A bill for an act

relating to insurance; replacing the Minnesota Comprehensive Health Association assessment with health care provider tax revenues; increasing the provider tax accordingly; appropriating money; amending Minnesota Statutes 2008, sections 62A.02, by adding a subdivision; 62E.02, subdivision 23; 62E.091; 62E.10, subdivisions 1, 2, 3, 6; 62E.11, subdivisions 9, 10; 62E.13, subdivisions 2, 3a, by adding a subdivision; 62E.14, subdivisions 1, 6; 295.52; 295.581; repealing Minnesota Statutes 2008, sections 62E.02, subdivision 23; 62E.11, subdivisions 5, 6, 13; 62E.13, subdivision 1.

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

Section 1. Minnesota Statutes 2008, section 62A.02, is amended by adding a subdivision to read:

Subd. 8. **Effects on premium rates of certain law changes.** In approving premium rates under this section and sections 62A.021; 62A.65, subdivision 3; and 62L.08, subdivision 8, the commissioners of commerce and health shall ensure that the provisions of this act eliminating the Comprehensive Health Association assessment are reflected in the premium rates charged by health plan companies.

EFFECTIVE DATE. This section is effective for coverage issued on or after January 1, 2011.

Sec. 2. Minnesota Statutes 2008, section 62E.02, subdivision 23, is amended to read:

Subd. 23. ~~**Contributing member**~~ **Health plan company.** "~~Contributing member~~ Health plan company" means those companies regulated under chapter 62A and offering, selling, issuing, or renewing policies or contracts of accident and health insurance; health maintenance organizations regulated under chapter 62D; nonprofit health service plan corporations regulated under chapter 62C; community integrated service networks

regulated under chapter 62N; fraternal benefit societies regulated under chapter 64B; the Minnesota employees insurance program established in section 43A.317, effective July 1, 1993; and joint self-insurance plans regulated under chapter 62H. ~~For the purposes of determining liability of contributing members pursuant to section 62E.11 payments received from or on behalf of Minnesota residents for coverage by a health maintenance organization or community integrated service network shall be considered to be accident and health insurance premiums.~~

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 3. Minnesota Statutes 2008, section 62E.091, is amended to read:

62E.091 APPROVAL OF STATE PLAN PREMIUMS.

The association shall submit to the commissioner any premiums it proposes to become effective for coverage under the comprehensive health insurance plan, pursuant to section 62E.08, subdivision 3. No later than 45 days before the effective date for premiums specified in section 62E.08, subdivision 3, the commissioner shall approve, modify, or reject the proposed premiums on the basis of the following criteria:

(a) whether the association has complied with the provisions of section 62E.11, subdivision 11;

(b) whether the association has submitted the proposed premiums in a manner which provides sufficient time for individuals covered under the comprehensive insurance plan to receive notice of any premium increase no less than 30 days prior to the effective date of the increase;

(c) the degree to which the association's computations and conclusions are consistent with section 62E.08;

(d) the degree to which any sample used to compute a weighted average by the association pursuant to section 62E.08 reasonably reflects circumstances existing in the private marketplace for individual coverage;

(e) the degree to which a weighted average computed pursuant to section 62E.08 that uses information pertaining to individual coverage available only on a renewal basis reflects the circumstances existing in the private marketplace for individual coverage;

(f) a comparison of the proposed increases with increases in the cost of medical care and increases experienced in the private marketplace for individual coverage;

(g) the financial consequences to enrollees of the proposed increase;

(h) the actuarially projected effect of the proposed increase upon both total enrollment in, and the nature of the risks assumed by, the comprehensive health insurance plan; and

~~(i) the relative solvency of the contributing members; and~~

~~(j)~~ (i) other factors deemed relevant by the commissioner.

In no case, however, may the commissioner approve premiums for those plans of coverage described in section 62E.08, subdivision 1, paragraphs (a) to (d), that are lower than 101 percent or greater than 125 percent of the weighted averages computed by the association pursuant to section 62E.08. The commissioner shall support a decision to approve, modify, or reject any premium proposed by the association with written findings and conclusions addressing each criterion specified in this section. If the commissioner does not approve, modify, or reject the premiums proposed by the association sooner than 45 days before the effective date for premiums specified in section 62E.08, subdivision 3, the premiums proposed by the association under this section become effective.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 4. Minnesota Statutes 2008, section 62E.10, subdivision 1, is amended to read:

Subdivision 1. **Creation; tax exemption.** There is established a Comprehensive Health Association to promote the public health and welfare of the state of Minnesota ~~with membership consisting of all insurers; self-insurers; fraternals; joint self-insurance plans regulated under chapter 62H; the Minnesota employees insurance program established in section 43A.317, effective July 1, 1993; health maintenance organizations; and community integrated service networks licensed or authorized to do business in this state~~. The association shall have no members. The Comprehensive Health Association is exempt from the taxes imposed under chapter 297I and any other laws of this state and all property owned by the association is exempt from taxation.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 5. Minnesota Statutes 2008, section 62E.10, subdivision 2, is amended to read:

Subd. 2. **Board of directors; organization.** The board of directors of the association shall be made up of ~~eleven members as follows: six directors selected by contributing members, subject to approval by the commissioner, one of which must be a health actuary; five public directors~~ 11 individuals selected by the commissioner, at least two of whom must be plan enrollees~~, two of whom are covered under an individual plan subject to assessment under section 62E.11 or group plan offered by an employer subject~~

~~to assessment under section 62E.11, and one of whom must be a licensed insurance agent~~. At least two of the ~~public~~ directors must reside outside of the seven county metropolitan area. ~~In determining voting rights at members' meetings, each member shall be entitled to vote in person or proxy. The vote shall be a weighted vote based upon the member's cost of self-insurance, accident and health insurance premium, subscriber contract charges, health maintenance contract payment, or community integrated service network payment derived from or on behalf of Minnesota residents in the previous calendar year, as determined by the commissioner. In approving directors of the board, the commissioner shall consider, among other things, whether all types of members are fairly represented. Directors selected by contributing members may be reimbursed from the money of the association for expenses incurred by them as directors, but shall not otherwise be compensated by the association for their services. The costs of conducting meetings of the association and its board of directors shall be borne by members of the association.~~

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 6. Minnesota Statutes 2008, section 62E.10, subdivision 3, is amended to read:

Subd. 3. ~~**Mandatory membership**~~ **Organizational documents.** ~~All members shall maintain their membership in the association as a condition of doing accident and health insurance, self-insurance, health maintenance organization, or community integrated service network business in this state.~~ The association shall submit its articles, bylaws, and operating rules to the commissioner for approval; provided that the adoption and amendment of articles, bylaws and operating rules by the association and ~~the~~ their approval by the commissioner ~~thereof shall be~~ is exempt from ~~the provisions of~~ sections 14.001 to 14.69.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 7. Minnesota Statutes 2008, section 62E.10, subdivision 6, is amended to read:

Subd. 6. **Antitrust exemption.** In the performance of their duties as ~~members~~ directors of the association, the ~~members~~ directors and their employers shall be exempt from the provisions of sections 325D.49 to 325D.66.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 8. Minnesota Statutes 2008, section 62E.11, subdivision 9, is amended to read:

Subd. 9. **Special assessment upon termination of individual health coverage.** Each ~~contributing member~~ health plan company that terminates individual health coverage

for reasons other than (a) nonpayment of premium; (b) failure to make co-payments; (c) enrollee moving out of the area served; or (d) a materially false statement or misrepresentation by the enrollee in the application for membership; and does not provide or arrange for replacement coverage that meets the requirements of section 62D.121; shall pay a special assessment to the state plan based upon the number of terminated individuals who join the comprehensive health insurance plan as authorized under section 62E.14, subdivisions 1, paragraph (d), and 6. Such a ~~contributing member~~ health plan company shall pay the association an amount equal to the average cost of an enrollee in the state plan in the year in which the ~~member~~ health plan company terminated enrollees multiplied by the total number of terminated enrollees who enroll in the state plan.

The average cost of an enrollee in the state comprehensive health insurance plan shall be determined by dividing the state plan's total annual losses by the total number of enrollees from that year. ~~This cost will be assessed to the contributing member who has terminated health coverage before the association makes the annual determination of each contributing member's liability as required under this section.~~

In the event that the ~~contributing member~~ health plan company is terminating health coverage because of a loss of health care providers, the commissioner may review whether or not the special assessment established under this subdivision will have an adverse impact on the ~~contributing member~~ health plan company or its enrollees or insureds, including but not limited to causing the ~~contributing member~~ health plan company to fall below statutory net worth requirements. If the commissioner determines that the special assessment would have an adverse impact on the ~~contributing member~~ health plan company or its enrollees or insureds, the commissioner may adjust the amount of the special assessment, or establish alternative payment arrangements to the state plan. For health maintenance organizations regulated under chapter 62D, the commissioner of health shall make the determination regarding any adjustment in the special assessment and shall transmit that determination to the commissioner of commerce.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 9. Minnesota Statutes 2008, section 62E.11, subdivision 10, is amended to read:

Subd. 10. **Termination of individual plan without replacement coverage.** Any ~~contributing members~~ health plan company who have terminated individual health plans and do not provide or arrange for replacement coverage that meets the requirements of section 62D.121, and whose former insureds or enrollees enroll in the state comprehensive health insurance plan with a waiver of the preexisting conditions pursuant to section 62E.14, subdivisions 1, paragraph (d), and 6, will be liable for the costs of any preexisting

conditions of their former enrollees or insureds treated during the first six months of coverage under the state plan. ~~The liability for preexisting conditions will be assessed before the association makes the annual determination of each contributing member's liability as required under this section.~~

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 10. Minnesota Statutes 2008, section 62E.13, subdivision 2, is amended to read:

Subd. 2. **Selection of writing carrier.** The association may ~~select policies and contracts, or parts thereof, submitted by a member or members of the association, or by the association or others, to~~ develop specifications for bids from any entity which wishes to be selected as a writing carrier to administer the state plan. The selection of the writing carrier shall be based upon criteria established by the board of directors of the association and approved by the commissioner. The criteria shall outline specific qualifications that an entity must satisfy in order to be selected and, at a minimum, shall include the entity's proven ability to handle large group accident and health insurance cases, efficient claim paying capacity, and the estimate of total charges for administering the plan. The association may select separate writing carriers for the two types of qualified plans and the $2,000, $5,000, and $10,000 deductible plans, the Medicare supplement plans, and the health maintenance organization contract.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 11. Minnesota Statutes 2008, section 62E.13, subdivision 3a, is amended to read:

Subd. 3a. **Extension of writing carrier contract.** Subject to the approval of the commissioner, and subject to the consent of the writing carrier, the association may extend the effective writing carrier contract for a period not to exceed three years, if the association and the commissioner determine that it would be in the best interest of the association's enrollees and ~~contributing members~~ of the state. This subdivision applies notwithstanding anything to the contrary in subdivisions 2 and 3.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 12. Minnesota Statutes 2008, section 62E.13, is amended by adding a subdivision to read:

Subd. 12. **Appropriation.** An amount sufficient to offset any deficit of the association for the fiscal year is appropriated from the health care access fund to the commissioner of commerce for payment to the association for that purpose.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 13. Minnesota Statutes 2008, section 62E.14, subdivision 1, is amended to read:

Subdivision 1. **Application, contents.** The comprehensive health insurance plan shall be open for enrollment by eligible persons. An eligible person shall enroll by submission of an application to the writing carrier. The application must provide the following:

~~(a)~~ (1) name, address, age, list of residences for the immediately preceding six months and length of time at current residence of the applicant;

~~(b)~~ (2) name, address, and age of spouse and children if any, if they are to be insured;

~~(c)~~ (3) evidence of rejection, a requirement of restrictive riders, a rate up, or a preexisting conditions limitation on a qualified plan, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk, by at least one ~~association member~~ health plan company within six months of the date of the application, or other eligibility requirements adopted by rule by the commissioner which are not inconsistent with this chapter and which evidence that a person is unable to obtain coverage substantially similar to that which may be obtained by a person who is considered a standard risk;

~~(d)~~ (4) if the applicant has been terminated from individual health coverage which does not provide replacement coverage, evidence that no replacement coverage that meets the requirements of section 62D.121 was offered, and evidence of termination of individual health coverage by an insurer, nonprofit health service plan corporation, or health maintenance organization, provided that the contract or policy has been terminated for reasons other than (1) failure to pay the charge for health care coverage; (2) failure to make co-payments required by the health care plan; (3) enrollee moving out of the area served; or (4) a materially false statement or misrepresentation by the enrollee in the application for the terminated contract or policy; and

~~(e)~~ (5) a designation of the coverage desired.

An eligible person may not purchase more than one policy from the state plan. Upon ceasing to be a resident of Minnesota a person is no longer eligible to purchase or renew coverage under the state plan, except as required by state or federal law with respect to renewal of Medicare supplement coverage.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 14. Minnesota Statutes 2008, section 62E.14, subdivision 6, is amended to read:

Subd. 6. **Termination of individual policy or contract.** A Minnesota resident who holds an individual health maintenance contract, individual nonprofit health service corporation contract, or an individual insurance policy previously approved by the commissioners of health or commerce, may enroll in the comprehensive health insurance plan with a waiver of the preexisting condition as described in subdivision 3, without interruption in coverage, provided (1) no replacement coverage that meets the requirements of section 62D.121 was offered by the ~~contributing member~~ health plan company, and (2) the policy or contract has been terminated for reasons other than (a) nonpayment of premium; (b) failure to make co-payments required by the health care plan; (c) moving out of the area served; or (d) a materially false statement or misrepresentation by the enrollee in the application for the terminated policy or contract; and, provided further, that the option to enroll in the plan is exercised by submitting an application that is received by the writing carrier no later than 90 days after termination of the existing policy or contract.

Coverage allowed under this section is effective when the contract or policy is terminated and the enrollee has submitted the proper application that is received within the time period stated in this subdivision and paid the required premium or fee.

Expenses incurred from the preexisting conditions of individuals enrolled in the state plan under this subdivision must be paid by the ~~contributing member~~ health plan company canceling coverage as set forth in section 62E.11, subdivision 10.

The application must include evidence of termination of the existing policy or certificate as required in subdivision 1.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 15. Minnesota Statutes 2008, section 295.52, is amended to read:

295.52 TAXES IMPOSED.

Subdivision 1. **Hospital tax.** A tax is imposed on each hospital equal to ~~two~~ ..... percent of its gross revenues.

Subd. 1a. **Surgical center tax.** A tax is imposed on each surgical center equal to ~~two~~ ..... percent of its gross revenues.

Subd. 2. **Provider tax.** A tax is imposed on each health care provider equal to ~~two~~ ..... percent of its gross revenues.

Subd. 3. **Wholesale drug distributor tax.** A tax is imposed on each wholesale drug distributor equal to ~~two~~ ..... percent of its gross revenues.

Subd. 4. **Use tax; legend drugs.** (a) A person that receives legend drugs for resale or use in Minnesota, other than from a wholesale drug distributor that is subject to

tax under subdivision 3, is subject to a tax equal to the price paid for the legend drugs multiplied by the tax percentage specified in this section. Liability for the tax is incurred when legend drugs are received or delivered in Minnesota by the person.

(b) A tax imposed under this subdivision does not apply to purchases by an individual for personal consumption.

Subd. 4a. **Tax collection.** A wholesale drug distributor with nexus in Minnesota, who is not subject to tax under subdivision 3, on all or a particular transaction is required to collect the tax imposed under subdivision 4, from the purchaser of the drugs and give the purchaser a receipt for the tax paid. The tax collected shall be remitted to the commissioner in the manner prescribed by section 295.55, subdivision 3.

Subd. 5. **Volunteer ambulance services.** Volunteer ambulance services are not subject to the tax under this section. For purposes of this requirement, "volunteer ambulance service" means an ambulance service in which all of the individuals whose primary responsibility is direct patient care meet the definition of volunteer under section 144E.001, subdivision 15. The ambulance service may employ administrative and support staff, and remain eligible for this exemption, if the primary responsibility of these staff is not direct patient care.

Subd. 6. **Hearing aids and prescription eyewear.** The tax liability of a person who meets the definition of a health care provider solely because the person sells or repairs hearing aids and related equipment or prescription eyewear is limited to the gross revenues received from the sale or repair of these items.

Subd. 7. **Tax reduction.** Notwithstanding subdivisions 1, 1a, 2, 3, and 4, the tax imposed under this section equals for calendar years 1998 to 2003, 1.5 percent of the gross revenues received on or after January 1, 1998, and before January 1, 2004.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 16. Minnesota Statutes 2008, section 295.581, is amended to read:

295.581 PROHIBITION ON NON-MINNESOTACARE TRANSFERS FROM FUND.

Notwithstanding any law to the contrary, and notwithstanding section 645.33, money in the health care access fund shall be appropriated only for purposes that are consistent with past and current MinnesotaCare appropriations in Laws 1992, chapter 549; Laws 1993, chapter 345; Laws 1994, chapter 625; and Laws 1995, chapter 234, ~~or~~ for initiatives that are part of the section 1115 of the Social Security Act health care reform waiver submitted to the federal Centers for Medicare and Medicaid Services by the commissioner

of human services as appropriated in Laws 1995, chapter 234; or for use under section 62E.13, subdivision 12.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 17. **APPROPRIATION.**

$..... is appropriated from the health care access fund to the commissioner of commerce to offset the deficit in the Minnesota Comprehensive Health Association program for the second half of fiscal year 2011. Any amount not expended in fiscal year 2011 may be carried over to fiscal year 2012 and is available until spent. Beginning for the 2012-2013 fiscal biennium, the commissioner of commerce shall include estimates of the cost of the Minnesota Comprehensive Health Association deficits in the commissioner's submissions under Minnesota Statutes, section 16A.10, and the governor shall include recommendations on it in the governor's budget submission to the legislature under Minnesota Statutes, section 16A.11.

EFFECTIVE DATE. This section is effective January 1, 2011.

Sec. 18. **REPEALER.**

Minnesota Statutes 2008, sections 62E.02, subdivision 23; 62E.11, subdivisions 5, 6, and 13; and 62E.13, subdivision 1, are repealed.

EFFECTIVE DATE. This section is effective January 1, 2011.

62E.02 DEFINITIONS.

Subd. 23. **Contributing member.** "Contributing member" means those companies regulated under chapter 62A and offering, selling, issuing, or renewing policies or contracts of accident and health insurance; health maintenance organizations regulated under chapter 62D; nonprofit health service plan corporations regulated under chapter 62C; community integrated service networks regulated under chapter 62N; fraternal benefit societies regulated under chapter 64B; the Minnesota employees insurance program established in section 43A.317, effective July 1, 1993; and joint self-insurance plans regulated under chapter 62H. For the purposes of determining liability of contributing members pursuant to section 62E.11 payments received from or on behalf of Minnesota residents for coverage by a health maintenance organization or community integrated service network shall be considered to be accident and health insurance premiums.

62E.11 OPERATION OF COMPREHENSIVE PLAN.

Subd. 5. **Allocation of losses.** Each contributing member of the association shall share the losses due to claims expenses of the comprehensive health insurance plan for plans issued or approved for issuance by the association, and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the state plan which exceed the premium payments allocated to the payment of benefits shall be the liability of the contributing members. Contributing members shall share in the claims expense of the state plan and operating and administrative expenses of the association in an amount equal to the ratio of the contributing member's total accident and health insurance premium, received from or on behalf of Minnesota residents as divided by the total accident and health insurance premium, received by all contributing members from or on behalf of Minnesota residents, as determined by the commissioner. Payments made by the state to a contributing member for medical assistance, MinnesotaCare, or general assistance medical care services according to chapters 256, 256B, and 256D shall be excluded when determining a contributing member's total premium.

Subd. 6. **Member assessments.** The association shall make an annual determination of each contributing member's liability, if any, and may make an annual fiscal year end assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the contributing members whose aggregate assessments comprised a minimum of 90 percent of the most recent prior annual assessment, in the event that the association deems that methodology to be the most administratively efficient and cost-effective means of assessment, and as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the state plan and operating and administrative expenses of the association until the association's next annual fiscal year end assessment. Payment of an assessment shall be due within 30 days of receipt by a contributing member of a written notice of a fiscal year end or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days shall be grounds for termination of the contributing member's membership. A contributing member which ceases to do accident and health insurance business within the state shall remain liable for assessments through the calendar year during which accident and health insurance business ceased. The association may decline to levy an assessment against a contributing member if the assessment, as determined herein, would not exceed ten dollars.

Subd. 13. **State funding; effect on premium rates of members.** In approving the premium rates as required in sections 62A.65, subdivision 3; and 62L.08, subdivision 8, the commissioners of health and commerce shall ensure that any appropriation to reduce the annual assessment made on the contributing members to cover the costs of the Minnesota comprehensive health insurance plan as required under this section is reflected in the premium rates charged by each contributing member.

62E.13 ADMINISTRATION OF PLAN.

Subdivision 1. **Submission of plans of coverage.** Any member of the association may submit to the commissioner the policies of accident and health insurance or the health maintenance organization contracts which are being proposed to serve in the comprehensive health insurance plan. The time and manner of the submission shall be prescribed by rule of the commissioner.