (a) or by a separate action. Damages recovered under this clause shall be for the benefit of the employer and the provisions of subdivision 6 shall not be applicable to such damages.

(c) The third party is not liable to any person other than the employee or his dependents or his employer for any damages resulting from the injury or death.

A co-employee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the co-employee or was intentionally inflicted by the co-employee.

Subd. 6. **Costs, attorney fees, expenses.** The proceeds of all actions for damages or settlement thereof under this section, except for damages received under subdivision 5, clause (b) received by the injured employee or his dependents or by the employer as provided by subdivision 5, shall be divided as follows:

(a) After deducting the reasonable cost of collection, including but not limited to attorneys fees and burial expense in excess of the statutory liability, then

(b) One-third of the remainder shall in any event be paid to the injured employee or his dependents, without being subject to any right of subrogation.

(c) Out of the balance remaining, the employer shall be reimbursed in an amount equal to all compensation paid under this chapter to the employee or his dependents by the employer less the product of the costs deducted under clause (a) divided by the total proceeds received by the employee or his dependents from the other party multiplied by all compensation paid by the employer to the employee or his dependents.

(d) Any balance remaining shall be paid to the employee or his dependents, and shall be a credit to employer for any compensation which employer is obligated to pay, but has not paid, and for any compensation that such employer shall be obligated to make in the future.

There shall be no reimbursement or credit to employer for interest or penalties.

Subd. 7. **Medical treatment.** The liability of an employer for medical treatment under this chapter shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, against whom the employee may have a cause of action which may be sued under this chapter, but the employer shall have a separate additional cause of action against such third party to recover any amounts paid by him for medical treatment under this section resulting from the negligence of such third party. This separate cause of action of the employer may be asserted in a separate action brought by the employer against such third party or in the action commenced by the employee or the employer under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded thereon shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses shall be for the benefit of the employer to the extent that the employer has paid or will be required to pay for medical treatment of the injured employee and shall not affect the amount of periodic compensation to be paid.

Subd. 8. **State as employer.** In every case arising under subdivision 5 when the state is the employer and a settlement between the third party and the employee is made it is not valid unless prior notice thereof is given to the state within a reasonable time. If the state pays compensation to the employee under the provisions of this chapter and becomes subrogated to the rights of the employee or his dependents any settlement between the employee or his dependents and the third party is void as against the state's right of subrogation. When an action at law is instituted by an employee or his dependents against a third party for recovery of damages a copy of the complaint and notice of trial or note of issue in such action shall be served on the state. Any judgment rendered therein is subject to a lien of the state for the amount to which it is entitled to be subrogated under the provisions of subdivision 5.

Subd. 9. **Service of notice on attorney general.** In every case in which the state is liable to pay compensation or is subrogated to the rights of the employee or his dependents, all notices required to be given the state shall be served on the attorney general and the commissioner of the department of labor and industry.

Subd. 10. [Repealed, 1976 c 2 s 70; 1976 c 154 s 3]

History: 1953 c 755 s 6; Ex1967 c 1 s 6; Ex1967 c 40 s 4; 1969 c 199 s 1,2; 1969 c 936 s 3,4; 1973 c 388 s 15; 1976 c 154 s 1,2; 1979 c 81 s 1,2; Ex1979 c 3 s 31

176.07 [Repealed, 1953 c 755 s 83]

176.071 JOINT EMPLOYERS; CONTRIBUTION.

When compensation is payable under this chapter for the injury or death of an employee employed and paid jointly by two or more employers at the time of the injury or death these employers shall contribute to the payment of the compensation in the proportion of their wage liabilities to the employee. If any such employer is excluded from the provisions of this chapter and is not liable for compensation, the liability of those employers who are liable for compensation is the proportion of the entire compensation which their wage liability bears to the employee's entire wages. As between themselves such employers may arrange for a different distribution of payment of the compensation for which they are liable.

History: 1953 c 755 s 7

176.08 [Repealed, 1953 c 755 s 83]

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

Subdivision 1. No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter is an enforceable lien against the compensation or is valid or binding in any other respect unless approved in writing by the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals, if the claim arises out of a proceeding for compensation under this chapter, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in a settlement of a claim for damages without trial. A compensation judge shall in matters before him have authority to approve a fee of up to 25 percent of the first \$4,000 of compensation awarded to the employee and up to 20 percent of the next \$20,000 of compensation awarded to employee. The workers' compensation court of appeals judge shall have authority only to approve fees in settlements upon appeal before them up to 25 percent of the first \$4,000 of compensation awarded to the employee and up to 20 percent of the next \$20,000 of compensation awarded to the employee. If the employer or his insurer or the defendant is given written notice of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval provided by this chapter.

Subd. 2. Any application for attorney fees in excess of the amount which a compensation judge or the workers' compensation court of appeals may authorize shall be made to the commissioner of labor and industry. The application shall set forth the fee requested and the basis for such 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 such hearing served upon known interested parties. In all cases the employee shall be served with notice of hearing.

Subd. 3. An employee who is dissatisfied with his attorney fees, may file an application for review by the commissioner of labor and industry. Such application shall state the basis for the need of review and whether or not a hearing is requested. A copy of such application shall be served upon the attorney for

the employee by the commissioner 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 commissioner of labor and industry shall have the authority to raise the question of the issue of the attorney fees at any time upon his own motion and shall have continuing jurisdiction over attorney fees.

Subd. 4. The review of a determination by the commissioner of labor and industry shall be only by supreme court by certiorari upon the ground that it is arbitrary and unwarranted by the evidence. There shall be no review under sections 176.421 and 176.442.

Subd. 5. In the determination of the reasonable value of attorney fees arising out of a claim or proceeding under this chapter, the following principles are to be applied:

(a) The fee in each individual case must be a reasonable one.

(b) There is no set standard fee to be awarded in any workers' compensation matter.

(c) No attorney-client fee contract or arrangement is binding in any workers' compensation matter.

(d) In determining a reasonable attorney fee, important factors to be taken into account are: the amount involved, the time and expense necessary to prepare for trial, the responsibility assumed by counsel, the expertise of counsel in the workers' compensation field, the difficulties of the issues involved, the nature of proof needed to be adduced and the results obtained. The amount of money involved shall not be the controlling factor.

(e) The determination of the fee in each specific workers' compensation matter must be done with the same care as the determination of any other fact question in the matter.

(f) The determiner of the attorney fee in each matter must ascertain whether or not a retainer fee has been paid to the attorney and if so, the amount of the retainer fee.

(g) The determiner of attorney fees in each case must personally see that the workers' compensation file contains fully adequate information to justify the fee that is determined.

Subd. 6. The commissioner of labor and industry may prescribe reasonable and proper rules and regulations to effect his and the division's obligations under this section without regard to the joint prescription required under section 175.17, subdivision 3.

Subd. 7. If the employer or insurer shall file a denial of liability, notice of discontinuance, or shall fail to make payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or shall otherwise resist unsuccessfully the payment of compensation or medical expenses, and the injured person shall have employed an attorney at law, who successfully procures payment on behalf of the employee, the compensation judge, commissioner of the department of labor and industry, or the workers' compensation court of appeals upon appeal, upon application, shall award to the employee against the insurer or self-insured employer or uninsured employer, in addition to the compensation benefits paid or awarded to the employee, an amount equal to 25 percent of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of \$250.

Subd. 8. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, and litigation ensues to resolve such dispute, the employee shall be awarded against the party held liable for the benefits, the rea-

sonable attorney fees, costs and disbursements he incurs to protect his rights, even if he is being voluntarily paid benefits by one of the parties to the dispute.

History: 1953 c 755 s 8; 1973 c 388 s 16; 1975 c 271 s 6; 1975 c 359 s 7; 1976 c 134 s 78; 1977 c 342 s 7-11; Ex1979 c 3 s 32

176.09 [Repealed, 1953 c 755 s 83]

176.091 MINOR EMPLOYEES.

A minor employee has the same power to enter into a contract, make election of remedy, make any settlement, and receive compensation as an adult employee, subject to the power of the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals to require the appointment of a guardian for the minor employee to make such settlement and to receive moneys thereunder or under an award.

History: 1953 c 755 s 9; 1957 c 781 s 1; 1973 c 388 s 17; 1975 c 271 s 6; 1975 c 359 23; 1976 c 134 s 78

176.095 LEGISLATIVE FINDINGS.

The legislature finds that workers' compensation benefits for total disabilities should exceed those benefits provided for partial disabilities in order to fairly compensate the person unable to engage in gainful employment or suffering an injury described in section 176.101, subdivision 5. It is the policy of the legislature that any change in the benefit schedule for total disability be accompanied by an appropriate change in the benefit schedule for partial disability.

History: 1969 c 936 s 1; 1975 c 359 s 23

176.10 [Repealed, 1953 c 755 s 83]

176.101 COMPENSATION SCHEDULE.

Subdivision 1. **Temporary total disability.** For injury producing temporary total disability, 66 2/3 percent of the daily wage at the time of injury

(1) provided that during the year commencing on October 1, 1979, and each year thereafter, commencing on October 1, the maximum weekly benefits payable shall be the statewide average weekly wage for the period ending December 31, of the preceding year.

(2) The minimum weekly compensation benefits for temporary total disability shall be not less than 50 percent of the statewide average weekly wage 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.

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.

Subd. 2. **Temporary partial disability.** In all cases of temporary partial disability the compensation shall be 66 2/3 percent of the difference between the daily wage of the worker at the time of injury and the wage he is able to earn in his partially disabled condition. 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, and subject to a maximum compensation equal to the statewide average weekly wage. If the employer does not furnish the worker with work which he can do in his temporary partially disabled condition and he is unable to procure such work with another employer, after reasonably diligent effort, the employee shall be paid at the full compensation rate for his or her temporary total disability.

Subd. 3. **Permanent partial disability.** For permanent partial disability compensation shall be that named in the following schedule, subject to a maximum compensation equal to the statewide weekly wage:

- (1) For the loss of a thumb, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 65 weeks;
- (2) For the loss of a first finger, commonly called index finger, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 40 weeks;
- (3) For the loss of a second finger, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 35 weeks;
- (4) For the loss of a third finger, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 25 weeks;
- (5) For the loss of a fourth finger, commonly called the little finger, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 20 weeks;
- (6) The loss of the first phalange of the thumb or of any finger, is considered equal to the loss of one-half of the thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the thumb or finger;
- (7) The loss of one and one-half or more phalanges is considered equal to the loss of the entire finger or thumb; but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;
- (8) For the loss of a great toe, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 35 weeks;
- (9) For the loss of a toe other than a great toe, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 15 weeks;
- (10) The loss of the first phalange of any toe is considered equal to the loss of one-half of the toe, and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the toe;
- (11) The loss of one and one-half or more phalanges is considered equal to the loss of the entire toe;
- (12) For the loss of a hand, not including the wrist movement, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 195 weeks;
- (13) For the loss of a hand, including wrist movement, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 220 weeks;
- (14) For the loss of an arm, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 270 weeks;
- (15) Amputation of the arm below the elbow is considered the loss of a hand, including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it is considered the loss of an arm;
- (16) For the loss of a foot, not including ankle movement, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 140 weeks;
- (17) For the loss of a foot, including ankle movement, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 165 weeks;
- (18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 195 weeks;
- (19) For the loss of a leg so close to the hip that no effective artificial member can be used, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during 220 weeks;
- (20) Amputation of a leg below the knee is considered as equal to the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered as equal to the loss of a leg;

- (21) For the loss of an eye, 66 2/3 percent of the daily wage at the time of injury during 160 weeks;
- (22) For the complete permanent loss of hearing in one ear, 66 2/3 percent of the daily wage at the time of injury during 85 weeks;
- (23) For the complete permanent loss of hearing in both ears, 66 2/3 percent of the daily wage at the time of injury during 170 weeks;
- (24) For the loss of an eye and a leg, 66 2/3 percent of the daily wage at the time of injury during 475 weeks;
- (25) For the loss of an eye and an arm, 66 2/3 percent of the daily wage at the time of injury during 475 weeks;
- (26) For the loss of an eye and a hand, 66 2/3 percent of the daily wage at the time of injury during 450 weeks;
- (27) For the loss of an eye and a foot, 66 2/3 percent of the daily wage at the time of injury during 400 weeks;
- (28) For the loss of two arms, other than at the shoulder, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (29) For the loss of two hands, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (31) For the loss of two feet, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (32) For the loss of one arm and the other hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (33) For the loss of one hand and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (34) For the loss of one leg and the other foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (35) For the loss of one leg and one hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (36) For the loss of one arm and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (37) For the loss of one arm and one leg, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (38) For loss of the voice mechanism, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;
- (39) For head injuries, 66 2/3 percent of the daily wage at the time of injury for that proportion of 500 weeks which is represented by its percentage of the permanent partial disability to the entire body as is determined from competent testimony at a hearing before a compensation judge, the commissioner, or the workers' compensation court of appeals;
- (40) For permanent partial disability resulting from injury to any internal organ until such time as the commissioner of labor and industry shall promulgate a schedule of internal organs and thereafter for internal organs covered by the schedule of internal organs established by the commissioner of labor and industry, 66 2/3 percent of the daily wage at time of injury for that proportion of 500 weeks, not to exceed 500 weeks, as determined by the commissioner of labor and industry, which is the proportionate amount of permanent partial disability caused to the entire body by the injury as is determined from competent testimony at a hearing before a compensation judge, the commissioner, or the workers' compensation court of appeals;

(41) For disfigurement or scarring not resulting from the loss of a member or other injury specifically compensated, affecting the employability or advancement opportunity of the injured person in the employment in which he was injured or other employment for which the employee is then qualified or for which the employee has become qualified, $66 \frac{2}{3}$ percent of the daily wage at the time of injury during the period the parties agree to or the compensation judge or the workers' compensation court of appeals in cases on appeal determines, not exceeding 90 weeks;

(42) For permanent partial disability resulting from injury to the back, $66 \frac{2}{3}$ percent of the daily wage at the time of injury for that proportion of 350 weeks which is represented by the percentage of the permanent partial disability as is determined from competent testimony at a hearing before a compensation judge, the commissioner, or the workers' compensation court of appeals;

(43) When an employee sustains concurrent injuries resulting in concurrent disabilities he shall receive compensation only for the injury which entitled him to the largest amount of compensation, but this does not affect liability for disfigurement affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in subdivision 5;

(44) In all cases of permanent partial disability it is considered that the permanent loss of the use of a member is equivalent to and draws the same compensation as the loss of that member, but the compensation in and by this schedule provided shall be in lieu of all other compensation in these cases, except as otherwise provided by this section;

In the event a worker has been awarded or is entitled to receive compensation for loss of use of a member under any workers' compensation law, and thereafter sustains loss of the member under circumstances entitling him to compensation therefor under this subdivision, the amount of compensation awarded, or that he is entitled to receive, for the loss of use, is to be deducted from the compensation due under the schedules of this section for the loss of the member, provided, that the amount of compensation due for the loss of the member caused by the subsequent accident is in no case less than 25 percent of the compensation payable under the schedule of this section for the loss of the member;

(45) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of the member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the member which the extent of the injury to the member bears to its total loss;

(46) In cases of permanent partial disability caused by simultaneous injury to two or more members, the applicable schedules in this subdivision shall be increased by 15 percent. This clause shall not apply when the injuries are compensated under paragraphs 22 to 37 inclusive, of this subdivision. In cases of partial disability due to injury to both eyes resulting in less than total loss of vision in one or both eyes compensation shall be paid at the prescribed rate during that part of 450 weeks which the extent of the combined injury to both eyes bears to the complete loss of industrial vision;

(47) The commissioner of labor and industry with the workers' compensation court of appeals may make or revise rules for the determination of the extent of the impairment of the industrial use of one or both eyes taking into account all primary coordinate factors of vision. These rules shall be made or revised after consultation with experts on industrial vision and after public notice to and hearing of interested parties;

(48) For permanent partial disability resulting from injury to the body as a whole due to burns, 66 2/3 percent of the daily wage at the time of injury, for that proportion of 350 weeks which is represented by the percentage of the permanent partial disability as is determined from competent testimony at a hearing before a compensation judge, the commissioner, or the workers' compensation court of appeals, the compensation to be paid in addition to the compensation as employee would otherwise be entitled to for loss of use of a member in accordance with this section;

(49) In all cases of permanent partial disability not enumerated in this schedule the compensation shall be 66 2/3 percent of the difference between the daily wage of the worker at the time of the injury and the daily wage he is able to earn in his partially disabled condition, subject to a maximum equal to the statewide average weekly wage, and continue during disability, not to exceed 350 weeks; and if the employer does not furnish the worker with work which he can do in his permanently partially disabled condition and he is unable to secure such work with another employer after a reasonably diligent effort, the employee shall be paid at his or her maximum rate of compensation for total disability.

Subd. 4. Permanent total disability. For permanent total disability, as defined in subdivision 5, the compensation shall be 66 2/3 percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability and a minimum weekly compensation equal to the minimum weekly compensation for a temporary total disability. This compensation shall be paid during the permanent total disability of the injured employee but after a total of \$25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision. This reduction shall also apply to any old age and survivor insurance benefits. Payments shall be made at the intervals when the wage was payable, as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of confinement in the institution, unless he has wholly dependent on him for support some person named in section 176.111, subdivisions 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of confinement, shall be paid for the benefit of the dependent person during dependency. The dependency of this person shall be determined as though the employee were deceased.

Subd. 5. Total disability. 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 any other injury which totally incapacitates the employee from working at an occupation which brings him an income constitutes total disability.

Subd. 6. Minors. 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 permanent partial disability, for the purpose of computing the compensation to which he is entitled for said injury the compensation rate for temporary total, temporary partial, retraining, permanent partial or permanent total disability shall be the larger of either the statewide average weekly wage or the employees weekly wage, but in no case shall the compensation exceed the maximum weekly compensation rate payable under this chapter.

Subd. 7. [Repealed, Ex1979 c 3 s 70]

History: 1953 c 755 s 10; 1955 c 615 s 1-5; 1957 c 781 s 2-5; Ex1967 c 40 s 7-11; 1969 c 186 s 1; 1969 c 276 s 2; 1969 c 936 s 5-8; 1971 c 422 s 1,2; 1971 c 475 s 1-4; 1973 c 388 s 18-20; 1973 c 600 s 1; 1973 c 643 s 1-4; 1974 c 486 s 2-4; 1975 c 271 s 6; 1975 c 359 s 8,23; 1976 c 134 s 78; 1977 c 342 s 12; 1977 c 347 s 30; Ex1979 c 3 s 33-35

176.102 REHABILITATION.

Subdivision 1. **Scope.** Vocational rehabilitation shall train an employee so he may be returned to a job related to his former employment or to a job in another work area which produces an economic status as close as possible to that he 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.

Subd. 2. **Administrators.** The commissioner of labor and industry shall hire a director of rehabilitation services in the classified service. The commissioner of labor and industry is responsible for supervising rehabilitation services, including the selection and delivery of services. The commissioner of labor and industry may hire qualified personnel to assist in his duties under this section and may delegate his duties and performance.

Subd. 3. **Review panel.** There is created a rehabilitation review panel composed of the commissioner of labor and industry or his designee, who shall serve as an ex officio member and two members each from labor, employers, insurers, vocational rehabilitation, and medicine and one member representing chiropractors. The members shall be appointed by the governor and shall serve four year terms which may be renewed. Compensation for members shall be governed by section 15.0575. The panel shall select a chairman. The panel shall (a) review and make a determination with respect to appeals regarding rehabilitation plans; (b) hold revocation of certification approval hearings; (c) continuously study rehabilitation; and (d) recommend rehabilitation rules as necessary to the commissioner of labor and industry. A majority vote of those attending a panel hearing under subdivision 6 shall constitute the decision of the board.

Subd. 4. **Rehabilitation plan; development.** Within 30 days of the time an employer or his insurer has medical information that an employee is unable due to a personal injury or occupational disease to return to his preinjury occupation the employer shall provide rehabilitation consultation for the employee. The employee, however, has the final decision on which rehabilitation agency is to be utilized pursuant to the provisions of this section. The consultation shall be done by any person or public or private institution approved by the commissioner of labor and industry. If the consultant determines rehabilitation would significantly reduce or eliminate the decrease in employability, the employer or insurer in conjunction with the rehabilitation consultant shall submit a specific plan of rehabilitation to the commissioner. If the employer does not provide rehabilitation consultation, when required by this section, within the time specified by this subdivision, the commissioner of labor and industry shall notify the employer and insurer that should they fail to provide rehabilitation consultation within 15 days from the receipt of the commissioner's notice, the division of vocational rehabilitation shall be authorized to provide the rehabilitation consultation for the employee. If the employee refuses to submit to any reasonable examinations and evaluative procedures to determine the need for and the details of a plan of rehabilitation, the amount of compensation may be reduced or the right to compensation may be suspended by an order of the division or workers' compensation court of appeals in a matter before it. In developing a

plan, consideration shall be given to the employee's age, education, previous work history, interests and skills.

Subd. 5. On the job training. On the job training is to be given consideration in developing a rehabilitation plan especially where it would produce an economic status similar to that enjoyed prior to disability. When a rehabilitation plan includes on the job training, the employee shall receive compensation while employed in an amount equal to the after tax wage the employee received at the time of the personal injury. This compensation shall be paid in whole or in part by the insurer liable for compensation for the employee's personal injury. The amount of compensation to be paid by this insurer shall be determined in the rehabilitation plan prepared pursuant to this section. Any difference between the amount of compensation the insurer is paying and the after tax wage the employee received at the time of the personal injury shall be paid by the on the job employer, but in no case shall this employer's amount exceed the prevailing wage for the job. After tax wage shall be determined by subtracting federal and state income tax from the employee's gross wage.

A rehabilitation plan which includes on the job training shall attempt to create an incentive for an employer to hire the employee for on the job training. This incentive may be in the form of reducing the on the job training employer's wages paid to the employee to a level which is less than the prevailing wage for the job, provided that the total compensation from the insurer, required by this section, and the wages paid by the on the job training employer is not less than the after tax wage received by the employee at the time of the personal injury. The compensation from the insurer and the on the job training employer paid pursuant to this subdivision is in lieu of temporary total disability payments and the additional compensation provided in subdivision 11.

Subd. 6. Plan, approval. The commissioner of labor and industry shall approve or reject rehabilitation plans. Any persons aggrieved by a decision of the commissioner may appeal to the rehabilitation panel within 30 days of the commissioner's decision. The decision of the panel may be appealed to the workers' compensation court of appeals. The panel may approve or reject the decision of the commissioner. If it rejects the commissioner's decision it may formulate its own rehabilitation plan.

Subd. 7. Plan implementation; reports. Upon request by the commissioner, insurer or employer, reports shall be made by the provider of the rehabilitation service to the commissioner of labor and industry, insurer and employer of an employee's progress under a plan.

Subd. 8. Plan modification. Upon request of the employer, the insurer, or employee to the commissioner, the plan may be suspended, terminated or altered upon a showing of good cause therefor, including:

- (a) a physical impairment that does not allow the employee to pursue the vocation being trained for;
- (b) the employee's performance level indicates he cannot complete the plan successfully; or
- (c) an employee does not cooperate with a plan.

An employee may request a change in a rehabilitation plan once because he feels he is not suited for the type of work for which training is being provided if the request is made within 90 days of the start of the plan. Any decision of the commissioner regarding a change in a plan may be appealed to the panel within 15 days of the decision.

Subd. 9. Plan, costs. An employer is liable for the following rehabilitation expenses under this section:

- (a) Cost of vocational rehabilitation diagnosis and preparation of a plan;
- (b) Cost of all rehabilitation services and supplies necessary for implementation of the plan;
- (c) Reasonable cost of tuition, books and travel; and, in addition, reasonable costs of board and lodging when rehabilitation requires residence away from the employee's customary residence; and
- (d) Any other expense agreed to be paid.

Subd. 10. **Rehabilitation; consultants.** The commissioner shall approve rehabilitation consultants who may propose and implement plans if they satisfy rules promulgated by the commissioner for rehabilitation consultants. A consultant may be an individual or public or private entity.

Subd. 11. **Compensation during rehabilitation.** The insurer or employer shall pay up to 156 weeks of compensation during rehabilitation under a plan in an amount equal to 125 percent of the employee's rate for temporary total disability. This payment is in lieu of payment for temporary total, temporary partial, or permanent total disability to which the employee might otherwise be entitled for this period under this chapter, but shall be considered to be the equivalent of temporary total disability for the purposes of section 176.132. If on the job training is part of the rehabilitation program, the weeks during which the insurer or employer pays compensation pursuant to subdivision 5 shall be subtracted from the 156 weeks of retraining compensation which has been paid, if any, pursuant to this subdivision. This subdivision shall not apply to retraining benefits for which liability has been established prior to July 1, 1979.

Subd. 12. **Rules.** The commissioner shall promulgate rules necessary to implement this section including rules relating to qualifications necessary to be an approved rehabilitation consultant.

History: *Ex1979 c 3 s 36*

176.105 COMMISSIONER TO ESTABLISH DISABILITY SCHEDULES.

Subdivision 1. The commissioner of labor and industry may by rule establish a schedule of degrees of disability resulting from different kinds of injuries.

Subd. 2. The commissioner shall by rule establish a schedule of internal organs that are compensable and indicate in the schedule to what extent the organs are compensable under section 176.101, subdivision 3.

Subd. 3. In order to accomplish the purposes of this section, the commissioner shall study disability or permanent impairment schedules set up by other states, the American Medical Association and other organizations.

History: *Ex1979 c 3 s 62*

176.11 [Repealed, 1953 c 755 s 83]

176.111 DEPENDENTS, ALLOWANCES.

Subdivision 1. **Persons wholly dependent, presumption.** For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent:

- (a) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;
- (b) children under 18 years of age, or a child under the age of 25 years who is regularly attending as a full time student at a high school, college, or university, or regularly attending as a full time student in a course of vocational or technical training.

Subd. 2. **Children.** Children 18 years of age, or over 18 when physically or mentally incapacitated from earning, are prima facie considered dependent.

Subd. 3. **Persons wholly supported.** A wife, child, husband, mother, father, grandmother, grandfather, grandchild, sister, brother, mother-in-law, father-in-law, wholly supported by a deceased worker at the time of his death and for a reasonable time prior thereto are considered his actual dependents and compensation shall be paid to them in the order named.

Subd. 4. **Persons partially supported.** Any member of a class named in subdivision 3 who regularly derived part of his support from the wages of a deceased worker at the time of his death and for a reasonable time prior thereto is considered his partial dependent and compensation shall be paid to such dependents in the order named.

Subd. 5. **Payments, to whom made.** In death cases compensation payable to dependents is computed on the following basis and shall be paid to the persons entitled thereto or to a guardian or such other person as the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal directs for the use and benefit of the person entitled thereto.

Subd. 6. **Spouse, no dependent child.** If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the dependent surviving spouse 50 percent of the daily wage at the time of the injury of the deceased.

Subd. 7. **Spouse, one dependent child.** If the deceased employee leave a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of such spouse and child 60 percent of the daily wage at the time of the injury of the deceased.

Subd. 8. **Spouse, two dependent children.** If the deceased employee leave a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of such spouse and such children $66 \frac{2}{3}$ percent of the daily wage at the time of the injury of the deceased.

Subd. 9. [Repealed, 1975 c 359 s 22]

Subd. 10. **Allocation of compensation.** In all cases where compensation is payable to the surviving spouse for the benefit of the surviving spouse and dependent children, the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal may determine what portion of the compensation shall be applied for the benefit of any such child and may order the same paid to a guardian.

Subd. 11. **Remarriage of dependent surviving spouse.** In the case of the remarriage of a dependent surviving spouse without dependent children the dependent surviving spouse shall receive a lump sum settlement equal to two full years compensation. In case of the remarriage of a dependent surviving spouse who has dependent children the compensation which would otherwise become the dependent surviving spouse's due shall be payable to the dependent surviving spouse, guardian, or such other person as the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal, orders for the use and benefit of the children during dependency. If the dependency of the children ceases before the equivalent of two years of the dependent surviving spouse's compensation has been paid to the children, the remainder of the two years compensation shall be payable in a lump sum to the dependent surviving spouse without deduction for interest. The payments provided herein shall be paid within 60 days after written notice to the employer of the remarriage or that the dependency of the children has ceased. No dependent surviving spouse who has remarried shall be held to be a dependent surviving spouse without dependent children when the deceased employee leaves any dependent child as defined by this chapter.

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

Subd. 13. [Repealed, 1977 c 342 s 28]

Subd. 14. **Parents.** If the deceased employee leave no widow or child or husband entitled to any payment under this chapter, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly 45 percent of the weekly wage at the time of the injury of the deceased. In case of the death of either of the wholly dependent parents the survivor shall receive 35 percent of the weekly wage thereafter. If the deceased employee leave one parent wholly dependent on the deceased, there shall be paid to such parent 35 percent of the weekly wage at the time of the injury of the deceased employee. The compensation payments under this section shall not exceed the actual contributions made by the deceased employee to the support of his parents for a reasonable time immediately prior to the injury which caused the death of the deceased employee.

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

Subd. 16. **Cessation of compensation.** Except as provided in this chapter, compensation ceases upon the death or marriage of any dependent.

Subd. 17. **Partial dependents.** Partial dependents are entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependents at the time of and for a reasonable time immediately prior to the injury bore to the total income of the dependent during the same time; and if the amount regularly contributed by the deceased to such partial dependents cannot be ascertained because of the circumstances of the case, the compensation judge or workers' compensation court of appeals, in cases upon appeal, shall make a reasonable estimate thereof taking into account all pertinent factors of the case.

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 \$1,000. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, such reasonable value shall be determined and approved by the commissioner of the department of labor and industry, a compensation judge, or workers' compensation court of appeals, in cases upon appeal, before payment, after such reasonable notice to interested parties as is required by the commissioner of the department of labor and industry. If the deceased leave no dependents, no compensation is payable, except as provided by this chapter.

Subd. 19. [Repealed, 1975 c 359 s 22]

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

Subd. 21. Death, benefits; coordination with governmental survivor benefits. The following provision shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

The combined total of weekly government survivor benefits and workers' compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing his death; provided, however, that no state workers' compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage provided, however, the workers' compensation benefits payable to a dependent surviving spouse shall not be reduced on account of any governmental survivor benefits payable to decedent's children if the support of the children is not the responsibility of the dependent surviving spouse.

History: 1953 c 755 s 11; 1955 c 615 s 6-8; 1957 c 781 s 6,7; 1965 c 742 s 1; Ex1967 c 40 s 12,13; 1969 c 936 s 9-12; 1971 c 475 s 5-7; 1973 c 388 s 21-25; 1973 c 643 s 5-7; 1975 c 271 s 6; 1975 c 359 s 9-16,23; 1976 c 134 s 78; 1977 c 342 s 13-15; Ex1979 c 3 s 37

176.12 [Repealed, 1953 c 755 s 83]

176.121 COMMENCEMENT OF COMPENSATION.

In cases of temporary total or temporary partial disability no compensation shall be allowed for the three days after the disability commenced, except as provided by section 176.135, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 176.141. If such disability continues for 10 days or longer, such compensation shall be computed from the commencement of the disability.

History: 1953 c 755 s 12; 1969 c 936 s 13

176.13 [Repealed, 1965 c 327 s 2]

176.131 SUBSEQUENT DISABILITY, SPECIAL FUND.

Subdivision 1. If an employee incurs personal injury and suffers disability that is substantially greater, because of a pre-existing physical impairment, than what would have resulted from the personal injury alone, the employer shall pay all compensation provided by this chapter, but he shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and \$2,000 in medical expenses, subject to the following exceptions:

If the personal injury alone results in permanent partial disability to a scheduled member under section 176.101, the monetary and medical expense limitations shall not apply and the employer shall be liable for such compensation, medical expense, and retraining attributable to the permanent partial disability, and he may be reimbursed from the compensation fund only for compensation paid in excess of such disability.

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

retraining, is liable for the portion of the disability that is attributable to that injury.

Subd. 2. If the employee's personal injury shall result in disability or death, and if the injury, death, or disability would not have occurred except for the pre-existing physical impairment, the employer shall pay all compensation provided by this chapter, but shall be reimbursed from the special compensation fund for such compensation only where the permanent physical impairment contributing to the second injury is diabetes, hemophilia or seizures.

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

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

(b) The employee with a pre-existing physical impairment must have been registered with the commissioner of labor and industry prior to the employee's personal injury or within 180 days after notice of the employee's personal injury is received by the employer. Registration subsequent to the injury shall be based on a medical report made prior to the injury indicating the pre-existing physical impairment.

Subd. 4. Any employer who hires or retains in his employment any person who has a physical impairment shall file a formal registration for each such employee with the commissioner of the department of labor and industry in such form as the commissioner may require.

Subd. 5. Registration under this section may be made by the employee or any employer provided:

(a) Registration shall be accompanied by satisfactory evidence of such physical impairment;

(b) Registration shall be in effect as long as said impairment exists;

(c) Upon request, a registered employee shall be furnished by the commissioner of the department of labor and industry with a registration card evidencing the fact of registration, and such other facts as the commissioner of the department of labor and industry deems advisable.

Subd. 6. When the employer claims reimbursement from the special compensation fund after paying compensation as prescribed by this section, he shall file with the commissioner of the department of labor and industry written notice of intention to claim reimbursement in accordance with the rules and regulations of the commissioner of the department of labor and industry.

Subd. 7. Under subdivisions 1 and 2, an occupational disease may be deemed to be the personal (second) injury.

If the subsequent disability for which reimbursement is claimed is an occupational disease, and if, subsequent to registration as provided by subdivisions 4 and 5, the employee has been employed by the employer in employment similar to that which initially resulted in such occupational disease, no reimbursement shall be paid to the employer.

Subd. 8. As used in this section the following terms have the meanings given them:

"Physical impairment" means any physical or mental condition that is permanent in nature, whether congenital or due to injury, disease or surgery and which is or is likely to be a hindrance or obstacle to obtaining employment provided that, physical impairment as used herein is limited to the following:

(a) Epilepsy,

(b) Diabetes,

(c) Hemophilia,

- (d) Cardiac disease,
- (e) Partial or entire absence of thumb, finger, hand, foot, arm or leg,
- (f) Lack of sight in one or both eyes or vision in either eye not correctable to 20/40,
- (g) Residual disability from poliomyelitis,
- (h) Cerebral Palsy,
- (i) Multiple Sclerosis,
- (j) Parkinson's disease,
- (k) Cerebral vascular accident,
- (l) Chronic Osteomyelitis,
- (m) Muscular Dystrophy,
- (n) Thrombophlebitis,
- (o) Any other physical impairment for which at least 50 weeks or more of weekly benefits would be payable as permanent partial disability if the physical impairment were evaluated according to standards used in workers' compensation proceedings, and

(p) Any other physical impairments of a permanent nature which the workers' compensation court of appeals may by rule prescribe;

"Compensation" has the meaning defined in section 176.011;

"Employer" includes insurer;

"Disability" means, unless otherwise indicated, any condition causing either temporary total, temporary partial, permanent total, permanent partial, death, medical expense, or retraining.

Subd. 9. The commissioner of the department of labor and industry shall prescribe rules and regulations necessary for the operation of this section, except as noted in section 176.131, subdivision 8, clause (p).

Subd. 10. The special compensation fund is created for the purposes provided in this chapter in the following manner:

(1) In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the commissioner of labor and industry the sum of \$5,000 for the benefit of the special compensation fund; in every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to at least \$5,000 in monetary benefits of dependency compensation, the employer shall pay to the commissioner of labor and industry for the benefit of the special compensation fund the difference between the amounts actually paid for the dependency benefits and \$5,000; but in no event shall the employer pay the commissioner of labor and industry less than \$1,000;

(2) When an employee suffers a personal injury which results in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability or death and which entitles him or dependents to compensation under sections 176.101 or 176.111, the employer shall in addition to compensation provided therein, pay to the commissioner of labor and industry for the benefit of the special compensation fund a lump sum without interest deduction equal to seven percent of the total compensation, as soon as the amount payable for the particular injury is determined, or arrived at by agreement of the parties and the amount is approved by the commissioner of labor and industry.

The provisions of clauses (1) and (2) shall apply to all workers' compensation payments, exclusive of medical costs, paid under sections 176.101 and 176.111 for all injuries or death occurring on or after June 1, 1971.

Personal injuries that occurred prior to June 1, 1971 shall be assessed at the rate in effect on the date of occurrence.

The seven percent of the total compensation required to be paid by the employer to the commissioner of labor and industry for the benefit of the special compensation fund as provided in clause (2) of this subdivision shall remain fixed at said seven percent for the period from June 1, 1971, to June 1, 1972. Effective June 1, 1972, through June 1, 1975, and thereafter on January 1, beginning in 1976, the rate shall be adjusted on the following basis: if the balance in the special compensation fund as of April 30 in any year through 1975 and as of September 30, 1975, and each September 30 thereafter, is below \$1,000,000, the rate of payment shall be increased by two percent over the then prevailing rate. If the balance is at least \$1,000,000 but below \$1,500,000, the rate will be increased by one percent. If the balance is at least \$1,500,000 but below \$2,000,000, there shall be no change. If the balance is at least \$2,000,000 but less than \$2,500,000, the rate shall be decreased by one percent. If the balance is at least \$2,500,000, the rate shall be decreased by two percent. If the balance is \$3,000,000 or more the commissioner of labor and industry shall within 30 days determine the percent of decrease, which shall be not less than two percent nor more than five percent.

Sums paid to the commissioner of labor and industry pursuant to the provisions hereof, shall be deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by this chapter. All money heretofore arising from the provisions of this section or similar law shall be transferred to this special compensation fund. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund.

The state treasurer shall be the custodian of this special fund and the workers' compensation division and the workers' compensation court of appeals in cases before it shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of clause (1) and dependency later is shown, or if deposit is or has been made pursuant to either clause (1) or (2) by mistake or inadvertence, or under circumstances that justice requires a refund thereof, the state treasurer is authorized to refund the deposit under order of the workers' compensation division or the workers' compensation court of appeals. There is appropriated to the persons entitled to the refunds from the fund an amount sufficient to make the refund and payment.

Costs within the department of labor and industry for the accounting and legal procedures necessary for administration of the programs financed by the special compensation fund shall be paid from the moneys biennially appropriated to the department and not from the special compensation fund.

Subd. 11. The commissioner of the department of labor and industry shall report biennially to the governor and to the legislature as to the financial status of such special compensation fund, which report shall include a statement of the receipts and the disbursements for the period covered.

Subd. 12. All employers shall make such reports to the commissioner of the department of labor and industry as shall be required for the proper administration of this section.

History: 1965 c 327 s 1; Ex1967 c 1 s 6; 1969 c 122 s 1; 1969 c 653 s 1; 1971 c 589 s 1-4; 1971 c 593 s 1; 1973 c 388 s 26-33; 1973 c 643 s 8; 1974 c 355 s 21; 1974 c 406 s 40; 1975 c 271 s 6; 1975 c 359 s 17,23; 1976 c 134 s 78; Ex1979 c 3 s 38-40

176.132 SUPPLEMENTARY BENEFITS.

Subdivision 1. **Eligible recipients.** An employee who has suffered personal injury 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 hereinafter prescribed after 104 weeks have elapsed and for the remainder of his total disablement. Regardless of the number of weeks of total disability, no totally disabled person shall be ineligible for supplementary benefits after four years have elapsed since the first date of his total disability, provided that all periods of disability are caused by the same injury.

Subd. 2. **Amount.** (a) The supplementary benefit payable under this section shall be the difference between the amount the employee receives on or after January 1, 1976, under section 176.101, subdivision 1 or subdivision 4, and 65 percent of the statewide average weekly wage as computed annually.

(b) In the event an eligible recipient is currently receiving no compensation or is receiving a reduced level of compensation because of a credit being applied as the result of a third party liability or damages, the employer or insurer shall compute the offset credit as if the individual were entitled to the actual benefit or 65 percent of the statewide average weekly wage as computed annually, whichever is greater. If this results in the use of a higher credit than otherwise would have been applied and the employer or insurer becomes liable for compensation benefits which would otherwise not have been paid, the additional benefits resulting shall be handled according to this section.

(c) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of a valid agreement in settlement of a claim, no supplementary benefit shall be payable under this section.

(d) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of prior limitations in the maximum amount payable for permanent total disability or because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and 65 percent of the statewide average weekly wage as computed annually.

(e) In the event that an eligible recipient is receiving simultaneous benefits from any government disability program, the amount of supplementary benefits payable under this section shall be reduced by five percent. If the individual does not receive the maximum benefits for which he is eligible under other governmental disability programs due to the provisions of 42 U.S.C. 424a (d), this reduction shall not apply.

Subd. 2a. **Time of adjustment.** Supplementary benefits payable under this section shall be adjusted each October 1, beginning in 1980, based upon the statewide average weekly wage for the preceding calendar year.

Subd. 3. **Payment.** The payment of supplementary benefits shall be the responsibility of the employer or insurer currently paying total disability benefits, or any other payer of such benefits. When the eligible individual is not currently receiving benefits because the total paid has reached the maximum prescribed by law the employer and insurer shall, nevertheless, pay the supplementary benefits that are prescribed by law. The employer or insurer paying the supplementary benefit shall have the right of full reimbursement from the special compensation fund for the amount of such benefits paid.

Subd. 4. **Administrative procedures.** The commissioner of the department of labor and industry shall prescribe such forms and procedures as are required for the administration of this section.

History: 1971 c 383 s 1; 1973 c 388 s 34; 1973 c 643 s 9; 1974 c 431 s 1,2; 1975 c 359 s 18; 1977 c 342 s 16-18; 1978 c 797 s 3; Ex1979 c 3 s 41; 1980 c 389 s 1

176.1321 EFFECTIVE DATE OF BENEFIT CHANGES.

Unless otherwise specified in the act making the change, any workers' compensation benefit change shall be effective on the October 1 next following its final enactment.

History: Ex1979 c 3 s 42

176.133 ATTORNEYS FEES, SUPPLEMENTARY BENEFITS.

No attorneys fees shall be permitted or approved by the workers' compensation court of appeals from the supplementary workers' compensation benefits provided by section 176.132, or amendments thereto, unless the case solely involves the obtaining of supplementary workers' compensation benefits. When such fees are allowed an amount equal to 25 percent of that portion of the fee which is in excess of \$250 shall be added to the employee's benefit as provided in section 176.081 rather than deducted as a portion thereof. The fees shall be subject to the limitations contained in section 176.081.

History: Ex1971 c 48 s 41; 1975 c 271 s 6; 1975 c 359 s 16,23; 1976 c 134 s 78

176.134 REOPENED CASE FUND.

Subdivision 1. **Created.** The commissioner of labor and industry shall assess insurers and self-insured employers the amount determined as necessary by the commissioner of insurance pursuant to section 79.22 and shall deposit these assessments with the state treasurer for the benefit of a special account to be known as the reopened case fund.

Interest or profit arising from investment of the reopened case fund shall be credited to the reopened case fund, and any loss from investment shall be borne by it.

Subd. 2. **Liability.** When a claim for compensation is made pursuant to this chapter by an employee or a claim for death benefits is made pursuant to this chapter on behalf of the dependents of a deceased employee after seven years from the date of the personal injury or death, and no compensation has previously been paid for the injury or death, the claim shall be against and paid from the reopened case fund.

If compensation has previously been paid for the personal injury or death for which compensation is being claimed, the claim shall be against and paid from the reopened case fund only if the claim is made after seven years from the date of injury or death or after three years from the date of last payment or compensation, whichever is later.

Subd. 3. **Last payment of compensation.** For the purposes of this section, the date of the last payment of compensation is the date of actual payment of the last installment of previously awarded compensation, except that when compensation was paid in a lump sum, the date of the last payment of compensation is the date to which the lump sum payment would have extended if the payments had been made in regular weekly intervals.

Subd. 4. **Administration.** The commissioner of labor and industry shall administer the reopened case fund.

Subd. 5. **Effective date for liability.** The reopened case fund is liable for injuries which occur after July 1, 1979.

History: *Ex1979 c 3 s 43*

176.135 TREATMENT; APPLIANCES; SUPPLIES.

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

Subd. 1a. **Non-emergency surgery; second surgical opinion.** The employer is required to furnish surgical treatment pursuant to subdivision 1 only after the employee has obtained two surgical opinions concerning whether the surgery is reasonably required to cure and relieve the effects of the personal injury or occupational disease. If at least one of the opinions affirms that the surgery is reasonably required, the employee may choose to undergo the surgery at the employer's expense. A second surgical opinion is not required in cases of emergency surgery or when the employer and employee agree that the opinion is not necessary.

Subd. 2. **Change of physicians, podiatrists, or chiropractors.** The commissioner of the department of labor and industry shall make the necessary rules for a change of physicians, podiatrists, or chiropractors in the case that either the employee or the employer desire a change and for the designation of a physician, podiatrist, or chiropractor suggested by the injured employee or the commissioner of the department of labor and industry. In such case the expense thereof shall be borne by the employer upon the same terms and conditions as provided in subdivision 1 and for medical, podiatric, chiropractic and surgical treatment and attendance.

Subd. 2a. **Definitions.** For the purposes of this section, the word "physicians" shall include persons holding the degree M. D. (Doctor of Medicine) and persons holding the degree D. O. (Doctor of Osteopathy); and the terms "medical, surgical and hospital treatment" shall include professional services rendered by licensed persons who have earned the degree M. D. or the degree D. O.

Subd. 3. **Limitation of liability.** The pecuniary liability of the employer for the treatment, articles and supplies required by this section shall be limited to such charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living when the same are paid for by the injured persons. On this basis the compensation judge or workers' compensation court of appeals on appeal may determine the reasonable value of all such services and supplies and the liability of the employer is limited to the amount so determined.

Subd. 4. **Christian Science treatment.** Any employee electing to receive Christian Science treatment as provided in subdivision 1 shall notify his employer in writing of his election within 30 days after July 1, 1953, and any person hereafter accepting employment shall give such notice at the time he accepts employment. Any employer may elect not to be subject to the provisions for Christian Science treatment provided for in this section by filing a written notice of such election with the commissioner of the department of labor and industry, in which event the election of the employee shall have no force or effect whatsoever.

History: 1953 c 439 s 1; 1953 c 755 s 13; 1971 c 863 s 1,2; 1973 c 258 s 1; 1973 c 388 s 35-38; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1979 c 107 s 1,2; Ex1979 c 3 s 44

176.136 MEDICAL FEE REVIEW.

The commissioner of labor and industry shall by rule establish procedures for determining whether 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. If the commissioner determines that the charge for a health service is excessive, he may limit payment to the reasonable charge for that service; however, the commissioner shall by rule establish procedures allowing for a provider to appeal such determination. The commissioner may contract with a review organization as defined in section 145.61 in making any determinations as to whether or not a charge is excessive.

History: Ex1979 c 3 s 45

176.137 REMODELING OF RESIDENCE; HANDICAPPED EMPLOYEES.

Subdivision 1. The employer shall furnish to an employee who is permanently disabled because of a personal injury suffered in the course of employment with that employer such alteration or remodeling of his principal residence as is reasonably required to enable the employee to move freely into and throughout his residence and to otherwise adequately accommodate the disability. Any remodeling or alteration shall be furnished only when the division or workers' compensation court of appeals determines that the injury is to such a degree that the employee is substantially prevented from functioning within the principal residence.

Subd. 2. The pecuniary liability of an employer for remodeling or alteration required by this section is limited to prevailing costs in the community for remodeling or alteration of that type.

Subd. 3. Where the alteration or remodeling of the employee's residence is not practicable, the award may be to purchase or lease a new or different residence if the new or different residence would better accommodate the disability.

Subd. 4. No award may be made except upon the certification of a licensed architect to the division or workers' compensation court of appeals that the proposed alteration or remodeling of an existing residence or the building or purchase of a new or different residence is reasonably required for the purposes specified in subdivision 1. The council for the handicapped shall advise the division or workers' compensation court of appeals as provided in section 256.482, subdivision 5, clause (7). The alteration or remodeling of an existing residence, or the building or purchase of a new home must be done under the supervision of a licensed architect relative to the specific needs to accommodate the handicap.

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

History: 1977 c 177 s 1

176.139 NOTICE OF RIGHTS POSTED.

A notice, in form approved by the commissioner of labor and industry, shall be posted in a conspicuous place at each place of employment, advising employees of their rights and obligations under this chapter, assistance available to them, and the operation of the workers' compensation system.

History: Ex1979 c 3 s 46

176.14 [Repealed, 1953 c 755 s 83]

176.141 NOTICE OF INJURY.

Unless the employer has actual knowledge of the occurrence of the injury or unless the injured worker, or a dependent or someone in behalf of either, gives written notice thereof to the employer within 14 days after the occurrence of the injury, then no compensation shall be due until the notice is given or knowledge obtained. If the notice is given or the knowledge obtained within 30 days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation unless the employer shows that he was prejudiced by such want, defect, or inaccuracy, and then only to the extent of the prejudice. If the notice is given or the knowledge obtained within 180 days, and if the employee or other beneficiary shows that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of the employer or his agent, then compensation may be allowed, unless the employer shows that he was prejudiced by failure to receive the notice, in which case the amount of compensation shall be reduced by a sum which fairly represents the prejudice shown. Unless knowledge is obtained or written notice given within 180 days after the occurrence of the injury no compensation shall be allowed, except that an employee who is unable, because of mental or physical incapacity, to give notice to the employer within 180 days from the injury shall give the prescribed notice within 180 days from the time the incapacity ceases.

History: 1953 c 755 s 14; 1977 c 343 s 19; Ex1979 c 3 s 47

176.145 SERVICE OF NOTICE, FORM.

The notice referred to in section 176.141 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by certified mail to the employer at the last known residence or business place thereof within the state, and may be substantially in the following form:

“NOTICE

You are hereby notified that an injury was received by (Name), who was in your employment at (place), while engaged as (kind of work), on or about the day of, 19...., and who is now located at (give town, street, and number); that, so far as now known, the nature of the injury was, and that compensation may be claimed therefor.

Dated, 19.. (signed)
(giving address)”

No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.

History: 1953 c 755 s 15; 1978 c 674 s 60

176.15 [Repealed, 1953 c 755 s 83]

176.151 TIME LIMITATIONS.

The time within which the following acts shall be performed shall be limited to the following periods, respectively:

(1) Actions or proceedings by an injured employee to determine or recover compensation, three years after the employer has made written report of the injury to the commissioner of the department of labor and industry, but not to exceed six years from the date of the accident.

(2) Actions or proceedings by dependents to determine or recover compensation, three years after the receipt by the commissioner of the department of labor and industry of written notice of death, given by the employer, but not to exceed six years from the date of injury, provided, however, if the employee was paid compensation for the injury from which the death resulted, such actions or proceedings by dependents must be commenced within three years after the receipt by the commissioner of the department of labor and industry of written notice of death, given by the employer, but not to exceed six years from the date of death. In any such case, if a dependent of the deceased, or any one in his behalf, gives written notice of such death to the commissioner of the department of labor and industry, the commissioner shall forthwith give written notice to the employer of the time and place of such death. In case the deceased was a native of a foreign country and leaves no known dependent within the United States, the commissioner of the department of labor and industry shall give written notice of the death to the consul or other representative of the foreign country forthwith.

(3) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time specified in this section, the period of limitation in any such case shall be extended for three years from the date when the incapacity ceases.

(4) In the case of injury caused by x-rays, radium, radioactive substances or machines, ionizing radiation, or any other occupational disease, the time limitations otherwise prescribed by Minnesota Statutes 1961, Chapter 176, and acts amendatory thereof, shall not apply, but the employee shall give notice to the employer and commence his action within three years after the employee has knowledge of the cause of such injury and the injury has resulted in disability.

History: 1953 c 755 s 16; 1965 c 419 s 1; Ex1967 c 40 s 14; 1973 c 388 s 39; 1973 c 643 s 10; 1975 c 359 s 17

176.155 EXAMINATIONS.

Subdivision 1. **Employer's physician.** The injured employee must submit himself to examination by the employer's physician, if requested by the employer, and at reasonable times thereafter upon the employer's request. The employee is entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own 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 his representative.

Subd. 2. **Neutral physician.** In each case of dispute as to the injury the commissioner of labor and industry, or in case of a hearing the compensation judge conducting the hearing, or the workers' compensation court of appeals if the matter is before it, may upon its own or his own motion, or upon request of

any interested party, made in compliance with the rules of the commissioner of labor and industry and the workers' compensation court of appeals regulating the proper time and forms for such request, designate a neutral physician from the list of neutral physicians developed by the commissioner of labor and industry to make an examination of the injured worker and report his findings to the commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals, as the case may be; provided that when an interested party requests, not later than 30 days prior to a scheduled prehearing conference, that a neutral physician be designated, the compensation judge shall make such a designation. When a party has requested the designation of a neutral physician prior to a prehearing conference, that party may withdraw the request at any time prior to the hearing. The commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals, as the case may be, may request the neutral physician to answer any particular question with reference to the medical phases of the case, including questions calling for an opinion as to the cause and occurrence of the injury insofar as medical knowledge is relevant in the answer. A copy of the signed certificate of the neutral physician shall be mailed to the parties in interest and either party, within five days from date of mailing, may demand that the physician be produced for purposes of cross-examination. The signed certificate of a neutral physician is competent evidence of the facts stated therein. The expense of the examination shall be paid as ordered by the commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals.

The commissioner of labor and industry shall develop and maintain a list of neutral physicians available for designation pursuant to this subdivision or section 176.391, subdivision 2.

Subd. 3. Refusal to be examined. If the injured employee refuses to comply with any reasonable request for examination, his right to compensation may be suspended by order of the division, or workers' compensation court of appeals in a matter before it, and no compensation shall be paid while he continues in such refusal.

Subd. 4. Autopsies. In all death claims where the cause of death is obscure or disputed any interested party may request an autopsy and, if denied, the compensation judge, or workers' compensation court of appeals upon appeal, upon petition and proper showing, shall order an autopsy. If any dependent claiming compensation or benefits does not consent to such autopsy within the time fixed by the order, all dependents shall forfeit all rights to compensation. The party demanding an autopsy shall bear the cost thereof.

Subd. 5. Testimony of examining physicians. Any physician designated by the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals or whose services are furnished or paid for by the employer, who treats or who makes or is present at any examination of an injured employee, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination relative to the injury or disability resulting therefrom.

History: 1953 c 755 s 17; 1969 c 276 s 2; 1973 c 388 s 40-43; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 342 s 20; Ex1979 c 3 s 48

176.16 [Repealed, 1953 c 755 s 83]

176.161 ALIEN DEPENDENTS.

Subdivision 1. Residing outside United States. In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent residing outside the United States the commissioner of the department of labor and industry shall direct the payment of all compensation due the

dependent to be made to the duly accredited consular officer of the country of which the beneficiary is a citizen residing within the state, or to his designated representative residing within the state; or, if the commissioner of the department of labor and industry believes that the interests of the dependent will be better served and at any time prior to the final settlement the dependent files with the commissioner of the department of labor and industry a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, the commissioner of the department of labor and industry may appoint such person. If it appears necessary to institute proceedings to enforce payment of compensation due the dependent, the commissioner of the department of labor and industry may permit the consular officer to institute these proceedings. If during the pendency of these proceedings, such power of attorney is filed by the alien dependent, the commissioner of the department of labor and industry shall then determine whether such attorney in fact be substituted to represent such dependent or if the consular officer or his representative continue therein. The person so appointed may carry on proceedings to settle all claims for compensation and receive for distribution to such dependent all compensation arising under this chapter. The settlement and distribution of the funds shall be made only on the written order of the commissioner of the department of labor and industry. The person so appointed shall furnish a bond satisfactory to the workers' compensation court of appeals, conditioned upon the proper application of the money received by him. Before the bond is discharged, the person so appointed shall file with the commissioner of the department of labor and industry a verified account of his receipts and disbursements of such compensation.

Subd. 2. List of dependents. Before receiving the first payment of such compensation and thereafter when ordered so to do by the commissioner of the department of labor and industry, the person so appointed shall furnish to the commissioner of the department of labor and industry a sworn statement containing a list of the dependents showing the name, age, residence, extent of dependency, and relationship to the deceased of each dependent.

Subd. 3. Certain proceedings legalized. In any proceedings heretofore taken to recover compensation for any alien dependent carried on for at least five years in the name of a person as petitioner, designated by power of attorney from the alien dependent, the right of this designated petitioner to conclude the proceedings or final settlement and to fully bind all parties thereby is hereby legalized in all respects.

History: 1953 c 755 s 18; 1973 c 388 s 44,45; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.165 LUMP SUM PAYMENTS.

The amounts of compensation payable periodically may be commuted to one or more lump sum payments only by order of the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal, and on such terms and conditions as the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals prescribes. In making these commutations the lump sum payments shall amount, in the aggregate, to a sum equal to the present value of all future instalments of the compensation calculated on a five percent basis.

History: 1953 c 755 s 19; 1973 c 388 s 46; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.17 [Repealed, 1953 c 755 s 83]

176.171 PAYMENT TO TRUSTEE.

At any time after the amount of any award or commutation is finally determined, a sum equal to the present value of all future instalments of the compensation, calculated on a five percent basis, where death or the nature of the injury renders the amount of future payments certain, may be paid by the employer to any bank, mutual savings bank, savings and loan association, or trust company in this state approved and designated by the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal. Such sum, together with all interest thereon, shall be held in trust for the employee or for the dependents of the employee, who shall have no further recourse against the employer. The employer's payment of this sum evidenced by a receipt of the trustee filed with the commissioner of the department of labor and industry, operates as a satisfaction of the compensation liability as to the employer. The trustee shall make payments from the fund in the same amounts and at the same time as are required of the employer until the fund and interest is exhausted, except when otherwise ordered by the commissioner of the department of labor and industry. In the appointment of trustee the preference shall be given to the choice of the injured employee or the choice of the dependents of the deceased employee.

History: 1953 c 755 s 20; 1971 c 422 s 3; 1973 c 388 s 47; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.175 RIGHT TO COMPENSATION, AWARD.

Subdivision 1. **Preferred claim.** The right to compensation and all compensation awarded any injured employee or for death claims to his dependents have the same preference against the assets of the employer as unpaid wages for labor. This compensation does not become a lien on the property of third persons by reason of this preference.

Subd. 2. **Non-assignability.** No claim for compensation owned by an injured employee or his dependents is assignable. Except as otherwise provided in this chapter, any claim for compensation owned by an injured employee or his dependents is exempt from seizure or sale for the payment of any debt or liability.

History: 1953 c 755 s 21

176.179 PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH.

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division or court of appeals relative to a claim by an injured employee or his survivors, and received in good faith by the employee or his 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 credit against future benefit entitlement; provided, however, that the credit applied against further payments of temporary total disability, temporary partial disability, permanent total disability, retraining benefits or death benefits shall not exceed 20 percent of the amount that would otherwise be payable.

History: 1974 c 486 s 5; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 49

176.18 [Repealed, 1953 c 755 s 83]

176.181 INSURANCE.

Subdivision 1. **Authorization.** Any employer responsible for compensation may insure the risk in any manner authorized by law.

Subd. 2. **Compulsory insurance; self-insurers.** (1) Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain a written order from the commissioner of insurance exempting the employer from insuring his liability for compensation and permitting him to self-insure the liability. The terms, conditions and requirements governing self-insurance shall be established by the commissioner pursuant to chapter 15. The commissioner shall also adopt, pursuant to clause (2)(c), rules permitting two or more employers in the same industry to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as group self-insurers. With the approval of the commissioner of insurance, any employer may exclude medical, chiropractic and hospital benefits as required by this chapter. An employer conducting distinct operations at different locations may either insure or self-insure the other portion of his operations which may be determined by the commissioner of insurance to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation shall make application to the commissioner of insurance, showing his financial ability to pay the compensation, whereupon by written order the commissioner of insurance may make an exemption as he deems proper. The commissioner of insurance may require further statements of financial ability of the employer to pay compensation. Upon ten days written notice the commissioner of insurance may revoke his order granting an exemption, in which event the employer shall immediately insure his liability. As a condition for the granting of an exemption the commissioner of insurance may require the employer to furnish security the commissioner considers sufficient to insure payment of all claims under this chapter. If the required security is in the form of currency or negotiable bonds, the commissioner of insurance shall deposit it with the state treasurer. In the event of any default upon the part of a self-insurer to abide by any final order or decision of the commissioner of labor and industry directing and awarding payment of compensation and benefits to any employee or the dependents of any deceased employee, then upon at least ten days notice to the self-insurer, the commissioner of insurance may by written order to the state treasurer require him to sell the pledged and assigned securities or a part thereof necessary to pay the full amount of any such claim or award with interest thereon. This authority to sell may be exercised from time to time to satisfy any order or award of the commissioner of labor and industry or any judgment obtained thereon. When securities are sold the money obtained shall be deposited in the state treasury to the credit of the commissioner of insurance and awards made against any such self-insurer by the commissioner of insurance shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commissioner of insurance and approved by the commissioner of finance out of the proceeds of the sale of securities. Where the security is in the form of a surety bond or personal guaranty the commissioner of insurance, at any time, upon at least ten days notice and opportunity to be heard, may require the surety to pay the amount of the award, the payments to be enforced in like manner as the award may be enforced.

(2)(a) No association, corporation, partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan under rules adopted pursuant to

this subdivision unless it is licensed to do so by the commissioner of insurance. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner of insurance is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner of insurance may issue a license subject to restrictions or limitations, including restrictions or limitations on the type of services which may be supplied or the activities which may be engaged in. The license is for a two year period.

(b) To assure that group self-insurance plans are financially solvent, administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner, entities licensed to engage in such business are subject to supervision and examination by the commissioner of insurance.

(c) To carry out the purposes of this subdivision, the commissioner of insurance may promulgate administrative rules, including emergency rules, pursuant to sections 15.0411 to 15.052. These rules may:

(i) establish reporting requirements for administrators of group self-insurance plans;

(ii) establish standards and guidelines to assure the adequacy of the financing and administration of group self-insurance plans;

(iii) establish bonding requirements or other provisions assuring the financial integrity of entities administering group self-insurance plans;

(iv) establish standards, including but not limited to minimum terms of membership in self-insurance plans, as necessary to provide stability for those plans;

(v) establish standards or guidelines governing the formation, operation, administration and dissolution of self-insurance plans; and

(vi) establish other reasonable requirements to further the purposes of this subdivision.

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 \$50, if the number of uninsured employees in his employment is less than five and for a penalty of \$200 if the number of such uninsured employees in his employment is five or more. If the employer continues his noncompliance, he is liable for five times the lawful premium for compensation insurance for such employer for the period he fails to comply with such provisions, commencing ten days after notice has been served upon him 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 the fact thereof to the attorney general. Upon receipt of such certification the attorney general shall forthwith commence and prosecute such 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 his duty, the attorney general, upon request of the commissioner of the department of labor and industry, may proceed against the employer in any court having jurisdiction for an order restraining him from having any person in his employment at any time when he is not complying with the provisions of subdivision 2.

Subd. 4. **Gross misdemeanor.** In addition to being subject to the penalty prescribed in subdivision 3, any employer wilfully and intentionally failing to comply with the provisions of subdivision 2 is guilty of a gross misdemeanor.

Subd. 5. **Indemnification.** A political subdivision or association of political subdivisions which is self insured, may be indemnified by the special compensation fund for payments for which the political subdivision or association is liable under this chapter. This indemnification shall be made only if all other assets together with the interest earned thereon which have been contributed by the subdivision pursuant to rules adopted by the commissioner of insurance as provided for in this section have been exhausted.

The state treasurer, as custodian of the fund, has a cause of action for all moneys paid out or to be paid out if the political subdivisions or association of subdivisions fail to meet a repayment schedule which he establishes at the time the request for indemnification is granted.

History: 1953 c 755 s 22; 1959 c 265 s 1; 1971 c 863 s 3; 1973 c 388 s 48,49; 1973 c 492 s 14; 1978 c 797 s 4; Ex1979 c 3 s 50,51

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

Subdivision 1. When any employee shall sustain injury arising out of and in the course of his 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 his dependents shall nevertheless receive benefits as provided for therein from the special compensation fund, and the state treasurer as custodian of such fund shall have a cause of action against such 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. An action to recover such moneys shall be instituted unless the custodian 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. 1a. When an employee or his dependent is entitled to benefits under this chapter from a self-insurer, present or past, other than the state and its municipal subdivisions, but fails to be paid them, the employee or his dependents, regardless of the date when the accident, personal injury, occupational disease, or death occurred, shall nevertheless receive such benefits from the special compensation fund, and the state treasurer as custodian of such fund shall have a cause of action against such 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 to exceed 50 percent of all moneys paid out or to be paid out. An action to recover such moneys shall be instituted unless the custodian determines that no recovery is possible. All moneys recovered shall be deposited in the general fund.

Subd. 2. Upon a warrant prepared by the commissioner of the department of labor and industry and approved by the commissioner of finance, and in accordance with the terms of the order awarding compensation, the state treasurer shall pay compensation to the employee or his dependent from the special compensation fund. The commissioner of the department of labor and industry shall certify to the state treasurer and to the legislature at the end of each biennium the total amount of compensation paid from the special compensation fund under subdivisions 1 and 1a. The state treasurer shall upon proper certification reimburse the special compensation fund the total amount certified as paid under this section.

History: 1967 c 330 s 1; 1969 c 372 s 1; 1969 c 399 s 49; 1973 c 388 s 50; 1973 c 750 s 1,2; 1974 c 355 s 22; 1977 c 403 s 6

176.185 POLICY OF INSURANCE.

Subdivision 1. Notice of coverage, termination, cancellation. Within 10 days after the issuance of a policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state, the insurer shall file notice of coverage with the commissioner of the department of labor and industry under regulations and on forms prescribed by the commissioner of the department of labor and industry. No policy shall be canceled by the insurer within the policy period nor terminated upon expiration date until a notice in writing shall be delivered or mailed to the insured and filed with the commissioner of the department of labor and industry, fixing the date on which it is proposed to cancel it, or declaring that the insurer does not intend to renew the policy upon the expiration date. Such cancellation or termination shall not become effective until 30 days after written notice has been filed with the commissioner of the department of labor and industry unless prior to the expiration of said 30 day period the employer obtains other insurance coverage or an order exempting him from carrying insurance as provided in section 176.181. Upon receipt of said notice the commissioner of the department of labor and industry shall notify the insured that he must obtain coverage from some other licensed carrier and that, if unable to do so, he shall request the Compensation Rating Bureau to designate some carrier to issue a policy as provided in section 79.25. Upon a cancellation or termination of a policy by the insurer the employer is entitled to have a policy assigned to him in accordance with sections 79.24 to 79.27. Notice of cancellation or termination by the insured shall be served upon the insurer by written statement to that effect mailed or delivered to the insurer. Upon receipt of such notice the insurer shall notify the commissioner of the department of labor and industry of the cancellation or termination and thereupon the commissioner of the department of labor and industry shall ask the employer for the reasons for his cancellation or termination and notify him of his duty under this chapter to insure his employees.

Subd. 2. Conditions. A policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state shall in every case be subject to the conditions of this section hereinafter named.

Subd. 3. Provision for benefits conferred by this chapter. Where the employer's risk is carried by an insurer the insurance policy shall provide compensation for injury or death in accordance with the full benefits conferred by this chapter.

Subd. 4. Compulsory provisions. Every insurance policy which insures the payment of compensation shall contain provisions declaring the following:

(1) Notice to or knowledge by the employer is notice to or knowledge by the insurer.

(2) Jurisdiction of the employer for any purpose is jurisdiction of the insurer.

(3) The insurer is bound by an award rendered against the employer.

(4) The employee has an equitable lien upon any amount which the insurer owes under the policy to the employer. Where the employer is legally incapacitated or otherwise unable to receive this amount and pay it over to the employee or his dependent, the insurer will pay the amount directly to the employee or his dependent. This payment by the insurer directly to the employee or his dependent discharges the obligation of the insurer to the employee, and the obligations of the insurer and the employer to the employee or his dependent.

(5) The insolvency or bankruptcy of the employer does not relieve the insurer from its obligation to pay compensation.

Subd. 5. **Agreement that employee pay part of cost of insurance.** Subject to the provisions of subdivision 6, an agreement between an employee and his employer under which the employee is to pay any part of the cost of insuring the employer's risk is void. An employer who makes a charge or deduction prohibited by this subdivision is guilty of a misdemeanor.

Subd. 6. **Joining risks with other risks in policy.** Where the agreement has been approved by the commissioner of the department of labor and industry the employer and employee may agree to carry the risk provided for in this chapter in conjunction with other and greater risks providing other and greater benefits in the form of additional compensation, or accident, sickness, or old age insurance or benefits. This agreement may provide for appropriate contribution by the employee.

Subd. 7. **Notice, effect.** Where an employer has properly insured the payment of compensation to his employee, and he posts a notice in conspicuous places about his place of business stating that he is so insured and by whom, and he files a copy of that notice with the commissioner of the department of labor and industry, the employee, or his dependent, shall proceed directly against the insurer. In such case but subject to subdivision 8, the employer is released from further liability in this respect.

Subd. 8. [Repealed, 1977 c 342 s 28]

Subd. 9. **Application of section.** Where an employer, who has been exempted from the requirement that he insure his liability for compensation under this chapter, insures any part of that liability, this section applies to such an employer to the extent that its provisions are applicable.

History: 1953 c 755 s 23; Ex1967 c 1 s 6; 1969 c 178 s 1; 1973 c 388 s 51-53

176.19 [Repealed, 1953 c 755 s 83]

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.

Subdivision 1. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, the commissioner of labor and industry, compensation judge, or workers' compensation court of appeals upon appeal may direct that one or more of the employers or insurers make payment of the benefits pending a determination of liability.

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 five percent a year. The claimant may also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

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.

Subd. 2. Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two or more insurers as to which is liable for payment, the commissioner of labor and industry may authorize the special compensation fund established in section 176.131 to make payment of the benefits pending a determination of liability.

The personal injury for which the commissioner may order compensation from the special fund is not limited by section 176.131, subdivision 8.

When liability has been determined, the party held liable for benefits shall be ordered to reimburse the special compensation fund for payments made, including interest at the rate of 12 percent a year.

Subd. 3. If a dispute exists as to whether an employee's injury is compensable under this chapter and the employee is otherwise covered by an insurer pursuant to chapters 62A, 62C and 62D, that insurer shall pay any medical costs incurred by the employee for the injury. If the injury is subsequently determined to be compensable pursuant to this chapter, the workers' compensation insurer shall be ordered to reimburse the insurer that made the payments for all medical payments made by the insurer for the injury, including interest at a rate of 12 percent a year.

If the employee's medical expenses for a personal injury are paid pursuant to any program administered by the commissioner of public welfare and it is subsequently determined that the injury is compensable pursuant to this chapter, the workers' compensation insurer shall reimburse the commissioner of public welfare for the medical expenses paid and attributable to the personal injury, including interest at a rate of 12 percent a year.

History: 1953 c 755 s 24; Ex1967 c 1 s 6; 1973 c 388 s 54; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 52

176.195 REVOCATION OF INSURER'S LICENSE.

Subdivision 1. **Grounds.** Where an insurer, or an agent of an insurer, has been guilty of fraud, misrepresentation, or culpable, persistent, and unreasonable delay in making payments or settlements under this chapter, the commissioner of insurance shall revoke the license of the insurer to write workers' compensation insurance.

Subd. 2. **Commencement of proceedings.** Such commissioner may act under subdivision 1 upon his own motion, the recommendation of the commissioner of the department of labor and industry, or the workers' compensation court of appeals, or the complaint of any interested person.

Subd. 3. **Complaint, answer; hearing.** A complaint against an insurer shall be in writing and shall specify clearly the grounds upon which the license is sought to be revoked. The insurer may file a written answer to the complaint and is entitled to receive a hearing in its own behalf before the commissioner of insurance.

Subd. 4. **Notice of hearing.** Such commissioner shall prescribe the method of procedure at the hearing, and its time and place. He shall mail to all interested parties ten days notice of the hearing.

Subd. 5. **Findings of facts, order.** Such commissioner shall make findings of fact and enter an appropriate order. He shall file the findings and order, and mail a copy of them to the commissioner of the department of labor and industry, the complainant, and the insurer.

Subd. 6. **Appeal to district court.** If he acts within ten days from the date he received a copy of the findings and order, the insurer may appeal from an order revoking his license. The appeal shall be taken to the district court of the district in which the office of the commissioner of insurance is located by serving a written notice of appeal on such commissioner. Such commissioner shall thereupon file a certified copy of his findings and order with the clerk of the district court. This certified copy is prima facie evidence of the facts it states. When the certified copy has been filed with the clerk, the court shall summarily hear and determine the questions involved in the appeal.

History: 1953 c 755 s 25; Ex1967 c 1 s 6; 1973 c 388 s 55,56; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.20 [Repealed, 1953 c 755 s 83]

176.201 DISCRIMINATORY RATES.

Subdivision 1. **Physically handicapped persons.** An insurer, or an agent or employee of an insurer, shall not make or charge a rate which discriminates against the employment of a person who is physically handicapped through the loss or loss of use of a member whether due to accident or other cause.

Subd. 2. **Violation a misdemeanor.** A person who violates subdivision 1 is guilty of a misdemeanor.

Subd. 3. **Conviction of violation, cancelation of license.** Where an insurer, or an agent or employee of an insurer, has been convicted under this section, the fact of conviction is sufficient cause for the commissioner of insurance to cancel the license of the insurer to write workers' compensation insurance.

History: 1953 c 755 s 26; 1975 c 359 s 23

176.205 PERSON DEEMED EMPLOYER.

Subdivision 1. **Fraudulent device to evade responsibility to worker.** Subject to subdivision 2, a person who creates or executes any fraudulent scheme, artifice, or device to enable him to execute work without being responsible to the worker under this chapter, is deemed an "employer" and is subject to the liabilities which this chapter imposes on employers.

Subd. 2. **Contractor, subcontractor.** Subdivision 1 does not apply to an owner who in good faith lets a contract to a contractor. In such case, the contractor or subcontractor is deemed the "employer."

Subd. 3. **Exceptions.** A person shall not be deemed a contractor or subcontractor where:

(a) he performs his work upon another's premises, with the other's tools or appliances, and under the other's direction; or,

(b) he does what is commonly called "piece work;" or,

(c) in any way the system of employment merely provides a method of fixing the worker's wages.

Subd. 4. **Calculation of compensation.** Where compensation is claimed against a person under the terms of this section, the compensation shall be calculated with reference to the wages the worker was receiving at the time of the injury or death from the person by whom the worker was immediately employed.

History: 1953 c 755 s 27

176.21 [Repealed, 1953 c 755 s 83]

176.211 ACTS OR OMISSIONS OF THIRD PERSONS.

Except as provided by this chapter the employer need not pay compensation for injuries due to the acts or omissions of third persons who are at the time neither in the service of the employer nor engaged in the work in which the injury occurs.

History: 1953 c 755 s 28

176.215 SUBCONTRACTOR'S FAILURE TO COMPLY WITH CHAPTER.

Subdivision 1. **Liability for payment of compensation.** Where a subcontractor fails to comply with this chapter, the general contractor, or intermediate contractor, or subcontractor is liable for payment of all compensation due an employee of a subsequent subcontractor who is engaged in work upon the subject matter of the contract.

Subd. 2. **Subrogation.** Where a person has paid compensation under this section, he is subrogated to the rights of the injured employee against his immediate employer, or any person whose liability for compensation payment to the employee is prior to the liability of the person who paid it.

Subd. 3. **Determination of respective liabilities.** The workers' compensation division may determine the respective liabilities of persons under this section.

History: 1953 c 755 s 29; Ex1967 c 1 s 6; 1973 c 388 s 57; 1975 c 359 s 23

176.22 [Repealed, 1953 c 755 s 83]

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.

Subdivision 1. **Denial of liability, request for extension of time.** Within 30 days from the date of notice to or knowledge by the employer of an injury compensable under the chapter, and unless within that 30 day period the employer or the insurer files with the commissioner of the department of labor and industry a denial of liability or a request for an extension of time within which to determine liability, the person responsible for payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 shall begin payment of compensation or charges for treatment.

Subd. 2. **Grant of extension.** Upon application made within the 30 day period referred to in subdivision 1, the commissioner of the department of labor and industry may grant an extension of time within which to determine liability. The extension shall not exceed 30 days.

Subd. 3. **Payments to special compensation fund.** Where an employer or insurer fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9, or to file a denial of liability, or to request an extension of time within the 30 day period referred to in subdivision 1, he shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled because of the injury. In addition, each day subsequent to the end of the 30 day period and until a compensation payment is made to the injured employee, the person responsible for payment of compensation shall pay to the special compensation fund an amount equal to the total compensation to which injured employee is entitled.

Subd. 4. **Failure to make payments after extension.** Where an employer or insurer has been granted an extension of time within which to determine liability and fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 or to file a denial of liability within such extended period, he shall make the payments provided in subdivision 3.

Subd. 5. **Double payments to special compensation fund.** Where an employer or insurer has failed to make the payments required by subdivision 3 or subdivision 4 within 60 days from the end of the 30 day period or the extended period, the division may require him to pay to the special compensation fund, each day subsequent to the end of the period and until a compensation payment is made to the injured employee, a sum equal to double the total amount of compensation to which the employee is entitled because of the injury. In addition, the person responsible for compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled.

Subd. 6. **Assessment of penalties.** The division shall assess the penalty payments provided for by subdivisions 3 to 5 against either the employer or the

insurer depending upon to whom the delay is attributable in making payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9. The insurer is not liable for a penalty payment assessed against the employer.

Subd. 7. **Interest.** Any payment of compensation, charges for treatment under section 176.135 or retraining expenses under 176.102, subdivision 9 not made when due shall bear interest at the rate of eight percent per annum from the due date to the date the payment is made.

History: 1953 c 755 s 30; 1973 c 388 s 58-61; 1977 c 342 s 21; Ex1979 c 3 s 53

176.225 ADDITIONAL AWARD AS PENALTY.

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

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

Subd. 2. **Examination of books and records.** To determine whether an employer or insurer has become subject to the payment provided by subdivision 1, the division or the workers' compensation court of appeals upon appeal may examine the books and records of the person relating to the payment of compensation, and may require him to furnish any other information relating to the payment of compensation.

Subd. 3. **Defiance of workers' compensation court of appeals, complaint.** Where an insurer persists in an action or omission listed in subdivision 1, or does not permit the examination of his books and records, or fails to furnish such information as required, the commissioner shall file a written complaint with the insurance commissioner. The complaint shall specify the facts and recommend the revocation of the license of the insurer to do business in this state. The workers' compensation court of appeals may also file such written complaint.

Subd. 4. **Hearing before insurance commissioner.** When he has received a complaint filed under subdivision 3, the insurance commissioner shall hear and determine the matter in the manner provided by this chapter. If he finds that a charge made by the complaint is true, the insurance commissioner shall revoke the license of the insurer to do business in this state. The insurer may appeal from the action of the commissioner revoking his license in the manner provided in this chapter.

History: 1953 c 755 s 31; Ex1967 c 1 s 6; 1973 c 388 s 62-64; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.23 [Repealed, 1953 c 755 s 83]

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

Subdivision 1. **Time limitation.** Where death or serious injury occurs to an employee during the course of employment, the employer shall report the injury or death to the commissioner of labor and industry and insurer within 48 hours after its occurrence. Where any other injury occurs which wholly or partly inca-

pacitates the employee from performing labor or service for three days or longer, the employer shall report the injury to the commissioner of labor and industry and insurer within 15 days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commissioner of labor and industry and insurer within 48 hours after he receives notice of this fact.

Subd. 2. Initial report, written report. Where subdivision 1 requires an injury to be reported within 48 hours, the employer may make his initial report by telephone, telegraph, or personal notice, and file a written report of the injury within seven days from its occurrence or within such time as the commissioner of labor and industry designates. All written reports of injuries required by subdivision 1 shall be in quadruplicate on a form designed by the commissioner, with two copies to the commissioner and one to the insurer.

Subd. 3. Physicians or surgeons to report injuries. Where a physician or surgeon has examined, treated, or has special knowledge of an injury to an employee which may be compensable under this chapter, he shall report to the commissioner of the department of labor and industry all facts relating to the nature and extent of the injury and disability within ten days after he has received a written request for such information from the commissioner of the department of labor and industry or any member or employee thereof.

Subd. 4. Supplementary reports. The commissioner of the department of labor and industry, or any member or employee thereof, may require the filing of such supplementary reports of accidents as it deems necessary to provide information required by law.

Subd. 5. Forms for reports. The commissioner of the department of labor and industry shall prescribe forms for use in making the reports required by this section. The form which the employer submits with reference to an accident shall include a declaration by the employer that he will pay the compensation the law requires.

Subd. 6. Commissioner of the department of labor and industry; duty to keep informed. The commissioner of the department of labor and industry shall keep fully informed of the nature and extent of all injuries compensable under this chapter, their resultant disabilities, and of the rights of employees to compensation. Where a physician or surgeon has examined, treated, or has special knowledge relating to an injury which may be compensable under this chapter, the commissioner of the department of labor and industry or any member or employee thereof shall request in writing a report from such person of the attendant facts.

Subd. 7. Medical reports. If requested by the division or by the workers' compensation court of appeals, or any member or employee thereof an employer, insurer, or employee shall file with the commissioner of the department of labor and industry the original or a verified copy of any medical report in his possession which bears upon the case.

Subd. 8. No public inspection of reports. Subject to subdivision 9, a report or its copy which has been filed with the commissioner of the department of labor and industry under this section is not available to public inspection. Any person who has access to such a report shall not disclose its contents to anyone in any manner.

A person who unauthorizedly discloses a report or its contents to another is guilty of a misdemeanor.

Subd. 9. Uses which may be made of reports. Reports filed with the commissioner of the department of labor and industry under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics.

The division may permit an attorney at law who represents an employer, insurer, or an employee or his dependent to examine its file in a compensation case if the attorney furnishes written authorization to do so from his client.

Subd. 10. Failure to file required report, penalty. Where an employer, physician, or surgeon has failed to file with the commissioner of the department of labor and industry any report required by this section in the manner and within the time limitations prescribed, he shall forfeit to the state \$50 for each such failure.

The attorney general shall sue in a civil action to collect this penalty upon notification of the matter by the commissioner of the department of labor and industry. The commissioner of the department of labor and industry shall certify to the attorney general each failure to report immediately upon its occurrence.

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

History: 1953 c 755 s 32; 1969 c 583 s 1; 1971 c 422 s 4-9; 1973 c 388 s 65-74; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 54,55

176.235 NOTICE TO EMPLOYERS AND INJURED EMPLOYEE OF RIGHTS AND DUTIES.

Subdivision 1. When the commissioner of labor and industry has received notice or information that an employee has sustained an injury which may be compensable under this chapter, the commissioner of labor and industry shall mail a brochure, written in language easily readable and understandable by a person of average intelligence and education, to the employee explaining the rights and obligations of the employee, the assistance available to the employee, the operation of the workers' compensation system, and whatever other relevant information the commissioner of labor and industry deems necessary.

Subd. 2. The commissioner shall prepare, in language easily readable and understandable by a person of average intelligence and education, a brochure explaining to employers their rights and obligations under this chapter and shall furnish it to employers subject to this chapter.

History: 1953 c 755 s 33; Ex1967 c 1 s 6; 1973 c 388 s 75; Ex1979 c 3 s 56

176.24 [Repealed, 1953 c 755 s 83]

176.241 NOTICE TO DIVISION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS.

Subdivision 1. Necessity for notice and showing; contents. Where an employee claims that the right to compensation continues, or refuses to sign or objects to signing a final receipt for compensation, the employer may not discontinue payment of compensation until he provides the division with notice in writing of his intention to do so, together with a statement of facts clearly indicating the reasons for the discontinuance.

The notice to the division shall state the date of intended discontinuance, the reason for the action, and the fact that the employee objects to the discontinuance. The notice shall be accompanied by a statement of facts in support of the discontinuance of compensation payments and whatever medical reports are in the possession of the employer bearing on the physical condition of the employee at the time of the proposed discontinuance.

Subd. 2. Continuance of employer's liability; suspension. Except where the commissioner of the department of labor and industry orders otherwise, until the notice and reports have been filed with the division, the liability of the employer to make payments of compensation continues.

When the division has received a notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended pending an investigation, hearing, and determination of the matter by the division as provided in the following subdivisions.

Subd. 3. Copy of notice to employee, investigation, hearing. When the division has received a notice of discontinuance, it shall immediately send the employee a copy of the notice and supporting documents which have been submitted in conjunction with the notice. The commissioner of labor and industry shall make an investigation to determine whether the right to compensation has terminated. If it appears from the investigation that the right to compensation may not have terminated, the commissioner of labor and industry shall schedule a hearing before a compensation judge, to determine the right of the employee, or his dependent, to further compensation.

The hearing shall be held within a reasonable time after the division has received the notice of discontinuance. The commissioner of labor and industry shall give eight days notice of the hearing to interested parties.

Subd. 4. Order. When the hearing has been held, and he has duly considered the evidence, the person who held the hearing shall promptly enter an order directing the payment of further compensation or confirming the termination of compensation. Where the order confirms a termination of compensation, the commissioner of labor and industry shall notify the employer of the action. This notification relieves the employer from further liability for compensation subject to the right of review afforded by this chapter, and to the right of the division to set aside the order at any time prior to the review and grant a new hearing pursuant to this chapter.

History: 1953 c 755 s 34; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 76-79; Ex1979 c 3 s 57

176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING.

An employer shall promptly file with the division receipts for payment of compensation as may be required by the rules of the division.

The commissioner of the department of labor and industry shall periodically check its records in each case to determine whether these receipts have been promptly filed, and if not, shall require the employer to do so.

History: 1953 c 755 s 35; 1973 c 388 s 80

176.25 [Repealed, 1953 c 755 s 83]

176.251 DUTIES OF THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

The commissioner of the department of labor and industry shall actually supervise and require prompt and full compliance with all provisions of this chapter relating to the payment of compensation.

History: 1953 c 755 s 36; 1973 c 388 s 81

176.253 INSURER, EMPLOYER; PERFORMANCE OF ACTS.

Where this chapter requires an employer to perform an act, the insurer of the employer may perform that act. Where the insurer acts in behalf of the employer, the employer is responsible for the authorized acts of the insurer and for any delay, failure, or refusal of the insurer to perform the act.

This section does not relieve the employer from any penalty or forfeiture which this chapter imposes on him.

History: 1953 c 755 s 37

176.255 [Repealed, 1953 c 755 s 83]

176.26 [Repealed, 1953 c 755 s 83]

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 his dependent, the commissioner of the department of labor and industry may designate one or more of the division employees to advise that party of his 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.

History: 1953 c 755 s 38; Ex1967 c 1 s 6; 1973 c 388 s 82

176.265 REPORT TO LEGISLATURE.

The commissioner of the department of labor and industry shall observe in detail the operation of this chapter throughout the state. He shall make a report to each session of the legislature concerning the operation of the chapter, proposing such changes as he deems advisable to improve the law.

History: 1953 c 755 s 39; 1973 c 388 s 83

176.27 [Repealed, 1953 c 755 s 83]

176.271 INITIATION OF PROCEEDINGS.

Subdivision 1. Unless otherwise provided by this chapter or by the commissioner of labor and industry, all proceedings before the division are initiated by the filing of a written petition on a prescribed form with the commissioner of labor and industry at his principal office.

Subd. 2. Before a proceeding is initiated pursuant to subdivision 1 the party contemplating initiation of a proceeding shall notify the party against whom the proceeding will be directed including an employer who has an interest in the matter and shall state the relief that will be sought in the proceeding. If the party to whom the notice is directed does not respond to the satisfaction of the party supplying the notice within 15 days of the receipt of the notice a proceeding may be initiated pursuant to subdivision 1. This notification is not required in cases where compliance with this subdivision would result in the claim being barred by section 176.151 or other sections.

History: 1953 c 755 s 40; Ex1967 c 1 s 6; 1973 c 388 s 84; Ex1979 c 3 s 58

176.275 FILING OF PAPERS.

The workers' compensation division and the workers' compensation court of appeals shall file any paper which has been delivered to it for filing immediately upon its receipt in the office of the commissioner of the department of labor and industry. The commissioner of the department of labor and industry shall file any paper which has been delivered to him for filing immediately upon its receipt.

History: 1953 c 755 s 41; Ex1967 c 1 s 6; 1973 c 388 s 85; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.28 [Repealed, 1953 c 755 s 83]

176.281 ORDERS, DECISIONS, AND AWARDS OF COMPENSATION JUDGES, COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY, OR WORKERS' COMPENSATION COURT OF APPEALS; FILING; SERVICE.

When the commissioner of the department of labor and industry or compensation judge or the workers' compensation court of appeals has rendered an order, decision, or award, it shall be filed immediately with the commissioner of the department of labor and industry. Where the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals has rendered an order, decision, or award, the commissioner of the department of labor and industry shall immediately serve a copy upon every party in interest, together with a notification of the time the same was filed.

History: 1953 c 755 s 42; 1969 c 276 s 2; 1973 c 388 s 86; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.285 SERVICE OF PAPERS AND NOTICES.

Service of papers and notices shall be by mail or by such other means as the commissioner of the department of labor and industry directs. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that he did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of such non-receipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

The commissioner of the department of labor and industry shall keep a careful record of each service including the time when made.

History: 1953 c 755 s 43; 1973 c 388 s 87

176.29 [Repealed, 1953 c 755 s 83]

176.291 DISPUTES AND DEFAULTS; PROCEDURE.

Where there is a dispute as to a question of law or fact in connection with a claim for compensation, or where there has been a default in the payment of compensation for a period of ten days, a party may present a verified petition to the commissioner of the department of labor and industry stating the matter in dispute or the fact of default.

The petition shall also state:

- (1) names and residence of parties;
- (2) facts relating to the employment at the time of injury, including amount of wages received;
- (3) extent and character of injury;
- (4) notice to or knowledge by employer of injury;
- (5) facts which the commissioner of the department of labor and industry and workers' compensation court of appeals by rule requires; and,
- (6) such other facts as are necessary for the information of the commissioner of the department of labor and industry and workers' compensation court of appeals.

History: 1953 c 755 s 44; 1973 c 388 s 88; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.295 NONRESIDENT EMPLOYERS; FOREIGN CORPORATION.

Subdivision 1. **Affidavit of inability to obtain service.** Where an employee or his dependent has filed a petition for compensation with the commissioner of the department of labor and industry, and he is unable to make service of the petition and other notices on the employer because the latter is a nonresident or a foreign corporation, the petitioner may file an affidavit with the commissioner of the department of labor and industry stating that he is so unable to make service.

Subd. 2. **Action in district court.** When he has filed the affidavit with the commissioner of the department of labor and industry, the petitioner may bring an action against the employer in the district court located in the county in which the employee resided at the time of the injury or death. The action shall be brought and conducted in the same manner as are other civil actions in district court. The complaint shall state that a petition for compensation has been filed with the commissioner of the department of labor and industry, and shall be accompanied by a verified copy of the affidavit. The complaint shall also state the facts upon which the right to compensation or other relief is based.

Subd. 3. **Attachment, garnishment; service by publication.** The remedies of attachment and garnishment are available to the petitioner in the district court action. Service of summons may be made by publication.

Subd. 4. **General appearances; security, bond.** Where the employer makes a general appearance in the district court action and files a bond or security approved by the commissioner of the department of labor and industry, or where an insurer appears generally in the action and assumes liability for any award which may be rendered against the employer, the district court shall dismiss the action.

History: 1953 c 755 s 45; Ex1967 c 1 s 6; 1973 c 388 s 89-91

176.30 [Repealed, 1953 c 755 s 83]

176.301 DETERMINATION OF ISSUES.

Subdivision 1. **Trial by court; reference to commissioner of the department of labor and industry.** When issue has been joined in the district court action, the court may try the action itself without a jury, or refer the matter to the commissioner of the department of labor and industry to be assigned for hearing. In the latter case, a compensation judge or the workers' compensation court of appeals upon appeal shall hear the case in the manner in which it hears cases originally. The commissioner of the department of labor and industry shall report the findings and decision of the compensation judge, or the workers' compensation court of appeals to the district court. The court may approve or disapprove such decision in the same manner as it approves or disapproves the report of a referee. The court shall enter judgment upon such decision.

Subd. 2. **Appeal from judgment of district court.** An appeal lies from the judgment of the district court as in other cases.

History: 1953 c 755 s 46; 1969 c 276 s 2; 1973 c 388 s 92; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.305 PETITIONS FILED WITH THE WORKERS' COMPENSATION DIVISION.

Subdivision 1. **Hearings on petitions.** When any petition has been filed with the workers' compensation division, the commissioner of the department of labor and industry shall, pursuant to his general rules or those of the workers' compensation court of appeals or special order, direct that the matter presented by the petition be heard by a compensation judge or presented to the workers'

compensation court of appeals if it is a matter within its jurisdiction. The division shall hear petitions to commute further compensation.

Subd. 2. **Service of copy of petition.** Within ten days after a petition has been filed, the commissioner of the department of labor and industry shall serve upon each adverse party a copy of the petition and a notice stating whether the hearing will be held before a compensation judge or that the petition has been referred to the workers' compensation court of appeals. The commissioner of the department of labor and industry shall deliver the original petition and copies of the notice which have been served, to a compensation judge or the workers' compensation court of appeals depending upon who will hear the matter.

Subd. 3. **Testimony.** Unless the workers' compensation court of appeals orders differently, testimony taken before a judge of the workers' compensation court of appeals or compensation judge is considered as though taken before the workers' compensation court of appeals. Where the commissioner of the department of labor and industry has substituted a compensation judge originally assigned to hear a matter, the testimony taken before the substitute compensation judge shall be considered as though taken before the judge before whom it was originally assigned.

History: 1953 c 755 s 47; 1969 c 9 s 45; 1969 c 276 s 2; 1973 c 388 s 93-95; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.31 [Repealed, 1953 c 755 s 83]

176.311 REASSIGNMENT OF PETITION FOR HEARING.

Where a petition is heard before a compensation judge, at any time before an award or order has been made in such proceeding, the commissioner of the department of labor and industry may reassign the petition for hearing before another compensation judge.

History: 1953 c 755 s 48; 1969 c 276 s 2; 1973 c 388 s 96

176.32 [Repealed, 1953 c 755 s 83]

176.321 ANSWER TO PETITION.

Subdivision 1. **Filing, service.** Within ten days after he has been served with a copy of the petition, an adverse party may file a verified answer to the petition. When he files the answer, the party shall also serve a copy on the petitioner or his attorney.

Within five days after he has been served with a copy of the answer, the petitioner may file a verified reply admitting or denying new matter set forth in the answer.

Subd. 2. **Contents.** The answer shall admit, deny, or affirmatively defend against the substantial averments of the petition, and shall state the contention of the adverse party with reference to the matter in dispute.

Each fact alleged by the petition or answer and not specifically denied by the answer or reply is deemed admitted, but the failure to deny such a fact does not preclude the workers' compensation court of appeals, commissioner, or compensation judge from requiring proof of the fact.

Subd. 3. **Extension of time in which to file answer.** Upon showing of cause, the commissioner of the department of labor and industry may extend the time in which to file an answer or reply for not more than 30 additional days.

History: 1953 c 755 s 49; 1969 c 276 s 2; 1973 c 388 s 97; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.33 [Repealed, 1953 c 755 s 83]

176.331 AWARD BY DEFAULT.

Where an adverse party has failed to file and serve an answer, if the petitioner presents proof of such fact, the commissioner of the department of labor and industry or compensation judge shall enter whatever award or order to which petitioner is entitled on the basis of the facts alleged in the petition, but the commissioner of the department of labor and industry or compensation judge may require proof of any alleged fact. If the commissioner of the department of labor and industry requires such proof, he shall assign the matter to a compensation judge to summarily hear and determine the same and to promptly make an award or order.

Where in such a default case the petition does not state facts sufficient to support an award, the commissioner of the department of labor and industry or compensation judge shall give the petitioner or his attorney written notice of such fact. The petitioner may thereupon file another petition as in the case of an original petition.

History: 1953 c 755 s 50; 1973 c 388 s 98

176.34 [Repealed, 1953 c 755 s 83]

176.341 HEARING ON PETITION.

Subdivision 1. **Time.** When the reply has been filed or the time has expired in which to file a reply, the commissioner of the department of labor and industry shall fix a time and place for hearing the petition. The hearing shall be held not less than ten days from the time the reply is filed or the expiration of the time in which the reply could have been filed or as soon thereafter as the parties can be heard.

Subd. 2. **Place.** Unless otherwise ordered by the commissioner of the department of labor and industry or compensation judge, the hearing shall be held in the county where the injury or death occurred.

Subd. 3. **Notice mailed to each party.** At least five days prior to the date of hearing, the workers' compensation division shall mail a notice of the time and place of hearing to each interested party.

History: 1953 c 755 s 51; 1969 c 276 s 2; 1973 c 388 s 99-101; 1975 c 359 s 23

176.35 [Repealed, 1953 c 755 s 83]

176.351 TESTIMONIAL POWERS.

Subdivision 1. **Oaths.** The compensation judge to whom a petition has been assigned for hearing shall administer an oath to each witness. The workers' compensation court of appeals shall also administer an oath to each witness appearing before it. The commissioner of the department of labor and industry may also administer an oath when required in the performance of his duties.

Subd. 2. **Subpoenas.** Upon his or its own initiative, or upon written request of an interested party, the workers' compensation court of appeals, or the commissioner or compensation judge before whom a hearing is held may issue a subpoena for the attendance of a witness or the production of such books, papers, records and documents as are material in the cause and are designated in the subpoena. The commissioner of the department of labor and industry may also issue a subpoena for the attendance of a witness or the production of such books, papers, records, and documents as are material in the cause pending and are designated in the subpoena.

Subd. 3. Advancement of fees and costs. The person who applies for issuance of a subpoena shall advance the required service and witness fees. The commissioner of the department of labor and industry shall pay for the attendance of witnesses who are subpoenaed by him, or the workers' compensation court of appeals, or a judge of the workers' compensation court of appeals, or a compensation judge. The fees are the same as the service and witness fees in civil actions in district court.

Subd. 4. Proceedings as for contempt of court. Where a person does not comply with an order or subpoena, the commissioner of the department of labor and industry, the workers' compensation court of appeals, or the commissioner or compensation judge concerned, may apply to the district court in the county in which the petition is pending for issuance of an order compelling obedience. Upon such an application, the district court shall compel obedience to the order or subpoena by attachment proceedings as for contempt in the case of disobedience of a similar order or subpoena issued by the district court.

History: 1953 c 755 s 52; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 102-105; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.36 [Repealed, 1953 c 755 s 83]

176.361 INTERVENTION.

Where a person has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge of such a character that he may either gain or lose by an order or decision, he may intervene in the proceeding by filing an application in writing stating the facts which show such interest.

The commissioner of the department of labor and industry and workers' compensation court of appeals shall adopt rules to govern the procedure for intervention.

History: 1953 c 755 s 53; 1969 c 276 s 2; 1973 c 388 s 106; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.37 [Repealed, 1953 c 755 s 83]

176.371 AWARD OR DISALLOWANCE OF COMPENSATION.

The workers' compensation court of appeals, or a judge of the workers' compensation court of appeals or compensation judge to whom a petition has been assigned for hearing, shall hear all competent evidence produced at the hearing, and, as soon after the hearing as possible, make such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings, evidence and this chapter require.

History: 1953 c 755 s 54; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.38 [Repealed, 1953 c 755 s 83]

176.381 REFERENCE OF QUESTIONS OF FACT.

Subdivision 1. Hearing before workers' compensation court of appeals. In the hearing of any matter before the workers' compensation court of appeals, the workers' compensation court of appeals may refer any question of fact to a judge of the workers' compensation court of appeals or compensation judge either to hear evidence and report it to the workers' compensation court of appeals or to hear evidence and make findings of fact and report them to the workers' compensation court of appeals. The workers' compensation court of appeals shall notify the commissioner of the department of labor and industry of any matter referred to a judge of the workers' compensation court of appeals or a compensation judge under this subdivision.

Subd. 2. **Hearing before compensation judge.** In the hearing of any petition before a compensation judge, the commissioner of the department of labor and industry may refer any question of fact to another compensation judge to hear evidence and report it to the original compensation judge.

History: 1953 c 755 s 55; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 107,108; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.39 [Repealed, 1953 c 755 s 83]

176.391 INVESTIGATIONS.

Subdivision 1. **Power to make.** Before, during, or after any hearing, the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals, if the matter is before it, may make an independent investigation of the facts alleged in the petition or answer.

Subd. 2. **Appointment of physicians, surgeons, and other experts.** The workers' compensation court of appeals, or a judge of the workers' compensation court of appeals or compensation judge assigned to a matter, or the commissioner of labor and industry, may appoint one or more neutral physicians or surgeons from the list established by the commissioner to examine the injury of the employee and report thereon. Where necessary to determine the facts, the services of other experts may also be employed.

Subd. 3. **Reports.** The report of a physician, surgeon, or other expert shall be filed with the commissioner of the department of labor and industry. The report shall be made a part of the record of the case and be open to inspection as such.

Subd. 4. **Compensation.** The commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals, as the case may be, shall fix the compensation of a physician, surgeon, or other expert whose services are employed under this chapter. This compensation shall be paid initially out of the funds appropriated for the maintenance of the workers' compensation division, but shall be taxed as costs to either party, or both, or otherwise, as the commissioner of the department of labor and industry, compensation judge, or the workers' compensation court of appeals directs.

Where a sum which has been taxed to a party has not been paid, it may be collected in the same manner as are costs generally.

History: 1953 c 755 s 56; 1969 c 9 s 46; 1969 c 276 s 2; 1973 c 388 s 109-112; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 59

176.40 [Repealed, 1953 c 755 s 83]

176.401 HEARINGS PUBLIC.

All hearings before the workers' compensation court of appeals, a judge of the workers' compensation court of appeals, or compensation judge are public.

History: 1953 c 755 s 57; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.41 [Repealed, 1953 c 755 s 83]

176.411 RULES OF EVIDENCE, PLEADING, AND PROCEDURE.

Subdivision 1. **Conduct of hearings and investigations.** Except as otherwise provided by this chapter, when the workers' compensation court of appeals, a judge of the workers' compensation court of appeals or compensation judge makes an investigation or conducts a hearing, it or he is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure. The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

Findings of fact shall be based upon competent evidence only.

Subd. 2. **Depositions.** Except where the workers' compensation court of appeals, a judge of the workers' compensation court of appeals, or compensation judge orders otherwise, depositions may be taken in the manner which the law provides for depositions in civil actions in district court.

Subd. 3. **Hospital records as evidence.** A hospital record relating to medical or surgical treatment given an employee is admissible as evidence of the medical and surgical matters stated in the record, but it is not conclusive proof of such matters.

History: 1953 c 755 s 58; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.42 [Repealed, 1953 c 755 s 83]

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

Subdivision 1. **Time for taking; grounds.** When a petition has been heard before a judge of the workers' compensation court of appeals or 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, he 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 judge of the workers' compensation court of appeals or compensation judge committed an error of law; or
- (3) The findings of fact and order were unwarranted by the evidence; or
- (4) The findings of fact and order were procured by fraud, or coercion, or other improper conduct of a party in interest.

Subd. 2. **Extension of time.** Where a party shows cause within the 30 day period referred to in subdivision 1, the workers' compensation court of appeals may extend the time for taking the appeal for not more than 30 additional days.

Subd. 3. **Notice of appeal.** The appellant shall prepare and sign a written notice of appeal specifying:

- (1) the order appealed from;
- (2) that appellant appeals from the order to the workers' compensation court of appeals;
- (3) the particular finding of fact which he claims was unwarranted by the evidence or procured by fraud, coercion, or other improper conduct; and,
- (4) any other ground upon which the appeal is taken.

Subd. 4. **Service and filing of notice; cost of transcript.** Within the 30 day period for taking an appeal, the appellant shall:

- (1) Serve a copy of the notice of appeal on each adverse party;
- (2) File the original notice, with proof of service by admission or affidavit, with the commissioner of the department of labor and industry;
- (3) In order to defray the cost of the transcript of the proceedings appealed from, pay to the commissioner of the department of labor and industry the sum of \$10 or so much of that sum as is necessary to present the question raised on the appeal.

The appellant is liable for the cost of the transcript in excess of \$10, but is entitled to a refund of any part of that sum not used to pay the cost of the transcript.

Upon a showing of cause, the commissioner of the department of labor and industry may direct that a transcript be prepared without expense to the appellant.

Subd. 5. Transcript. When the notice of appeal has been filed with the commissioner of the department of labor and industry and the transcription fee has been paid, the commissioner of the department of labor and industry shall immediately prepare a typewritten transcript of the proceedings. The official reporter who transcribes the proceedings shall certify to their correctness.

Subd. 6. Powers of workers' compensation court of appeals on appeal. On an appeal taken under this section, the workers' compensation court of appeals may:

- (1) disregard the findings of fact which the judge of the workers' compensation court of appeals or compensation judge has made;
- (2) examine the testimony and hear other evidence;
- (3) substitute for the findings of fact made by the judge of the workers' compensation court of appeals or compensation judge such findings as the total evidence requires; and,
- (4) make such award or disallowance of compensation or other order as the facts and findings require.

Subd. 7. Record of proceedings. At the division's own expense, the commissioner of the department of labor and industry shall make a complete record of all proceedings before himself, the workers' compensation court of appeals, a judge of the workers' compensation court of appeals, or compensation judge. The commissioner of the department of labor and industry shall provide a stenographer to make a record of the proceedings.

The stenographer shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge. The commissioner of the department of labor and industry shall fix the amount of this charge.

History: 1953 c 755 s 59; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 113-115; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.43 [Repealed, 1953 c 755 s 83]

176.431 APPEAL BASED ON ERROR OF LAW BY COMPENSATION JUDGE.

Subdivision 1. Hearing. Where an appeal has been taken to the workers' compensation court of appeals under this chapter on the ground that the compensation judge has made an error of law, the workers' compensation court of appeals shall grant a hearing. The commissioner of the department of labor and industry shall notify the workers' compensation court of appeals promptly of the taking of any appeal.

The workers' compensation court of appeals shall fix a time and place for the hearing, and notify the commissioner of the department of labor and industry who shall give each party in interest at least five days written notice.

Subd. 2. Disposition by workers' compensation court of appeals. The workers' compensation court of appeals shall either sustain, reverse, or modify the order appealed from. The workers' compensation court of appeals shall act as soon after the hearing as possible.

History: 1953 c 755 s 60; 1969 c 276 s 2; 1973 c 388 s 116; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.44 [Repealed, 1953 c 755 s 83]

176.441 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE.

Subdivision 1. **Disposition by workers' compensation court of appeals.** Where an appeal has been taken to the workers' compensation court of appeals under this chapter, on either the ground that the findings or order or both were unwarranted by the evidence, or were procured by fraud, coercion, or other improper conduct of a party, the workers' compensation court of appeals may:

- (1) grant a hearing de novo; or,
- (2) assign the petition for rehearing, notify the commissioner of the department of labor and industry, who shall set the rehearing before a compensation judge; or,
- (3) sustain, reverse, or modify the order appealed from.

Subd. 2. **Hearing de novo.** When the workers' compensation court of appeals grants a hearing de novo under subdivision 1, it shall fix a time and place for the hearing, and notify the commissioner of the department of labor and industry who shall give each party in interest at least five days written notice of the hearing.

As soon after the hearing as possible, the workers' compensation court of appeals shall make written findings of fact and enter an order awarding or disallowing compensation.

History: 1953 c 755 s 61; 1969 c 276 s 2; 1973 c 388 s 117,118; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.442 APPEALS FROM DECISIONS OF COMMISSIONER OF DEPARTMENT OF LABOR AND INDUSTRY.

Any decision or determination of the commissioner of the department of labor and industry affecting a right, privilege, benefit, or duty which is imposed or conferred under this chapter is subject to review by the workers' compensation court of appeals. A person aggrieved by such determination may appeal to the workers' compensation court of appeals in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals.

History: 1973 c 388 s 119; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.45 [Repealed, 1953 c 755 s 83]

176.451 DEFAULTS.

Subdivision 1. **Application to district court for judgment.** Where there has been a default of more than 30 days in the payment of compensation due under an award, the employee, or his dependent, or other person entitled to the payment of money under the award, may apply to the judge of any district court for the entry of judgment upon the award.

Subd. 2. **Certified copy of award; filing, notice.** The application shall be made by filing a certified copy of the award with the clerk of court and by serving a ten days notice upon adverse parties. Service of the notice shall be made in the manner provided by court rule for service of summons in district court.

Subd. 3. **Clerk's fees.** The clerk shall charge only 25 cents for the entire service he performs under this section.

Subd. 4. **Matters for determination; judgment.** When he hears the application for judgment upon the award, the judge has authority to determine only the facts of the award and the regularity of the proceedings upon which the award is based. The judge shall enter judgment accordingly.

Judgment shall not be entered upon an award while an appeal is pending.

Subd. 5. **Effect of district court judgment.** The judgment of the district court entered upon an award has the same force and effect, and may be vacated, set aside, or satisfied as may other judgments of the district court.

History: 1953 c 755 s 62

176.46 [Repealed, 1953 c 755 s 83]

176.461 SETTING ASIDE AWARD.

Except where a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or where 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 days after written notice to all interested parties, may set the award aside and grant a new hearing before itself or refer the matter for a determination on its merits to a compensation judge, who shall make such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings and the evidence produced and the provisions of this chapter shall require.

History: 1953 c 755 s 63; Ex1967 c 40 s 15; 1973 c 388 s 120; 1975 c 271 s 6; 1975 c 359 s 18,23; 1976 c 134 s 78

176.47 [Repealed, 1953 c 755 s 83]

176.471 REVIEW BY SUPREME COURT ON CERTIORARI.

Subdivision 1. **Time for seeking review; grounds.** Where the workers' compensation court of appeals has made an award or disallowance of compensation or other order, if a party in interest acts within 30 days from the date he was served with notice of the order, he may have the order reviewed by the supreme court on certiorari upon one of the following grounds:

- (1) The order does not conform with this chapter; or,
- (2) The workers' compensation court of appeals committed any other error of law; or,
- (3) The findings of fact and order were unwarranted by the evidence.

Subd. 2. **Extension of time for seeking review or for filing other papers.** Where cause is shown within the 30 day period referred to in subdivision 1, the supreme court may extend the time for seeking review on certiorari. The supreme court may also extend the time for filing any other paper which this chapter requires to be filed with that court.

Subd. 3. **Service of writ and bond; filing fee.** To effect a review upon certiorari, the party shall serve a writ of certiorari and a bond upon the commissioner of the department of labor and industry within the 30 day period referred to in subdivision 1. The party shall also at this time pay to the secretary of the commissioner of the department of labor and industry the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule.

Subd. 4. **Contents of writ.** The writ of certiorari required by subdivision 3 shall show that a review is to be had in the supreme court of the proceedings of the workers' compensation court of appeals upon which the order is based.

Subd. 5. **Bond.** The bond required by subdivision 3 shall be executed in such amount and with such sureties as the commissioner of the department of labor and industry directs and approves. The bond shall be conditioned to pay the cost of the review.

Subd. 6. **Transmittal of fee and return.** When the writ of certiorari has been served upon the commissioner of the department of labor and industry, the

bond has been filed, and the filing fee has been paid, the commissioner of the department of labor and industry shall immediately transmit to the clerk of the supreme court that filing fee and the return to the writ of certiorari and bond.

Subd. 7. **Jurisdiction vested.** Filing such return and payment of the filing fee referred to in subdivision 6 vests the supreme court with jurisdiction of the case.

Subd. 8. **Return of proceedings transmitted to court.** Within 30 days after the writ of certiorari, bond, and filing fee have been filed with the commissioner of the department of labor and industry, the commissioner of the department of labor and industry shall transmit to the clerk of the supreme court a true and complete return of the proceedings of the workers' compensation court of appeals under review, or such part of those proceedings as is necessary to allow the supreme court to review properly the questions presented.

The commissioner of the department of labor and industry shall certify the return of the proceedings under his seal. The petitioner or relator shall pay to the commissioner of the department of labor and industry the reasonable expense of preparing the return.

Subd. 9. **Application of rules governing appeals in civil actions.** When the return of the proceedings before the workers' compensation court of appeals has been filed with the clerk of the supreme court, the supreme court shall hear and dispose of the matter in accordance with the laws and court rules governing appeals in civil actions.

Subd. 10. **Rules.** The supreme court may adopt rules which are consistent with this chapter and necessary or convenient to the impartial and speedy disposition of these cases.

History: 1953 c 755 s 64; 1971 c 686 s 1; 1973 c 388 s 121-124; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1976 c 239 s 37

176.48 [Repealed, 1953 c 755 s 83]

176.481 ORIGINAL JURISDICTION OF SUPREME COURT.

On review upon certiorari under this chapter, the supreme court has original jurisdiction. It may reverse, affirm, or modify the order allowing or disallowing compensation and enter such judgment as it deems just and proper. Where necessary the supreme court may remand the cause to the workers' compensation court of appeals for a new hearing or for further proceedings with such directions as the court deems proper.

History: 1953 c 755 s 65; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.49 [Repealed, 1953 c 755 s 83]

176.491 STAY OF PROCEEDINGS PENDING DISPOSITION OF CASE.

Where a writ of certiorari has been perfected under this chapter, it stays all proceedings for the enforcement of the order being reviewed until the case has been finally disposed of either in the supreme court or, where the cause has been remanded to the workers' compensation division for a new hearing or further proceedings, before the workers' compensation court of appeals or compensation judge.

History: 1953 c 755 s 66; 1973 c 388 s 125; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.50 [Repealed, 1953 c 755 s 83]

176.501 ATTORNEY GENERAL ACTS FOR WORKERS' COMPENSATION COURT OF APPEALS.

Unless the workers' compensation court of appeals directs otherwise, when an order of the workers' compensation court of appeals is reviewed by the supreme court under this chapter, the attorney general shall represent the workers' compensation court of appeals. He shall prepare and present such papers, briefs, and arguments as he deems necessary to support the order under review.

History: 1953 c 755 s 67; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.51 [Repealed, 1953 c 755 s 83]

176.511 COSTS.

Subdivision 1. **Parties not awarded costs.** Except as provided otherwise by this chapter and specifically by this section, in hearings before the workers' compensation court of appeals, or a judge of the workers' compensation court of appeals, or compensation judge, costs shall not be awarded to either party.

Subd. 2. **Disbursements, taxation.** The compensation judge, or on appeals to the workers' compensation court of appeals, the workers' compensation court of appeals may award the prevailing party reimbursement for actual and necessary disbursements. These disbursements shall be taxed upon five days written notice to adverse parties.

Subd. 3. **Attorney's fee, allowance.** Where upon an appeal to the workers' compensation court of appeals, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the workers' compensation court of appeals may include in its award as an incident to its review on appeal an amount to cover a reasonable attorney's fee, or it may allow the fee in a proceeding to tax disbursements.

Subd. 4. **Costs and disbursements on certiorari.** On review by the supreme court upon certiorari, costs and disbursements shall be taxed as they are upon appeals in civil actions.

Subd. 5. **Attorney's fee on certiorari.** Where upon a review by the supreme court upon certiorari, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the court may allow a reasonable attorney's fee incident to the review. This allowance of an attorney's fee shall be made a part of the judgment order of the supreme court.

History: 1953 c 755 s 68; 1969 c 276 s 2; 1973 c 388 s 126; 1975 c 271 s 6; 1975 c 359 s 19,23; 1976 c 134 s 78; 1977 c 342 s 22

176.52 [Repealed, 1953 c 755 s 83]

176.521 SETTLEMENT OF CLAIMS.

Subdivision 1. **Validity.** An agreement between an employee or his dependent and the employer or insurer to settle any claim, which is not upon appeal before the workers' compensation court of appeals, for compensation under this chapter is valid where it has been executed in writing and signed by the parties, and intervenors in the matter, and the division has approved the settlement and made an award thereon. If the matter is upon appeal before the workers' compensation court of appeals, the workers' compensation court of appeals is the approving body.

Subd. 2. **Approval.** Settlements shall be approved only where the terms conform with this chapter.

The division and the workers' compensation court of appeals shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or his dependent and the employer or insurer and intervenors in the matter are represented by an attorney shall be presumed to be reasonable, fair, and in conformity with this chapter.

Subd. 3. Setting aside award upon settlement. Notwithstanding any provision in the agreement of settlement to the contrary, the workers' compensation court of appeals may set aside an award made upon a settlement, pursuant to this chapter.

History: 1953 c 755 s 69; 1973 c 388 s 127,128; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1979 c 271 s 1; Ex1979 c 3 s 60

176.53 [Repealed, 1953 c 755 s 83]

176.531 AWARD OF COMPENSATION AGAINST A POLITICAL SUBDIVISION OR SCHOOL DISTRICT.

Subdivision 1. Preferred claim. Where there has been an award of compensation under this chapter to be paid by a political subdivision or a school district, the entitlement of a person to payment under the award is a preferred claim against the subdivision or district. The award shall be paid when and as ordered from the general fund of the subdivision or district, and from the current tax apportionment received by the subdivision or district for the credit of the general fund.

Subd. 2. Payment from general fund. When the political subdivision or school district has issued an order or warrant for payment of compensation, and the order or warrant has not been paid, it is a preferred claim which shall be paid from the general fund and from current tax apportionments received for the credit of the general fund before any subsequent claim for compensation is paid.

Subd. 3. Prompt payment. This section shall be liberally construed to insure the prompt payment of compensation.

History: 1953 c 755 s 70; 1973 c 388 s 129

176.54 [Repealed, 1953 c 755 s 83]

176.541 STATE DEPARTMENTS.

Subdivision 1. Application of chapter to state employees. This chapter applies to the employees of any department of this state.

Subd. 2. Defense of claim against state. When the commissioner of the department of labor and industry believes that a claim against the state for compensation should be contested, he shall defend the state claim.

Subd. 3. Duties of attorney general. At any stage in such a compensation proceeding, the attorney general may assume the duty of defending the state. When the commissioner of the department of labor and industry or a department of this state requests the attorney general to assume the defense, he shall do so.

Subd. 4. Medical examination of employee; witnesses; conduct of defense. In conducting a defense against a claim for compensation, the commissioner of the department of labor and industry or the attorney general, as the case may be, may require that an employee submit to a medical examination, procure the attendance of expert and other witnesses at a hearing, and do any other act necessary to conduct a proper defense.

Subd. 5. Expenses of conducting defense. The expenses of conducting a defense shall be charged to the department which employs the employee

involved. These expenses shall be paid from the state compensation revolving fund.

Subd. 6. **Legal and clerical help.** The commissioner of the department of labor and industry may employ such legal and clerical help as authorized by the department of administration. The salaries of these persons shall be paid from the state compensation revolving fund, but shall be apportioned among the several departments of the state in relation to the amount of compensation paid to employees of any department as against the total amount of compensation paid to employees of all departments.

Subd. 7. **Historical society as state department.** For the purposes of workers' compensation as provided by this chapter, the Minnesota historical society is a state department and such chapter applies to its employees the same as it applies to employees of any department of the state government.

Subd. 8. **State may insure.** The state of Minnesota may elect to insure its liability under the workers' compensation law for persons employed under the federal Emergency Employment Act of 1971, as amended, and the Comprehensive Employment and Training Act of 1973, as amended, with an insurer properly licensed in Minnesota.

History: 1953 c 755 s 71; 1967 c 8 s 1; 1971 c 422 s 10; 1973 c 388 s 130-133; 1975 c 2 s 2; 1975 c 359 s 23

176.55 [Repealed, 1953 c 755 s 83]

176.551 REPORTS.

Subdivision 1. **Heads of state departments to report accidents to employees.** Except as provided in subdivision 2, the head of a department of the state shall report each accident which occurs to an employee as and in the manner required by this chapter.

Subd. 2. **Contents.** The report need not contain a statement relating to liability to pay compensation as required by this chapter.

History: 1953 c 755 s 72

176.56 [Repealed, 1953 c 755 s 83]

176.561 WORKERS' COMPENSATION COURT OF APPEALS POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY.

The division and the workers' compensation court of appeals have the same powers and duties in matters relating to state employees as they have in relation to other employees.

Except as specifically provided otherwise herein, the procedure for determining the liability of the state for compensation is the same as that applicable in other cases.

History: 1953 c 755 s 73; 1973 c 388 s 134; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78

176.57 [Repealed, 1953 c 755 s 83]

176.571 INVESTIGATIONS OF INJURIES TO STATE EMPLOYEES.

Subdivision 1. **Preliminary investigation.** When the head of a department has filed a report or the commissioner of the department of labor and industry has otherwise received information of the occurrence of an injury to a state employee for which liability to pay compensation may exist, the commissioner of the department of labor and industry shall make a preliminary investigation to determine the question of probable liability.

In making this investigation, the commissioner of the department of labor and industry may require the assistance of the head of any department or any employee of the state. The commissioner of the department of labor and industry may require that all facts be furnished which appear in the records of any state department bearing on the issue.

Subd. 2. Findings of fact, proposed order. When the commissioner of the department of labor and industry has completed his investigation, he shall make findings of fact and shall enter an award or other order which he proposes to make relating to the liability of the state to pay compensation.

Subd. 3. Copies of findings and proposed order, mailing. The commissioner of the department of labor and industry shall mail a copy of his findings and proposed order to the employee, the head of the department in which he works, and the attorney general.

Subd. 4. Objections to order. Within ten days from the date the findings and order were mailed, or within such longer period which the commissioner of the department of labor and industry may fix, the employee, or the head of the department, or the attorney general, may file an objection to the order with the commissioner of the department of labor and industry.

Subd. 5. Reconsideration of order. When an objection has been filed under subdivision 4, the commissioner of the department of labor and industry shall reconsider his proposed order. Subject to subdivision 6, in making this reconsideration, the commissioner of the department of labor and industry may set aside or correct any finding or order, or both, without the necessity of holding a formal hearing.

Subd. 6. Formal hearing on objections. The commissioner of the department of labor and industry shall hold a formal hearing on the objections which have been filed to the proposed order where the circumstances warrant such a hearing. The hearing shall be before a compensation judge.

Subd. 7. Finality of findings and order in absence of objection. Where an objection has not been made to the proposed order under subdivision 4, the findings and order are final subject to the right of the commissioner of the department of labor and industry to reform or modify it under this chapter.

The findings and order which the commissioner of the department of labor and industry makes upon a reconsideration are likewise final though subject to the same review under this chapter.

History: 1953 c 755 s 74; 1973 c 388 s 135-141

176.58 [Repealed, 1953 c 755 s 83]

176.581 FINDINGS AND FINAL ORDER.

Subdivision 1. Filing of certified copies. The commissioner of the department of labor and industry shall file a certified copy of his findings and final order with the attorney general and the commissioner of finance.

Subd. 2. Payment of compensation. Upon a warrant prepared by the commissioner of the department of labor and industry and approved by the commissioner of finance, and in accordance with the terms of the order awarding compensation, the state treasurer shall pay compensation to the employee or his dependent. These payments shall be made from money appropriated for this purpose.

Subd. 3. Receipts filed. The person to whom compensation is paid shall file with the commissioner of the department of labor and industry all current interim and final receipts for such payment as is required of employers.

History: 1953 c 755 s 75; 1973 c 388 s 142-144; 1973 c 492 s 14

176.59 [Repealed, 1953 c 755 s 83]

176.591 STATE COMPENSATION REVOLVING FUND.

Subdivision 1. **Establishment.** To facilitate the discharge by the state of its obligations under this chapter, there is established a revolving fund to be known as the state compensation revolving fund.

This fund is comprised of the unexpended balance in the fund on July 1, 1935, and the sums which the several departments of the state pay to the fund.

Subd. 2. **State treasurer as custodian.** The state treasurer is custodian of this fund.

Subd. 3. **Compensation payments upon warrants.** The state treasurer shall make compensation payments from the fund only as authorized by this chapter upon warrants of the commissioner of the department of labor and industry.

History: 1953 c 755 s 76; 1973 c 388 s 145

176.60 [Repealed, 1953 c 755 s 83]

176.601 [Repealed, 1974 c 355 s 30]

176.602 PAYMENTS FROM STATE COMPENSATION REVOLVING FUND.

The state treasurer shall only pay from the state compensation revolving fund the awards of compensation and the expenses of other benefits to an employee or his dependent.

History: 1974 c 355 s 31

176.603 COST OF ADMINISTERING CHAPTER, PAYMENT.

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

History: 1974 c 355 s 32

176.61 [Repealed, 1953 c 755 s 83]

176.611 MAINTENANCE OF STATE COMPENSATION REVOLVING FUND.

Subdivision 1. **Generally.** The state compensation revolving fund shall be maintained as provided in the following subdivisions:

Subd. 2. **Self-sustaining departments.** Except that the transportation department shall reimburse the fund for moneys paid to its employees or their dependents at such times and in such amounts as the commissioner of the department of labor and industry orders, every self-sustaining department of the state shall pay into such fund at the end of every fiscal year such amounts as the commissioner of the department of labor and industry shall certify has been paid out of the fund for its employees or their dependents. For the purposes of this section, a "self-sustaining department" is one in which the income and revenue from its activities substantially offsets its cost of operation.

Subd. 3. **Departments not self-sustaining.** A department which is not self-sustaining shall pay to the fund at the end of each biennium, such sums as the commissioner of the department of labor and industry certifies has been paid out of the fund for its employees or their dependents. The heads of the department shall anticipate these payments by including them in their budget requests to the legislature.

Subd. 4. **Departments partially self-sustaining.** Every department which is partially self-sustaining shall pay (1) at the end of every fiscal year such proportion of the sum which the commissioner of the department of labor and industry certifies has been paid out of the fund during the year to its employees or their dependents as the total of their income and revenue bears to their annual cost of operation, and (2) at the end of each biennium, the balance of the sums so certified. The head of the department shall anticipate these payments by including them in their budget requests to the legislature.

Subd. 5. [Repealed, 1974 c 355 s 14]

Subd. 6. [Repealed, 1974 c 355 s 14]

Subd. 6a. **Appropriations constituting fund.** There is hereby appropriated from the general fund in the state treasury to the state compensation revolving fund the sum of \$967,690 to be used to pay claims of employees of the state. This appropriation together with the sum of \$74,013.12 heretofore appropriated from the trunk highway fund and \$2,395,986.88 heretofore appropriated from the general fund totals \$3,437,690 and constitutes the revolving fund.

History: 1953 c 755 s 78; 1955 c 744 s 1; 1957 c 656 s 1; 1963 c 551 s 1; 1965 c 57 s 1; 1969 c 399 s 49; 1971 c 907 s 1; 1973 c 388 s 147-149; 1974 c 355 s 15; 1975 c 204 s 77; 1976 c 166 s 7; 1979 c 50 s 19

176.62 [Repealed, 1953 c 755 s 83]

176.621 [Repealed, 1975 c 61 s 26]

176.63 [Repealed, 1953 c 755 s 83]

176.631 [Repealed, 1975 c 61 s 26]

176.64 [Repealed, 1953 c 755 s 83]

176.641 ACCIDENTS OR INJURIES ARISING PRIOR TO EFFECTIVE DATE.

All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this chapter shall be governed by the then existing law.

History: 1953 c 755 s 81

176.645 ADJUSTMENT OF BENEFITS.

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 amount due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1976, and each October 1 thereafter the amount due shall be adjusted by multiplying the amount due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, 21 months prior to the adjustment and the numerator of which is the statewide average weekly wage for December 31, nine months prior 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 October 1, 1977 or thereafter 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 percent.

History: 1975 c 359 s 20; 1977 c 342 s 23

176.65 [Repealed, 1953 c 755 s 83]

176.651 SEVERABILITY.

In case for any reason any paragraph or any provision of this chapter shall be questioned in any court of last resort, and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision thereof.

History: 1953 c 755 s 82

176.66 OCCUPATIONAL DISEASES; HOW REGARDED.

Subdivision 1. **Disability, disablement.** The disablement of an employee resulting from an occupational disease shall be regarded as a personal injury within the meaning of the workers' compensation law.

Subd. 2. [Repealed, 1973 c 643 s 12]

Subd. 3. [Repealed, 1973 c 643 s 12]

Subd. 4. [Repealed, 1973 c 643 s 12]

Subd. 5. [Repealed, 1973 c 643 s 12]

Subd. 6. [Repealed, 1973 c 643 s 12]

Subd. 7. [Repealed, 1973 c 643 s 12]

Subd. 8. [Repealed, 1973 c 643 s 12]

Subd. 9. [Repealed, 1973 c 643 s 12]

History: 1921 c 82 s 67; 1939 c 306; 1943 c 633 s 4; 1947 c 612 s 1; 1949 c 500 s 1-3; 1955 c 206 s 2; 1957 c 834 s 2; 1959 c 20 s 2; 1963 c 497 s 2; 1967 c 905 s 9; Ex1967 c 1 s 6; 1973 c 643 s 11; 1975 c 359 s 23 (4327)

176.661 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.662 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.663 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.664 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.665 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.666 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.667 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.668 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.669 EXPENSES; RULES.

Subdivision 1. **Payment of expenses.** Any expense incurred by the department of labor and industry in carrying out the purposes of Laws 1943, Chapter 633, shall be paid out of the general fund for the department of labor and industry.

Subd. 2. **Making of rules.** The department shall make such rules, regulations, and orders with reference to procedure as it deems necessary not inconsistent with Laws 1943, Chapter 633.

History: 1943 c 633 s 15,16; 1969 c 9 s 49; 1973 c 388 s 164,165

176.67-176.79 [Repealed, 1953 c 755 s 83]

176.80 [Obsolete]

176.81 [Repealed, 1953 c 755 s 83]

176.82 ACTION FOR CIVIL DAMAGES FOR OBSTRUCTING EMPLOYEE SEEKING BENEFITS.

Any person discharging or threatening to discharge an employee for seeking workers' compensation benefits or in any manner intentionally obstructing an employee seeking workers' compensation benefits is liable in a civil action for damages incurred by the employee including any diminution in workers' com-

pensation benefits caused by a violation of this section including costs and reasonable attorney fees, and for punitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled. Damages awarded under this section shall not be offset by any workers' compensation benefits to which the employee is entitled.

History: 1975 c 359 s 21,23