CHAPTER 79

COMPENSATION INSURANCE

79.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of sections 79.01 to 79.211, shall have the meanings ascribed to them.

Subd. 2. **Insurer.** The word "insurer" means any insurance carrier authorized by license issued by the commissioner of commerce to transact the business of workers' compensation insurance in this state and includes a political subdivision providing self insurance or establishing a pool under section 471.981, subdivision 3.

Subd. 3. **Insurance.** The word "insurance" means workers' compensation insurance and insurance covering any part of the liability of an employer exempted from insuring liability for compensation, as provided in section 176.181 and includes a program of self insurance, self insurance revolving fund or pool established under section 471.981.

Subd. 4. [Repealed, 1969 c 9 s 10]

Subd. 5. **Commissioner.** The word "commissioner" means the commissioner of commerce.

Subd. 6. **Association.** "Association" or "rating association" means the Workers' Compensation Insurers Rating Association of Minnesota.

Subd. 7. **Interested party.** "Interested party" means any person or association acting on behalf of its members who is directly affected by a change in the schedule of rates and includes the staff of the department of commerce.

Subd. 8. **Schedule of rates.** "Schedule of rates" means the rate level applicable to the various industry groupings or classes, including the risk classifications thereunder upon which the determination of workers' compensation premiums are based, including but not limited to all systems for merit or experience rating, retrospective rating, and premium discounts.

History: *(3612) 1921 c 85 s 1; 1931 c 353 s 1; 1957 c 508 s 1; 1969 c 9 s 8; 1973 c 577 s 1,2; 1975 c 359 s 23; Ex1979 c 3 s 1; 1980 c 529 s 3,4; 1981 c 346 s 9,10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 384 art 2 s 1*

79.02 [Repealed, 1969 c 9 s 10]

79.021 [Repealed, 1969 c 9 s 10]

79.03 [Repealed, 1969 c 9 s 10]

79.04 [Repealed, 1969 c 9 s 10]
79.05 [Repealed, Ex1979 c 3 s 70]
79.06 [Repealed, Ex1979 c 3 s 70]
79.07 [Repealed, Ex1979 c 3 s 70]
79.071 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.072 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.073 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.074 DISCRIMINATION.

Subdivision 1. [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

Subd. 2. **Dividends.** Dividend plans are not unfairly discriminatory where different premiums result for different policyholders with similar loss exposures but different expense factors, or where different premiums result for different policyholders with similar expense factors but different loss exposures, so long as the respective premiums reflect the differences with reasonable accuracy. Every insurer referred to in section 79.20 who issues participating policies shall file with the commissioner a true copy or summary as the commissioner shall direct of its participating dividend rates as to policyholders. The commissioner may study the participating dividend rates and make recommendations to the legislature concerning possible bases for unfair discrimination.

History: *Ex1979 c 3 s 5*

79.075 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.076 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.08 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.081 MANDATORY DEDUCTIBLES.

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

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

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

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

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

History: *1992 c 510 art 3 s 1*

79.085 SAFETY PROGRAMS.

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

History: *1992 c 510 art 3 s 2*

79.09 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.095 APPOINTMENT OF ACTUARY.

The commissioner shall employ the services of a casualty actuary experienced in worker's compensation whose duties shall include but not be limited to investigation of complaints by insured parties relative to rates, rate classifications, or discriminatory practices of an insurer. The salary of the actuary employed pursuant to this section is not subject to the provisions of section 43A.17, subdivision 1.

History: *1977 c 342 s 24; Ex1979 c 3 s 8; 1981 c 210 s 54*

79.096 ACCESS TO RATE MAKING DATA.

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

History: *1992 c 510 art 3 s 3*

79.10 REVIEW OF ACTS OF INSURERS.

The department of commerce staff may investigate on the request of any person or on its own initiative the acts of the rating association, an insurer, or an agent that are subject to provisions of chapter 79 and may make findings and recommendations that the commissioner issue an order requiring compliance with the provisions thereof. The proposed findings and recommended order shall be served on all affected parties at the same time that the staff transmits its findings and recommendations to the commissioner. Any party adversely affected by the proposed findings and recommended order may request that a hearing be held concerning the issues raised therein within 15 days after service of the findings and recommended order. This hearing shall be conducted as a contested case pursuant to sections 14.001 to 14.69. If a hearing is not requested within the time specified in this section, the proposed findings and recommended order may be adopted by the commissioner as a final order.

History: *(3621) 1921 c 85 s 10; 1953 c 615 s 3; 1969 c 9 s 9; 1973 c 577 s 2; Ex1979 c 3 s 9; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1984 c 592 s 77; 1984 c 655 art 1 s 92; 1987 c 384 art 2 s 1; 1990 c 422 s 10*

79.11 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.12 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.13 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.14 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.15 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.16 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.17 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.171 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.18 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.19 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.20 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.21 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.211 CERTAIN PREMIUM DETERMINATION PRACTICES.

Subdivision 1. **Certain wages excluded for ratemaking.** The rating association or an insurer shall not include wages paid for a vacation, holiday, or sick leave in the determination of a workers' compensation insurance premium.

Subd. 2. **Division of payroll.** An insurer shall permit an employer to divide a payroll among the rating classifications most closely fitting the work actually performed by each employee in a four-hour block or more for purposes of premium calculation when the employer's records provide adequate support for a division.

Subd. 3. **Payroll computations for certain public employees.** The commissioner of commerce in setting the assigned risk plan rates or an insurer shall compute a premium for an elected or appointed official of a town based on the actual annual wage received from the town.

History: *Ex1979 c 3 s 12; 1980 c 556 s 6; 1981 c 346 s 139; 1983 c 290 s 4; 1986 c 444; 1987 c 301 s 1*

79.22 Subdivision 1. [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

Subd. 2. [Repealed, 1984 c 432 art 2 s 55]

79.221 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.23 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.24 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.25 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.251 ADMINISTRATION OF ASSIGNED RISK PLAN.

Subdivision 1. **Assigned risk plan review board.** (1) An assigned risk plan review board is created for the purposes of review of the operation of section 79.252 and this section. The board shall have all the usual powers and authorities necessary for the discharge of its duties under this section and may contract with individuals in discharge of those duties.

(2) The board shall consist of six members to be appointed by the commissioner of commerce. Three members shall be insureds holding policies or contracts of coverage issued pursuant to subdivision 4. Two members shall be insurers licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b). The commissioner shall be the sixth member and shall vote.

Initial appointments shall be made by September 1, 1981, and terms shall be for three years duration. Removal, the filling of vacancies and compensation of the members other than the commissioner shall be as provided in section 15.059.

(3) The assigned risk plan review board shall audit the reserves established (a) for individual cases arising under policies and contracts of coverage issued under subdivision 4 and (b) for the total book of business issued under subdivision 4.

(4) The assigned risk plan review board shall monitor the operations of section 79.252 and this section and shall periodically make recommendations to the commissioner, and to the governor and legislature when appropriate, for improvement in the operation of those sections.

(5) All insurers and self-insurance administrators issuing policies or contracts under subdivision 4 shall pay to the commissioner a .25 percent assessment on premiums for policies and contracts of coverage issued under subdivision 4 for the purpose of defraying the costs of the assigned risk plan review board. Proceeds of the assessment shall be deposited in the state treasury and credited to the general fund.

(6) The assigned risk plan and the assigned risk plan review board shall not be deemed a state agency.

Subd. 2. **Appropriate merit rating plan.** The commissioner shall develop an appropriate merit rating plan which shall be applicable to all insureds holding policies or contracts of coverage issued pursuant to subdivision 4 and to the insurers or self-insurance administrators issuing those policies or contracts. The plan shall provide a maximum

merit adjustment equal to ten percent of earned premium. The actual adjustment may vary with insured's loss experience.

Subd. 3. **Rates.** Insureds served by the assigned risk plan shall be charged premiums based upon a rating plan, including a merit rating plan adopted by the commissioner by rule. The commissioner shall annually, not later than January 1 of each year, establish the schedule of rates applicable to assigned risk plan business. Assigned risk premiums shall not be lower than rates generally charged by insurers for the business. The commissioner shall fix the compensation received by the agent of record. The establishment of the assigned risk plan rates and agent fees are not subject to chapter 14.

Subd. 4. **Administration.** The commissioner shall enter into service contracts as necessary or beneficial for accomplishing the purposes of the assigned risk plan. Services related to the administration of policies or contracts of coverage shall be performed by one or more qualified insurance companies licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b), or self-insurance administrators licensed pursuant to section 176.181, subdivision 2, clause (2), paragraph (a). A qualified insurer or self-insurance administrator shall possess sufficient financial, professional, administrative, and personnel resources to provide the services contemplated in the contract. Services related to assignments, data management, assessment collection, and other services shall be performed by a licensed data service organization. The cost of those services is an obligation of the assigned risk plan.

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

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

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

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

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

(5) review of medical care utilization; and

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

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

Subd. 5. **Assessments.** The commissioner shall assess all insurers licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b) an amount sufficient to fully fund the obligations of the assigned risk plan, if the commissioner determines that the assets of the assigned risk plan are insufficient to meet its obligations. The assessment of each insurer shall be in a proportion equal to the proportion which the amount of compensation insurance written in this state during the preceding calendar year by that insurer bears to the total compensation insurance written in this state during the preceding calendar year by all licensed insurers.

Subd. 6. **Agents.** A person licensed under section 60A.17 may submit an application for coverage to the assigned risk plan and receive a fee from the assigned risk plan for submitting the application. However, the licensee is not an agent of the assigned risk plan for purposes of state law. All checks or similar instruments submitted in payment of assigned risk plan premiums must be made payable to the assigned risk plan and not the agent.

Subd. 7. **Investment of assets.** The commissioner shall certify and transfer to the

state board of investment all assigned risk plan assets which in the commissioner's judgment are not required for immediate use. The state board of investment shall invest the certified assets, and may invest the assets consistent with the provisions of section 11A.14. All investment income and losses attributable to the investment of assigned risk plan assets must be credited to the assigned risk plan. When the commissioner certifies to the state board that invested assets are required for immediate use, the state board shall sell assets to provide the amount of assets the commissioner certifies. The board shall transfer the sale proceeds to the commissioner.

History: *1981 c 346 s 14; 1983 c 289 s 114 subd 1; 1983 c 290 s 5; 1983 c 293 s 63; 1984 c 655 art 1 s 92; 1989 c 260 s 24; 1990 c 450 s 1; 1992 c 510 art 3 s 4,5*

79.252 ASSIGNED RISK PLAN.

Subdivision 1. **Purpose.** The purpose of the assigned risk plan is to provide workers' compensation coverage to employers rejected by two nonaffiliated licensed insurance companies, pursuant to subdivision 2. Each rejection must be in writing and must be obtained within 60 days before the date of application to the assigned risk plan. In addition, the rejections must also show the name of the insurance company and the representative contacted.

Subd. 2. **Rejected risks.** An insurer that refuses to write insurance for an employer shall furnish the employer a written notice of refusal. The employer shall file a copy of the notice of refusal with the data service organization under contract with the commissioner pursuant to section 79.251, subdivision 4.

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

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

Subd. 4. **Responsibilities.** Assigned risk policies and contracts of coverage shall be subject to premium tax pursuant to section 60A.15, and special compensation fund assessments pursuant to section 176.131, subdivision 10. The assigned risk plan shall be a member of the reinsurance association for the purposes of sections 79.34 to 79.40 and may select either retention limit provided in section 79.34, subdivision 2.

Subd. 5. **Rules.** The commissioner may adopt rules, including emergency rules, as may be necessary to implement section 79.251 and this section.

History: *1983 c 290 s 6; 1984 c 640 s 32; 1Sp1985 c 10 s 72; 1992 c 510 art 3 s 6,7*

79.253 ASSIGNED RISK SAFETY ACCOUNT.

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

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

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

(2) employers whose workers' compensation premium classification assigned to

the greatest portion of the payroll for the employer has a premium rate in the top 25 percent of premium rates for all classes; and

(3) all other employers.

Subd. 3. **Incentives and penalties.** The assigned risk plan shall develop a premium rating system subject to approval by the commissioner of commerce that provides a reduction in premium rates for employers that follow safety recommendations made under this section and an increase in rates for employers that do not. The system must be sensitive to the economic ability of an employer to implement particular recommendations.

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

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

History: *1992 c 510 art 3 s 8*

79.255 WORKERS' COMPENSATION INSURANCE; LESSORS OF EMPLOYEES.

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

(1) identify the name of the lessor;

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

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

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

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

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

Subd. 2. **Ineligibility to register.** Any lessor of employees whose workers' compensation insurance has been terminated within the past five years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premium otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

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

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

Subd. 5. **Forms of registration.** The commissioner may prescribe forms necessary to promote the efficient administration of this section.

Subd. 6. **Advertising prohibition.** No organization registered under this section

shall directly or indirectly reference that registration in any advertisements, marketing material, or publications.

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

Subd. 8. **Application of section.** Any lessor of employees that was doing business in this state prior to April 28, 1992, shall register with the commissioner within 30 days of July 1, 1992.

History: *1992 c 510 art 3 s 9*

79.26 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.27 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.28 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.29 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.30 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.31 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.32 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
79.33 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

REINSURANCE ASSOCIATION

79.34 CREATION OF REINSURANCE ASSOCIATION.

Subdivision 1. **Conditions requiring membership.** The nonprofit association known as the workers' compensation reinsurance association may be incorporated under chapter 317A with all the powers of a corporation formed under that chapter, except that if the provisions of that chapter are inconsistent with sections 79.34 to 79.40, sections 79.34 to 79.40 govern. Each insurer as defined by section 79.01, subdivision 2, shall, as a condition of its authority to transact workers' compensation insurance in this state, be a member of the reinsurance association and is bound by the plan of operation of the reinsurance association; provided, that all affiliated insurers within a holding company system as defined in chapter 60D are considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association. Each self-insurer approved under section 176.181 and each political subdivision that self-insures shall, as a condition of its authority to self-insure workers' compensation liability in this state, be a member of the reinsurance association and is bound by its plan of operation; provided that:

(1) all affiliated companies within a holding company system, as determined by the commissioner of labor and industry in a manner consistent with the standards and definitions in chapter 60D, are considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association; and

(2) all group self-insurers granted authority to self-insure pursuant to section 176.181 are considered single entities for purposes of the exercise of all the rights and duties of membership in the reinsurance association. As a condition of its authority to self-insure workers' compensation liability, and for losses incurred after December 31, 1983, the state is a member of the reinsurance association and is bound by its plan of operation. The commissioner of employee relations represents the state in the exercise of all the rights and duties of membership in the reinsurance association. The state treasurer shall pay the premium to the reinsurance association from the state compensation revolving fund upon warrants of the commissioner of employee relations, except that the University of Minnesota shall pay its portion of workers' compensation reinsurance premiums directly to the workers' compensation reinsurance association. For the purposes of this section, "state" means the administrative branch of state government, the

legislative branch, the judicial branch, the University of Minnesota, and any other entity whose workers' compensation liability is paid from the state revolving fund. The commissioner of finance may calculate, prorate, and charge a department or agency the portion of premiums paid to the reinsurance association for employees who are paid wholly or in part by federal funds, dedicated funds, or special revenue funds. The reinsurance association is not a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of labor and industry with respect to the reinsurance association are not subject to chapters 13, 14, and 15. All property owned by the association is exempt from taxation. The reinsurance association is not obligated to make any payments or pay any assessments to any funds or pools established pursuant to this chapter or chapter 176 or any other law.

Subd. 1a. **Gross premiums tax.** The direct funded premium received by the reinsurance association is subject to the gross premium tax imposed by section 60A.15. Only direct funded premium payments made to the reinsurance association by self-insurers approved pursuant to section 176.181 and each political subdivision that self-insures shall be subject to the gross premiums tax.

Subd. 2. **Loses; retention limits.** The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of $300,000 or $100,000 retention limit, at the option of the member. In case of occupational disease causing disablement on and after October 1, 1979, each person suffering disablement due to occupational disease is considered to be involved in a separate loss occurrence. The lower retention limit shall be increased to the nearest $10,000, on January 1, 1982 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, as determined in accordance with section 176.011, subdivision 20. On January 1, 1982 and on each January 1 thereafter, the higher retention limit shall be increased by the amount necessary to retain a $200,000 difference between the two retention limits. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid by the member for workers' compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. For losses incurred on or after January 1, 1979, any amounts paid by a member pursuant to sections 176.183, 176.221, 176.225, and 176.82 shall not be included in ultimate loss and shall not be indemnified by the reinsurance association. A loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs, and a member is liable for a loss up to its retention limit in effect at the time that the loss was incurred, except that members which are determined by the reinsurance association to be controlled by or under common control with another member, and which are liable for claims from one or more employees entitled to compensation for a single compensable event, including aggregate losses relating to a single loss occurrence, may aggregate their losses and obtain indemnification from the reinsurance association for the aggregate losses in excess of the higher retention limit in effect at the time the loss was incurred. Each member is liable for payment of its ultimate loss and shall be entitled to indemnification from the reinsurance association for the ultimate loss in excess of the member's retention limit in effect at the time of the loss occurrence.

A member that chooses the higher retention limit shall retain the liability for all losses below the higher retention limit itself and shall not transfer the liability to any other entity or reinsure or otherwise contract for reimbursement or indemnification for losses below its retention limit, except in the following cases: (a) when the reinsurance or contract is with another member which, directly or indirectly, through one or more intermediaries, control or are controlled by or are under common control with the member; (b) when the reinsurance or contract provides for reimbursement or indemnification of a member if and only if the total of all claims which the member pays or incurs, but which are not reimbursable or subject to indemnification by the reinsurance

association for a given period of time, exceeds a dollar value or percentage of premium written or earned and stated in the reinsurance agreement or contract; (c) when the reinsurance or contract is a pooling arrangement with other insurers where liability of the member to pay claims pursuant to chapter 176 is incidental to participation in the pool and not as a result of providing workers' compensation insurance to employers on a direct basis under chapter 176; (d) when the reinsurance or contract is limited to all the claims of a specific insured of a member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the insured of the member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the insured of a member is not inconsistent with the bases of exception provided under clauses (a), (b) and (c); or (e) when the reinsurance or contract is limited to all claims of a specific self-insurer member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the self-insurer member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the self-insurer member are not inconsistent with the bases for exception provided under clauses (a), (b) and (c).

Whenever it appears to the commissioner of labor and industry that any member that chooses the higher retention limit has participated in the transfer of liability to any other entity or reinsured or otherwise contracted for reimbursement or indemnification of losses below its retention limit in a manner inconsistent with the bases for exception provided under clauses (a), (b), (c), (d), and (e), the commissioner may, after giving notice and an opportunity to be heard, order the member to pay to the state of Minnesota an amount not to exceed twice the difference between the reinsurance premium for the higher and lower retention limit applicable to the member for each year in which the prohibited reinsurance or contract was in effect. Any member subject to this penalty provision shall continue to be bound by its selection of the higher retention limit for purposes of membership in the reinsurance association.

Subd. 3. **Withdrawal from association.** An insurer may withdraw from the reinsurance association only upon ceasing to be authorized by license issued by the commissioner of commerce to transact workers' compensation insurance in this state and when all workers' compensation insurance policies issued by such insurer have expired; a self-insurer may withdraw from the reinsurance association only upon ceasing to be approved to self-insure workers' compensation liability in this state pursuant to section 176.181.

An insurer or self-insurer which withdraws or whose membership in the reinsurance association is terminated shall continue to be bound by the plan of operation. Upon withdrawal or termination, all unpaid premiums which have been charged to the withdrawing or terminated member shall be payable as of the effective date of the withdrawal or termination.

Subd. 4. **Liabilities of insolvent members.** An unsatisfied net liability to the reinsurance association of an insolvent member shall be assumed by and apportioned among the remaining members of the reinsurance association as provided in the plan of operation. The reinsurance association shall have all rights allowed by law on behalf of the remaining members against the estate or funds of the insolvent member for sums due the reinsurance association.

Subd. 5. **Merger or consolidation.** When a member has been merged or consolidated into another insurer or self-insurer, or another insurer, which provides insurance required by chapter 176, has reinsured a member's entire business, the member and successors in interest of the member shall remain liable for the member's obligations.

Subd. 6. **Identifying losses in report.** The commissioner of labor and industry shall require each member to identify the portion of all losses which exceed its retention limit selected under this section in any report filed with the workers' compensation insurers rating association of Minnesota or filed with the department of labor and industry for use in reviewing the workers' compensation schedule of rates.

Subd. 7. **Losses 1984 and after.** For losses incurred on or after January 1, 1984, the reinsurance association shall indemnify the member for the ultimate loss, in excess of the retention limit in effect at the time of the loss occurrence, sustained in each loss occurrence relating to one or more claims arising out of a single compensable event in another state provided that:

(a) the injured worker is eligible for benefits under section 176.041, subdivision 2 or 3, but elects to receive benefits under the workers' compensation statute of another state in lieu of benefits under chapter 176; and

(b) the ultimate loss indemnified by the reinsurance association shall be determined as provided in this chapter, except that the benefits shall be equal to those required to be paid under the workers' compensation statute of the state elected.

History: *Ex1979 c 3 s 17; 1980 c 556 s 7; 1981 c 346 s 17,18,139; 1Sp1981 c 4 art 1 s 62; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1983 c 290 s 7-9; 1984 c 432 art 1 s 2; 1984 c 655 art 1 s 92; 1985 c 234 s 21; 1987 c 268 art 2 s 26,27; 1988 c 667 s 22; 1989 c 304 s 137; 1991 c 325 art 14 s 17; 1991 c 345 art 1 s 70*

79.35 DUTIES; RESPONSIBILITIES; POWERS.

The reinsurance association shall do the following on behalf of its members:

(a) Assume 100 percent of the liability as provided in section 79.34;

(b) Establish procedures by which members shall promptly report to the reinsurance association each claim which, on the basis of the injury sustained, may reasonably be anticipated to involve liability to the reinsurance association if the member is held liable under chapter 176. Solely for the purpose of reporting claims, the member shall in all instances consider itself legally liable for the injury. The member shall advise the reinsurance association of subsequent developments likely to materially affect the interest of the reinsurance association in the claim;

(c) Maintain relevant loss and expense data relative to all liabilities of the reinsurance association and require each member to furnish statistics in connection with liabilities of the reinsurance association at the times and in the form and detail as may be required by the plan of operation;

(d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur in excess of the higher retention limit but less than the prefunded limit, together with incurred or estimated to be incurred operating and administrative expenses for the period to which this premium applies and actual claim payments to be made by members, during the period to which this premium applies, for claims in excess of the prefunded limit in effect at the time the loss was incurred. The prefunded limit shall be $2,500,000 on and after October 1, 1979, provided that the prefunded limit shall be increased on January 1, 1983 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, to the nearest $100,000, as determined in accordance with section 176.011, subdivision 20. Each member shall be charged a proportion of the total premium in an amount equal to its proportion of the exposure base of all members during the period to which the reinsurance association premium will apply. The exposure base shall be determined by the board and is subject to the approval of the commissioner of labor and industry. In determining the exposure base, the board shall consider, among other things, equity, administrative convenience, records maintained by members, amenability to audit, and degree of risk refinement. Each member exercising the lower retention option shall also be charged a premium established by the board as sufficient to cover incurred or estimated to be incurred claims for the liability the reinsurance association is likely to incur between the lower and higher retention limits for the period to which the premium applies. Each member shall also be charged a premium determined by the board to equitably distribute excess or deficient premiums from previous periods including any excess or deficient premiums resulting from a retroactive change in the prefunded limit. The premiums charged to members shall not be unfairly discriminatory as defined in section 79.074. All premiums shall be approved by the commissioner of labor and industry;

(e) Require and accept the payment of premiums from members of the reinsurance association;

(f) Receive and distribute all sums required by the operation of the reinsurance association;

(g) Establish procedures for reviewing claims procedures and practices of members of the reinsurance association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the reinsurance association, the reinsurance association may undertake, or may contract with another person, including another member, to adjust or assist in the adjustment of claims which create a potential liability to the association. The reinsurance association may charge the cost of the adjustment under this paragraph to the member, except that any penalties or interest incurred under sections 176.183, 176.221, 176.225, and 176.82 as a result of actions by the reinsurance association after it has undertaken adjustment of the claim shall not be charged to the member but shall be included in the ultimate loss and listed as a separate item; and

(h) Provide each member of the reinsurance association with an annual report of the operations of the reinsurance association in a form the board of directors may specify.

History: *Ex1979 c 3 s 18; 1980 c 556 s 8; 1981 c 346 s 19,139; 1983 c 290 s 10; 1985 c 234 s 21*

79.36 ADDITIONAL POWERS.

In addition to the powers granted in section 79.35, the reinsurance association may do the following:

(a) Sue and be sued. A judgment against the reinsurance association shall not create any direct liability against the individual members of the reinsurance association. The reinsurance association shall provide in the plan of operation for the indemnification, to the extent provided in the plan of operation, of the members, members of the board of directors of the reinsurance association, and officers, employees and other persons lawfully acting on behalf of the reinsurance association;

(b) Reinsure all or any portion of its potential liability, including potential liability in excess of the prefunded limit, with reinsurers licensed to transact insurance in this state or otherwise approved by the commissioner of labor and industry;

(c) Provide for appropriate housing, equipment, and personnel as may be necessary to assure the efficient operation of the reinsurance association;

(d) Contract for goods and services, including but not limited to independent claims management, actuarial, investment, and legal services from others within or without this state to assure the efficient operation of the reinsurance association;

(e) Adopt operating rules, consistent with the plan of operation, for the administration of the reinsurance association, enforce those operating rules, and delegate authority as necessary to assure the proper administration and operation of the reinsurance association;

(f) Intervene in or prosecute at any time, including but not limited to intervention or prosecution as subrogee to the member's rights in a third party action, any proceeding under this chapter or chapter 176 in which liability of the reinsurance association may, in the opinion of the board of directors of the reinsurance association or its designee, be established, or the reinsurance association affected in any other way;

(g) The net proceeds derived from intervention or prosecution of any subrogation interest, or other recovery, shall first be used to reimburse the reinsurance association for amounts paid or payable pursuant to this chapter, together with any expenses of recovery, including attorney's fees, and any excess shall be paid to the member or other person entitled thereto, as determined by the board of directors of the reinsurance association, unless otherwise ordered by a court.

(h) Hear and determine complaints of a company or other interested party concerning the operation of the reinsurance association; and

(i) Perform other acts not specifically enumerated in this section which are necessary or proper to accomplish the purposes of the reinsurance association and which are not inconsistent with sections 79.34 to 79.40 or the plan of operation.

History: *Ex1979 c 3 s 19; 1980 c 556 s 9; 1981 c 346 s 20,139; 1985 c 234 s 21; 1987 c 384 art 2 s 1*

79.37 BOARD OF DIRECTORS.

A board of directors of the reinsurance association is created and is responsible for the operation of the reinsurance association consistent with the plan of operation and sections 79.34 to 79.40. The board consists of 13 directors. Four directors shall represent insurers, two directors shall represent employers, two shall represent self-insurers; two directors shall represent employees; the commissioner of finance and the executive director of the state board of investment or their designees shall serve as directors; and one director shall represent the public. Insurer members of the reinsurance association shall elect the directors who represent insurers; self-insurer members of the reinsurance association shall elect the directors who represent self-insurers; and the commissioner of labor and industry shall appoint the remaining directors for the terms authorized in the plan of operation. Each director is entitled to one vote. Terms of the directors shall be staggered so that the terms of all the directors do not expire at the same time and so that a director does not serve a term of more than four years. The board shall select a chair and other officers it deems appropriate.

A majority of the directors currently holding office constitutes a quorum. Action may be taken by a majority vote of the directors present.

The board shall take reasonable and prudent action regarding the management of the reinsurance association including but not limited to determining the entity who shall manage the daily affairs of the reinsurance association. The board shall report to the governor of its actions regarding the entity selected to manage the reinsurance association and the reasons for the selection.

History: *Ex1979 c 3 s 20; 1980 c 556 s 10; 1981 c 346 s 139; 1983 c 290 s 11; 1984 c 592 s 78; 1985 c 234 s 2; 1986 c 444; 1987 c 384 art 2 s 1*

79.38 PLAN OF OPERATION.

Subdivision 1. **Provisions.** The plan of operation shall provide for all of the following:

(a) The establishment of necessary facilities;

(b) The management and operation of the reinsurance association;

(c) A preliminary premium, payable by each member in proportion to its total premium in the year preceding the inauguration of the reinsurance association, for initial expenses necessary to commence operation of the reinsurance association;

(d) Procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods;

(e) Procedures governing the actual payment of premiums to the reinsurance association;

(f) Reimbursement of each member of the board by the reinsurance association for actual and necessary expenses incurred on reinsurance association business;

(g) The composition, terms, compensation and other necessary rules consistent with section 79.37 for boards of directors of the reinsurance association;

(h) The investment policy of the reinsurance association; and

(i) Any other matters required by or necessary to effectively implement sections 79.34 to 79.40.

Subd. 2. **Validity.** If the reinsurance association is incorporated pursuant to chapter 317A, the plan of operation shall be filed with and accepted by the secretary of state as the corporation's articles of incorporation and bylaws. The plan of operation shall be valid as articles of incorporation and bylaws under chapter 317A, notwithstanding

that one or more of the required provisions for articles and bylaws under chapter 317A is not included or requirements of form are not followed.

Subd. 3. **Amendments.** (a) **Procedure with members' ratification.** The plan of operation may be amended, in whole or in part, as follows: proposal of an amendment by a member of the board and adoption by a majority vote of the board at a meeting duly called for that purpose, ratification by a majority vote of the members at any annual meeting or special meeting duly called for that purpose, and approval of the commissioner of labor and industry, provided that an amendment shall be deemed approved 30 days after the day following the date of ratification by the members if not sooner disapproved by written order of the commissioner.

(b) **Emergency board power to amend with delayed members' ratification.** The board shall have emergency powers to amend the plan at a meeting duly called for that purpose, without ratification by the members; provided that a meeting of members shall be scheduled to consider ratification of the amendment within 90 days.

(c) **Commissioner's power to amend.** If the board proposes an amendment which the members decline to ratify, the commissioner of labor and industry is authorized, upon request of the board, to amend the plan as proposed by the board when the commissioner determines that failure to adopt the proposed amendment may seriously impair the ability of the reinsurance association to meet its financial obligations.

(d) **Delegation of authority to ratify.** By a majority vote, the members, voting in person, or by proxy if authorized by the board, at a meeting duly called for that purpose, may authorize the board to exercise the power of amendment of the plan without ratification by the members. When the members have authorized the board to amend the plan without ratification by the members, the board may, by a majority vote of the directors, amend the plan, provided that notice of the meeting and of the proposed amendment shall be given to each director and officer, including the commissioner of labor and industry. By a majority vote, the members, voting in person, or by proxy if authorized by the board, at a meeting duly called for that purpose, may prospectively revoke the authority of the board to amend the plan without ratification by the members.

History: *Ex1979 c 3 s 21; 1980 c 556 s 11; 1981 c 346 s 139; 1985 c 234 s 21; 1986 c 444; 1987 c 384 art 2 s 1,16; 1989 c 304 s 137*

79.39 APPLICABILITY OF CHAPTER 79.

Subdivision 1. **Examination by commissioner.** The reinsurance association is subject to all the provisions of this chapter. The commissioner of labor and industry or an authorized representative of the commissioner may visit the reinsurance association at any time and examine, audit, or evaluate the reinsurance association's operations, records and practices. For purposes of this section, "authorized representative of the commissioner" includes employees of the department of labor and industry or other parties retained by the commissioner.

Subd. 2. **Costs and expenses.** The commissioner of labor and industry may order and the reinsurance association shall pay the costs and expenses of any examination, audit, or evaluation conducted pursuant to subdivision 1.

History: *Ex1979 c 3 s 22; 1984 c 592 s 79; 1985 c 234 s 21*

79.40 PREMIUM INCLUSION IN RATEMAKING.

Premiums charged members by the reinsurance association shall be recognized in the ratemaking procedures for insurance rates in the same manner as assessments for the special compensation fund.

History: *Ex1979 c 3 s 23*

79.41 [Repealed, 1980 c 556 s 13; 1981 c 346 s 139]

79.42 [Repealed, 1980 c 556 s 13; 1981 c 346 s 139]

79.50 PURPOSES.

The purposes of chapter 79 are to:

(a) Promote public welfare by regulating insurance rates so that premiums are not excessive, inadequate, or unfairly discriminatory;

(b) Promote quality and integrity in the data bases used in workers' compensation insurance ratemaking;

(c) Prohibit price fixing agreements and anticompetitive behavior by insurers;

(d) Promote price competition and provide rates that are responsive to competitive market conditions;

(e) Provide a means of establishment of proper rates if competition is not effective;

(f) Define the function and scope of activities of data service organizations;

(g) Provide for an orderly transition from regulated rates to competitive market conditions; and

(h) Encourage insurers to provide alternative innovative methods whereby employers can meet the requirements imposed by section 176.181.

History: *1981 c 346 s 21*

79.51 RULES.

Subdivision 1. **Adoption; when.** The commissioner shall adopt rules to implement provisions of this chapter. The rules shall be finally adopted after May 1, 1982. By January 15, 1982, the commissioner shall provide the legislature a description and explanation of the intent and anticipated effect of the rules on the various factors of the rating system.

Subd. 2. [Repealed, 1983 c 290 s 173]

Subd. 3. **Rules; subject matter.** (a) The commissioner in issuing rules shall consider:

(1) data reporting requirements, including types of data reported, such as loss and expense data;

(2) experience rating plans;

(3) retrospective rating plans;

(4) general expenses and related expense provisions;

(5) minimum premiums;

(6) classification systems and assignment of risks to classifications;

(7) loss development and trend factors;

(8) the workers' compensation reinsurance association;

(9) requiring substantial compliance with the rules mandated by this section as a condition of workers' compensation carrier licensure;

(10) imposing limitations on the functions of workers' compensation data service organizations consistent with the introduction of competition;

(11) the rules contained in the workers' compensation rating manual adopted by the workers' compensation insurers rating association; and

(12) any other factors that the commissioner deems relevant to achieve the purposes of this chapter.

(b) The rules shall provide for the following:

(1) competition in workers' compensation insurance rates in such a way that the advantages of competition are introduced with a minimum of employer hardship;

(2) adequate safeguards against excessive or discriminatory rates in workers' compensation;

(3) encouragement of workers' compensation insurance rates which are as low as reasonably necessary, but shall make provision against inadequate rates, insolvencies and unpaid benefits;

(4) assurances that employers are not unfairly relegated to the assigned risk pool;

(5) requiring all appropriate data and other information from insurers for the purpose of issuing rules, making legislative recommendations pursuant to this section and monitoring the effectiveness of competition; and

(6) preserving a framework for risk classification, data collection, and other appropriate joint insurer services where these will not impede the introduction of competition in premium rates.

Subd. 4. **Advisory committee.** The commissioner shall appoint an advisory committee which shall offer recommendations regarding rulemaking under this section. The advisory committee shall include representatives of insurers, employers, and employees. The advisory committee expires as provided in section 15.059, subdivision 5.

History: *1981 c 346 s 22; 1983 c 290 s 12; 1988 c 629 s 14*

79.52 DEFINITIONS.

Subdivision 1. **Generally.** The following words or phrases shall have the meanings ascribed to them for the purposes of this chapter, unless the context clearly indicates that a different meaning is intended.

Subd. 2. **Market.** "Market" means any reasonable grouping or classification of employers.

Subd. 3. **Data service organization.** "Data service organization" means any entity which has ten or more members or is controlled directly or indirectly by ten or more insurers and is engaged in collecting data for use in insurance ratemaking or other activities permitted by this chapter. Affiliated members or insurers shall be counted as a single unit for the purpose of this definition. The workers' compensation insurers rating association of Minnesota shall be considered a data service organization.

Subd. 4. **Classification plan; classification.** "Classification plan" or "classification" means the plan, system, or arrangement for rating insurance policyholders.

Subd. 5. **Rates.** "Rates" means the cost of insurance per exposure base unit.

Subd. 6. **Base premium.** "Base premium" means the amount of premium which an employer would pay for insurance derived by applying rates to an exposure base prior to the application of any merit rating or discount factors.

Subd. 7. **Premium.** "Premium" means the price charged to an insured for insurance for a specified period of time, regardless of the timing of actual payments.

Subd. 8. **Discount factor.** "Discount factor" means any factor which is applied to the base premium and which is based upon insurer expenses or other factors not related to the risk of loss.

Subd. 9. **Merit rating.** "Merit rating" means a system or form of rating by which base premium is modified on the basis of loss experience or other factors which are reasonably related to loss or risk of loss and which may be reasonably affected by the action or activities of the insured. The sensitivity of a merit rating system to loss experience may vary by the size of risk. Merit rating shall include both prospective and retrospective methods for modifying base premium.

Subd. 10. **Loss development factors.** "Loss development factors" means factors applied to recorded incurred losses to estimate the amount of ultimate loss payments that will have been made for losses during the applicable period when all claims are paid.

Subd. 11. **Trend or trending.** "Trend" or "trending" means any procedure employing data for the purpose of projecting or forecasting the future value of that data or other data, or the factors resulting from such a procedure.

Subd. 12. **Interested party.** "Interested party" means any person, or association acting on behalf of its members, directly affected by a change in the schedule of rates and includes the staff of the department of commerce.

Subd. 13. **Insurer.** "Insurer" means any insurer licensed to transact the business of workers' compensation insurance in this state.

Subd. 14. **Insurance.** "Insurance" means workers' compensation insurance.

Subd. 15. **Rating plan.** "Rating plan" means every manual, and every other rule including discount factors and merit rating necessary for the calculation of an insured's premium from an insurer's rates. An insurer may choose to adopt for use the rating plan of the data service organization in which it maintains membership.

Subd. 16. **Attorney's fees.** No loss adjustment expense used to pay attorney fees or other costs in defense of a workers' compensation claim shall be charged to an insured in a merit rating plan or to a plan under section 79.251, subdivision 2.

History: *1981 c 346 s 23; 1983 c 289 s 114 subd 1; 1983 c 290 s 13; 1984 c 655 art 1 s 92*

79.53 PREMIUM CALCULATION.

Subdivision 1. **Method of calculation.** Each insurer shall establish premiums to be paid by an employer according to its filed rates and rating plan as follows:

Rates shall be applied to an exposure base to yield a base premium which may be further modified by merit rating, premium discounts, and other appropriate factors contained in the rating plan of an insurer to produce premium. Nothing in this chapter shall be deemed to prohibit the use of any premium, provided the premium is not excessive, inadequate or unfairly discriminatory.

Subd. 2. **Study; report.** The commissioner of commerce shall conduct a comparative actuarial study of the exposure bases of employers located within and outside of the seven county metropolitan area. In addition to the factors required to be considered by a data service organization under section 79.61, subdivision 1, the study shall include the activity permitted under section 79.61, subdivision 2, and specifically, shall include a comparative study of the incidence of litigation in relationship to first reports of injuries as between employers within and outside the metropolitan area.

For the purposes of this section, "metropolitan area" has the meaning as defined in section 473.121, subdivision 2.

A report on the study shall be made by the commissioner to the legislature by January 15, 1984.

History: *1981 c 346 s 24; 1983 c 289 s 114 subd 1; 1983 c 290 s 14; 1984 c 655 art 1 s 92*

79.531 NEGLIGENTLY PAID CLAIMS.

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

History: *1986 c 461 s 1*

79.54 COMPETITIVE MARKET PRESUMPTION.

A competitive market is presumed to exist until the commissioner, after a hearing on the record, determines that a reasonable degree of competition does not exist and issues an order to that effect. The order shall include the conditions and procedures under which a determination of insufficient competition shall expire.

History: *1981 c 346 s 25*

79.55 STANDARDS FOR RATES.

Subdivision 1. **General standards.** Premiums shall not be excessive, inadequate, or unfairly discriminatory.

Subd. 2. **Excessiveness.** No premium is excessive in a competitive market. In the absence of a competitive market, premiums are excessive if the expected underwriting profit, together with expected income from invested reserves for the market in question, that would accrue to an insurer would be unreasonably high in relation to the risk undertaken by the insurer in transacting the business.

Subd. 3. **Inadequacy.** Premiums are inadequate if, together with the investment income associated with an insurer's Minnesota workers' compensation insurance business, they are clearly insufficient to sustain projected losses and expenses of the insurer and (a) if their continued use could lead to an insolvent situation for the insurer; or (b) if their use destroys or lessens competition or is likely to destroy or lessen competition.

Subd. 4. **Unfair discrimination.** Premiums are unfairly discriminatory if differentials for insureds fail to reasonably reflect the differences in expected losses and expenses to the insurer attributable to the insureds. Rates are not unfairly discriminatory solely because different premiums result for insureds with like loss exposures but different expense factors, or like expense factors but different loss exposures, provided that rates reflect the differences with reasonable accuracy.

Subd. 5. **Discounts permitted.** An insurer may offer a discount from a manual premium if the premium otherwise complies with this section. The commissioner shall not by rule, or otherwise, prohibit a credit or discount from a manual premium solely because it is greater than a certain fixed percentage of the premium.

History: *1981 c 346 s 26; 1985 c 219 s 1*

79.56 FILING RATES AND RATING INFORMATION.

Subdivision 1. **After effective date.** Each insurer shall file with the commissioner a complete copy of its rates and rating plan, and all changes and amendments thereto, within 15 days after their effective dates. An insurer need not file a rating plan if it uses a rating plan filed by a data service organization. If an insurer uses a rating plan of a data service organization but deviates from it, then all deviations must be filed by the insurer.

Subd. 2. **Before effective date.** The commissioner may order an insurer to file rates at least 30 days before the effective date of the rates (a) if the commissioner determines, based upon reasonable evidence, that an order is appropriate because of the insurer's financial condition or (b) due to a prior finding of unfairly discriminatory rating practices; or (c) due to a prior finding of inadequate rates. The order may require that supplementary rate and supporting information be included in a filing.

Subd. 3. **Penalties.** Any insurer using a rate or a rating plan which has not been filed shall be subject to a fine of up to $100 for each day the failure to file continues. The commissioner may, after a hearing on the record, find that the failure is willful. A willful failure to meet filing requirements shall be punishable by a fine of up to $500 for each day during which a willful failure continues. These penalties shall be in addition to any other penalties provided by law.

Subd. 4. **Public inspection.** All filings shall be open to public inspection during normal business hours at the offices of the department of commerce.

History: *1981 c 346 s 27; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

79.57 FILING RATES; NONCOMPETITIVE MARKET.

Upon making a determination that a market is not competitive, the commissioner shall require rates for use in that market to be filed 30 days prior to their effective date. The filing shall include, in a form prescribed by the commissioner, an explanation of the rates and any data supporting the use of the rates which are not on file with a data service organization.

The commissioner may issue an order for a hearing at any time prior to the effective date of the rates and the rates shall not become effective until the commissioner has ruled on the rates following the hearing.

The commissioner may disapprove the rates subsequent to their effective date, except that rates so disapproved shall remain effective until the commissioner issues an order following a hearing.

History: *1981 c 346 s 28*

79.58 DISAPPROVAL OF RATES OR RATING PLANS.

Subdivision 1. **Rates.** A rate filed by an insurer may be disapproved by the commissioner subsequent to its effective date. Following a disapproval and prior to a refiling the insurer shall use the rates as reasonably established by the commissioner.

The commissioner shall disapprove a rate if, after a hearing on the record, the commissioner finds that:

(a) The premium is inadequate or unfairly discriminatory; or

(b) A competitive market for workers' compensation does not exist and rates are excessive; or

(c) The insurer failed to comply with filing requirements.

A rehearing shall be held within 30 days of any disapproval under this section at the request of the insurer whose rates are disapproved.

Subd. 2. **Rating plans.** The commissioner may disapprove a rating plan of a data service organization if, after a hearing, the commissioner finds that it is unfairly discriminatory. Any order of disapproval shall require the data service organization to use an alternative rating plan until approval of a rating plan by the commissioner. The commissioner shall not approve any rating plan based upon any data other than Minnesota data, except that other data may be utilized as a supplement to Minnesota data when the commissioner determines that an exceptional case requires such data to establish the statistical credibility of an occupational classification.

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

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

History: *1981 c 346 s 29; 1986 c 444; 1992 c 510 art 6 s 1*

79.59 INSURERS AND DATA SERVICE ORGANIZATIONS; PROHIBITED ACTIVITIES.

Subdivision 1. **Monopolization.** No insurer or data service organization shall attempt to monopolize or combine or conspire with any other person to monopolize the business of insurance.

Subd. 2. **Agreement prohibited.** No insurer shall agree with any other insurer or with a data service organization to adhere to or to use any rate, rating plan, rating schedule, rating rule, or underwriting rule except as specifically authorized by this chapter or for the purpose of creating experience modifications for employers with employees in more than one state.

Subd. 3. **Trade restraint.** No insurer or data service organization shall make an agreement with any other insurer, data service organization, or other person which has the purpose or the effect of restraining trade or of substantially lessening competition.

Subd. 4. **Exceptions.** The fact that insurers writing not more than 25 percent of the workers' compensation premiums in Minnesota use the same rates, rating plans, rating schedules, rating rules, underwriting rules, or similar materials shall not alone constitute a violation of subdivision 1 or 2.

Two or more insurers under common ownership or operating under common management or control may act in concert between or among themselves with respect to matters authorized under this chapter as if they constituted a single insurer, provided that the rating plan of such insurers shall be considered to be a single plan for the purposes of determining unfair discrimination.

Subd. 5. **Additional prohibition.** In addition to other prohibitions contained in this chapter, no data service organization shall:

(a) Refuse to supply any service for which it is licensed or any data, except for data identifiable to an individual insurer, to any insurer authorized to do business in this state which offers to pay the usual compensation for the service or data;

(b) Require the purchase of any specific service as a condition to obtaining any other services sought;

(c) Participate in the development or distribution of rates, rating plans, or rating rules except as specifically authorized by this chapter or by rules adopted pursuant to this chapter; or

(d) Refuse membership to any licensed insurer.

History: *1981 c 346 s 30*

79.60 INSURERS; REQUIRED AND PERMITTED ACTIVITY.

Subdivision 1. **Required activity.** Each insurer shall perform the following activities:

(a) Maintain membership in and report loss experience data to a licensed data service organization in accordance with the statistical plan and rules of the organization as approved by the commissioner;

(b) Establish a plan for merit rating which shall be consistently applied to all insureds, provided that members of a data service organization may use merit rating plans developed by that data service organization;

(c) Provide an annual report to the commissioner containing the information and prepared in the form required by the commissioner; and

(d) Keep a record of the premiums and losses paid under each workers' compensation policy written in Minnesota in the form required by the commissioner.

Subd. 2. **Permitted activity.** In addition to any other activities not prohibited by this chapter, insurers may:

(a) Through licensed data service organizations, individually, or with insurers commonly owned, managed, or controlled, conduct research and collect statistics to investigate, identify, and classify information relating to causes or prevention of losses;

(b) Develop and use classification plans and rates based upon any reasonable factors; and

(c) Develop rules for the assignment of risks to classifications.

History: *1981 c 346 s 31*

79.61 DATA SERVICE ORGANIZATIONS; REQUIRED AND PERMITTED ACTIVITY.

Subdivision 1. **Required activity.** Any data service organization shall perform the following activities:

(a) File statistical plans, including classification definitions, amendments to the plans, and definitions, with the commissioner for approval, and assign each compensation risk written by its members to its approved classification for reporting purposes;

(b) Establish requirements for data reporting and monitoring methods to maintain a high quality data base;

(c) Prepare and distribute a periodic report, in a form prescribed by the commissioner, on ratemaking including, but not limited to the following elements:

(i) development factors and alternative derivations;

(ii) trend factors and alternative derivations and applications;

(iii) pure premium relativities for the approved classification system for which data are reported, provided that the relativities for insureds engaged in similar occupations and presenting substantially similar risks shall, if different, differ by at least ten percent; and

(iv) an evaluation of the effects of changes in law on loss data.

The report shall also include explicit discussion and explanation of methodology, alternatives examined, assumptions adopted, and areas of judgment and reasoning supporting judgments entered into, and the effect of various combinations of these elements on indications for modification of an overall pure premium rate level change. The pure premium relativities and rate level indications shall not include a loading for expenses or profit and no expense or profit data or recommendations relating to expense or profit shall be included in the report or collected by a data service organization;

(d) Collect, compile, summarize, and distribute data from members or other sources pursuant to a statistical plan approved by the commissioner;

(e) Prepare merit rating plan and calculate any variable factors necessary for utilization of the plan. Such a plan may be used by any of its members, at the option of the member provided that the application of a plan shall not result in rates that are unfairly discriminatory;

(f) Provide loss data specific to an insured to the insured at a reasonable cost;

(g) Distribute information to an insured or interested party that is filed with the commissioner and is open to public inspection; and

(h) Assess its members for operating expenses on a fair and equitable basis.

Subd. 2. **Permitted activity.** In addition to any other activities not prohibited by chapter 79, any data service organization may:

(a) Collect and analyze data in order to investigate, identify, and classify information relating to causes or prevention of losses;

(b) Make inspections for the sole purpose of reporting and maintaining data quality;

(c) Contract with another data service organization to fulfill any of the above requirements; and

(d) Prepare and file with the commissioner a rating plan for use by any of its members, provided that no member may be required to use any part of the plan.

History: *1981 c 346 s 32*

79.62 DATA SERVICE ORGANIZATIONS; LICENSING, EXAMINATION.

Subdivision 1. **License required.** No data service organization shall provide any service and no insurer shall use the services of a data service organization unless the organization is licensed by the commissioner.

Subd. 2. **Procedure; application.** A data service organization shall apply for a license in a form and manner prescribed by the commissioner. The application of a data service organization shall include:

(a) a copy of its constitution, articles of incorporation, bylaws, and other rules pertaining to the conduct of its business;

(b) a plan and narrative describing how it will perform the activities required by section 79.61;

(c) a statement showing its technical qualifications; and

(d) any other information that the commissioner may reasonably require.

Subd. 2a. **Employer representation.** The commissioner may appoint two representatives of employers to serve on the board of directors of each licensed data service organization. These directors serve for a term of two years and are entitled to vote on all matters under consideration.

Subd. 3. **Issuance.** The commissioner, upon finding that the applicant organization is qualified to provide the services required and proposed, or has contracted with a licensed data service organization to purchase these services which are required by this chapter but are not provided directly by the applicant, and that all requirements of law are met, shall issue a license. Each license is subject to annual renewal effective June 30. Each new or renewal license application must be accompanied by a fee of $50.

Subd. 4. **Suspension; revocation.** The commissioner may, after a hearing on the record, revoke or suspend the license of a data service organization if the commissioner finds that the organization is not in compliance with the requirements of this chapter or rules issued thereunder.

Subd. 5. **Licensee examination.** The commissioner may examine any licensed data service organization or applicant for this license to determine whether its activities and practices comply with law. The cost of the examination shall be paid by the examined organization pursuant to section 60A.03.

History: *1981 c 346 s 33; 1Sp1985 c 10 s 73; 1986 c 444*

79.63 [Repealed, 1983 c 290 s 173]