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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **860**

02/06/2017 Authored by Albright and Mahoney
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; regulating workers' compensation self-insurance; regulating
1.3 certified financial statements; prohibiting the running of a negative surplus; limiting
1.4 the actuarial liability present value discount; amending Minnesota Statutes 2016,
1.5 sections 79A.02, subdivision 4; 79A.04, subdivision 2; 79A.06, subdivision 5;
1.6 79A.22, subdivision 13; 176.181, subdivision 2; repealing Minnesota Statutes
1.7 2016, section 176.181, subdivision 6.

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

1.9 Section 1. Minnesota Statutes 2016, section 79A.02, subdivision 4, is amended to read:

1.10 Subd. 4. **Recommendations to commissioner regarding revocation.** After each fifth
1.11 anniversary from the date each individual and group self-insurer becomes certified to
1.12 self-insure, the committee shall review all relevant financial data filed with the Department
1.13 of Commerce that is otherwise available to the public and make a recommendation to the
1.14 commissioner about whether each self-insurer's certificate should be revoked. For group
1.15 self-insurers who have been in existence for five years or more and have been granted
1.16 renewal authority, a level of funding in the common claims fund must be maintained at not
1.17 less than the greater of either: (1) one year's claim losses paid in the most recent year; or
1.18 (2) one-third of the security deposit posted with the Department of Commerce according
1.19 to section 79A.04, subdivision 2. ~~This provision supersedes any requirements under section~~
1.20 ~~79A.03, subdivision 10, and Minnesota Rules, part 2780.5000.~~

1.21 Sec. 2. Minnesota Statutes 2016, section 79A.04, subdivision 2, is amended to read:

1.22 Subd. 2. **Minimum deposit.** The minimum deposit is 110 percent of the private
1.23 self-insurer's estimated future liability. The deposit may be used to secure payment of all
1.24 administrative and legal costs, and unpaid assessments required by section 79A.12,

2.1 subdivision 2, relating to or arising from its or other employers' self-insuring. As used in
2.2 this section, "private self-insurer" includes both current and former members of the
2.3 self-insurers' security fund; and "private self-insurers' estimated future liability" means the
2.4 private self-insurers' total of estimated future liability as determined by an Associate or
2.5 Fellow of the Casualty Actuarial Society every year for group member private self-insurers
2.6 and, for a nongroup member private self-insurer's authority to self-insure, every year for
2.7 the first five years. After the first five years, the nongroup member's total shall be as
2.8 determined by an Associate or Fellow of the Casualty Actuarial Society at least every two
2.9 years, and each such actuarial study shall include a projection of future losses during the
2.10 period until the next scheduled actuarial study, less payments anticipated to be made during
2.11 that time.

2.12 All data and information furnished by a private self-insurer to an Associate or Fellow
2.13 of the Casualty Actuarial Society for purposes of determining private self-insurers' estimated
2.14 future liability must be certified by an officer of the private self-insurer to be true and correct
2.15 with respect to payroll and paid losses, and must be certified, upon information and belief,
2.16 to be true and correct with respect to reserves. The certification must be made by sworn
2.17 affidavit. In addition to any other remedies provided by law, the certification of false data
2.18 or information pursuant to this subdivision may result in a fine imposed by the commissioner
2.19 of commerce on the private self-insurer up to the amount of \$5,000, and termination of the
2.20 private self-insurers' authority to self-insure. The determination of private self-insurers'
2.21 estimated future liability by an Associate or Fellow of the Casualty Actuarial Society shall
2.22 be conducted in accordance with standards and principles for establishing loss and loss
2.23 adjustment expense reserves by the Actuarial Standards Board, an affiliate of the American
2.24 Academy of Actuaries. The commissioner may reject an actuarial report that does not meet
2.25 the standards and principles of the Actuarial Standards Board, and may further disqualify
2.26 the actuary who prepared the report from submitting any future actuarial reports pursuant
2.27 to this chapter. Within 30 days after the actuary has been served by the commissioner with
2.28 a notice of disqualification, an actuary who is aggrieved by the disqualification may request
2.29 a hearing to be conducted in accordance with chapter 14. Based on a review of the actuarial
2.30 report, the commissioner of commerce may require an increase in the minimum security
2.31 deposit in an amount the commissioner considers sufficient.

2.32 In addition, the Minnesota self-insurers' security fund may, at its sole discretion and
2.33 cost, undertake an independent actuarial review or an actuarial study of a private self-insurer's
2.34 estimated future liability as defined in this subdivision. The review or study must be
2.35 conducted by an associate or fellow of the Casualty Actuarial Society. The actuary has the

3.1 right to receive and review data and information of the self-insurer necessary for the actuary
3.2 to complete its review or study. A copy of this report must be filed with the commissioner
3.3 and a copy must be furnished to the self-insurer.

3.4 Estimated future liability is determined by first taking the total amount of the self-insured's
3.5 future liability of workers' compensation claims and then deducting the total amount which
3.6 is estimated to be returned to the self-insurer from any specific excess insurance coverage,
3.7 aggregate excess insurance coverage, and any supplementary benefits or second injury
3.8 benefits which are estimated to be reimbursed by the special compensation fund. However,
3.9 in the determination of estimated future liability, the actuary for the self-insurer shall not
3.10 take a credit for any excess insurance or reinsurance which is provided by a captive insurance
3.11 company which is wholly owned by the self-insurer. The actuarial study must not apply a
3.12 present value discount in computing future liabilities. Supplementary benefits or second
3.13 injury benefits will not be reimbursed by the special compensation fund unless the special
3.14 compensation fund assessment pursuant to section 176.129 is paid and the reports required
3.15 thereunder are filed with the special compensation fund. In the case of surety bonds, bonds
3.16 shall secure administrative and legal costs in addition to the liability for payment of
3.17 compensation reflected on the face of the bond. In no event shall the security be less than
3.18 the last retention limit selected by the self-insurer with the Workers' Compensation
3.19 Reinsurance Association, provided that the commissioner may allow former members to
3.20 post less than the Workers' Compensation Reinsurance Association retention level if that
3.21 amount is adequate to secure payment of the self-insurers' estimated future liability, as
3.22 defined in this subdivision, including payment of claims, administrative and legal costs,
3.23 and unpaid assessments required by section 79A.12, subdivision 2. The posting or depositing
3.24 of security pursuant to this section shall release all previously posted or deposited security
3.25 from any obligations under the posting or depositing and any surety bond so released shall
3.26 be returned to the surety. Any other security shall be returned to the depositor or the person
3.27 posting the bond.

3.28 As a condition for the granting or renewing of a certificate to self-insure, the
3.29 commissioner may require a private self-insurer to furnish any additional security the
3.30 commissioner considers sufficient to insure payment of all claims under chapter 176.

3.31 Sec. 3. Minnesota Statutes 2016, section 79A.06, subdivision 5, is amended to read:

3.32 Subd. 5. **Private employers who have ceased to be self-insured.** (a) Private employers
3.33 who have ceased to be private self-insurers shall discharge their continuing obligations to
3.34 secure the payment of compensation which is accrued during the period of self-insurance,

4.1 for purposes of Laws 1988, chapter 674, sections 1 to 21, by compliance with all of the
4.2 following obligations of current certificate holders:

4.3 (1) Filing reports with the commissioner to carry out the requirements of this chapter;

4.4 (2) Depositing and maintaining a security deposit for accrued liability for the payment
4.5 of any compensation which may become due, pursuant to chapter 176. However, if a private
4.6 employer who has ceased to be a private self-insurer purchases an insurance policy from
4.7 an insurer authorized to transact workers' compensation insurance in this state which provides
4.8 coverage of all claims for compensation arising out of injuries occurring during the entire
4.9 period the employer was self-insured, whether or not reported during that period, the policy
4.10 will:

4.11 (i) discharge the obligation of the employer to maintain a security deposit for the payment
4.12 of the claims covered under the policy;

4.13 (ii) discharge any obligation which the self-insurers' security fund has or may have for
4.14 payment of all claims for compensation arising out of injuries occurring during the period
4.15 the employer was self-insured, whether or not reported during that period; and

4.16 (iii) discharge the obligations of the employer to pay any future assessments to the
4.17 self-insurers' security fund; provided, however, that a member that terminates its
4.18 self-insurance authority on or after August 1, 2010, shall be liable for an assessment under
4.19 paragraph (b). The actuarial opinion shall not take into consideration any transfer of the
4.20 member's liabilities to an insurance policy if the member obtains a replacement policy as
4.21 described in this subdivision within one year of the date of terminating its self-insurance.

4.22 A private employer who has ceased to be a private self-insurer may instead buy an
4.23 insurance policy described above, except that it covers only a portion of the period of time
4.24 during which the private employer was self-insured; purchase of such a policy discharges
4.25 any obligation that the self-insurers' security fund has or may have for payment of all claims
4.26 for compensation arising out of injuries occurring during the period for which the policy
4.27 provides coverage, whether or not reported during that period.

4.28 A policy described in this clause may not be issued by an insurer unless it has previously
4.29 been approved as to the insurer, form, and substance by the commissioner; and

4.30 (3) Paying within 30 days all assessments of which notice is sent by the security fund,
4.31 for a period of seven years from the last day its certificate of self-insurance was in effect.
4.32 Thereafter, the private employer who has ceased to be a private self-insurer may either: (i)
4.33 continue to pay within 30 days all assessments of which notice is sent by the security fund

5.1 until it has no incurred liabilities for the payment of compensation arising out of injuries
5.2 during the period of self-insurance; or (ii) pay the security fund a cash payment equal to
5.3 four percent of the net present value of all remaining incurred liabilities for the payment of
5.4 compensation under sections 176.101 and 176.111 as certified by a member of the casualty
5.5 actuarial society. Assessments shall be based on the benefits paid by the employer during
5.6 the calendar year immediately preceding the calendar year in which the employer's right to
5.7 self-insure is terminated or withdrawn.

5.8 (b) With respect to a self-insurer who terminates its self-insurance authority after April
5.9 1, 1998, that member shall obtain and file with the commissioner an actuarial opinion of
5.10 its outstanding liabilities as determined by an associate or fellow of the Casualty Actuarial
5.11 Society within 120 days of the date of its termination. If the actuarial opinion is not timely
5.12 filed, the self-insurers' security fund may, at its discretion, engage the services of an actuary
5.13 for this purpose. The expense of this actuarial opinion must be assessed against and be the
5.14 obligation of the self-insurer. The commissioner may issue a certificate of default against
5.15 the self-insurer for failure to pay this assessment to the self-insurers' security fund as provided
5.16 by section 79A.04, subdivision 9. ~~The opinion may discount liabilities up to four percent~~
5.17 ~~per annum to net present value.~~ The actuarial study must not apply a present value discount
5.18 in computing future liabilities. Within 60 days after notification of approval of the actuarial
5.19 opinion by the commissioner, the exiting member shall pay to the security fund an amount
5.20 determined as follows: a percentage will be determined by dividing the security fund's
5.21 members' deficit as determined by the most recent audited financial statement of the security
5.22 fund by the total actuarial liability of all members of the security fund as calculated by the
5.23 commissioner within 30 days of the exit date of the member. This quotient will then be
5.24 multiplied by that exiting member's total future liability as contained in the exiting member's
5.25 actuarial opinion. If the payment is not made within 30 days of the notification, interest on
5.26 it at the rate prescribed by section 549.09 must be paid by the former member to the security
5.27 fund until the principal amount is paid in full.

5.28 (c) A former member who terminated its self-insurance authority before April 1, 1998,
5.29 who has paid assessments to the self-insurers' security fund for seven years, and whose
5.30 annualized assessment is \$15,000 or less, may buy out of its outstanding liabilities to the
5.31 self-insurers' security fund by an amount calculated as follows: 1.35 multiplied by the
5.32 indemnity case reserves at the time of the calculation, multiplied by the then current
5.33 self-insurers' security fund annualized assessment rate.

5.34 (d) A former member who terminated its self-insurance authority before April 1, 1998,
5.35 and who is paying assessments within the first seven years after ceasing to be self-insured

6.1 under paragraph (a), clause (3), may elect to buy out its outstanding liabilities to the
6.2 self-insurers' security fund by obtaining and filing with the commissioner an actuarial
6.3 opinion of its outstanding liabilities as determined by an associate or fellow of the Casualty
6.4 Actuarial Society. The opinion must separate liability for indemnity benefits from liability
6.5 for medical benefits, and must discount each up to four percent per annum to net present
6.6 value. Within 30 days after notification of approval of the actuarial opinion by the
6.7 commissioner, the member shall pay to the security fund an amount equal to 120 percent
6.8 of that discounted outstanding indemnity liability, multiplied by the greater of the average
6.9 annualized assessment rate since inception of the security fund or the annual rate at the time
6.10 of the most recent assessment.

6.11 (e) A former member who has paid the security fund according to paragraphs (b) to (d)
6.12 and subsequently receives authority from the commissioner to again self-insure shall be
6.13 assessed under section 79A.12, subdivision 2, only on indemnity benefits paid on injuries
6.14 that occurred after the former member received authority to self-insure again; provided that
6.15 the member furnishes verified data regarding those benefits to the security fund.

6.16 (f) In addition to proceedings to establish liabilities and penalties otherwise provided, a
6.17 failure to comply may be the subject of a proceeding before the commissioner. An appeal
6.18 from the commissioner's determination may be taken pursuant to the contested case
6.19 procedures of chapter 14 within 30 days of the commissioner's written determination.

6.20 Any current or past member of the self-insurers' security fund is subject to service of
6.21 process on any claim arising out of chapter 176 or this chapter in the manner provided by
6.22 section 5.25, or as otherwise provided by law. The issuance of a certificate to self-insure to
6.23 the private self-insured employer shall be deemed to be the agreement that any process
6.24 which is served in accordance with this section shall be of the same legal force and effect
6.25 as if served personally within this state.

6.26 Sec. 4. Minnesota Statutes 2016, section 79A.22, subdivision 13, is amended to read:

6.27 Subd. 13. **Common claims fund; five-year exception.** For commercial group
6.28 self-insurers who have been in existence for five years or more, a level of funding in the
6.29 common claims fund must be maintained at not less than the greater of either:

6.30 (1) one year's claim losses paid in the most recent year; or

6.31 (2) one-third of the security deposit posted with the Department of Commerce according
6.32 to section 79A.24, subdivision 2.

7.1 ~~This provision supersedes any requirements under subdivisions 11 and 12 and Minnesota~~
7.2 ~~Rules, part 2780.5000.~~

7.3 Sec. 5. Minnesota Statutes 2016, section 176.181, subdivision 2, is amended to read:

7.4 Subd. 2. **Compulsory insurance; self-insurers.** (a) Every employer, except the state
7.5 and its municipal subdivisions, liable under this chapter to pay compensation shall insure
7.6 payment of compensation with some insurance carrier authorized to insure workers'
7.7 compensation liability in this state, or obtain a written order from the commissioner of
7.8 commerce exempting the employer from insuring liability for compensation and permitting
7.9 self-insurance of the liability. The terms, conditions and requirements governing
7.10 self-insurance shall be established by the commissioner pursuant to chapter 14. The
7.11 commissioner of commerce shall also adopt, pursuant to paragraph (d), rules permitting
7.12 two or more employers, whether or not they are in the same industry, to enter into agreements
7.13 to pool their liabilities under this chapter for the purpose of qualifying as group self-insurers.
7.14 With the approval of the commissioner of commerce, any employer may exclude medical,
7.15 chiropractic and hospital benefits as required by this chapter. An employer conducting
7.16 distinct operations at different locations may either insure or self-insure the other portion
7.17 of operations as a distinct and separate risk. An employer desiring to be exempted from
7.18 insuring liability for compensation shall make application to the commissioner of commerce,
7.19 showing financial ability to pay the compensation, whereupon by written order the
7.20 commissioner of commerce, on deeming it proper, may make an exemption. An employer
7.21 may establish financial ability to pay compensation by providing financial statements of
7.22 the employer to the commissioner of commerce. Upon ten days' written notice the
7.23 commissioner of commerce may revoke the order granting an exemption, in which event
7.24 the employer shall immediately insure the liability. As a condition for the granting of an
7.25 exemption the commissioner of commerce may require the employer to furnish security the
7.26 commissioner of commerce considers sufficient to insure payment of all claims under this
7.27 chapter, consistent with subdivision 2b. If the required security is in the form of currency
7.28 or negotiable bonds, the commissioner of commerce shall deposit it with the commissioner
7.29 of management and budget. In the event of any default upon the part of a self-insurer to
7.30 abide by any final order or decision of the commissioner of labor and industry directing and
7.31 awarding payment of compensation and benefits to any employee or the dependents of any
7.32 deceased employee, then upon at least ten days' notice to the self-insurer, the commissioner
7.33 of commerce may by written order to the commissioner of management and budget require
7.34 the commissioner of management and budget to sell the pledged and assigned securities or
7.35 a part thereof necessary to pay the full amount of any such claim or award with interest

8.1 thereon. This authority to sell may be exercised from time to time to satisfy any order or
8.2 award of the commissioner of labor and industry or any judgment obtained thereon. When
8.3 securities are sold the money obtained shall be deposited in the state treasury to the credit
8.4 of the commissioner of commerce and awards made against any such self-insurer by the
8.5 commissioner of commerce shall be paid to the persons entitled thereto by the commissioner
8.6 of management and budget upon warrants prepared by the commissioner of commerce out
8.7 of the proceeds of the sale of securities. Where the security is in the form of a surety bond
8.8 or personal guaranty the commissioner of commerce, at any time, upon at least ten days'
8.9 notice and opportunity to be heard, may require the surety to pay the amount of the award,
8.10 the payments to be enforced in like manner as the award may be enforced.

8.11 (b) No association, corporation, partnership, sole proprietorship, trust or other business
8.12 entity shall provide services in the design, establishment or administration of a group
8.13 self-insurance plan under rules adopted pursuant to this subdivision unless it is licensed, or
8.14 exempt from licensure, pursuant to section 60A.23, subdivision 8, to do so by the
8.15 commissioner of commerce. An applicant for a license shall state in writing the type of
8.16 activities it seeks authorization to engage in and the type of services it seeks authorization
8.17 to provide. The license shall be granted only when the commissioner of commerce is satisfied
8.18 that the entity possesses the necessary organization, background, expertise, and financial
8.19 integrity to supply the services sought to be offered. The commissioner of commerce may
8.20 issue a license subject to restrictions or limitations, including restrictions or limitations on
8.21 the type of services which may be supplied or the activities which may be engaged in. The
8.22 license is for a ~~two-year~~ three-year period.

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

8.27 (d) To carry out the purposes of this subdivision, the commissioner of commerce may
8.28 promulgate administrative rules pursuant to sections 14.001 to 14.69. These rules may:

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

8.30 (2) establish standards and guidelines consistent with subdivision 2b to assure the
8.31 adequacy of the financing and administration of group self-insurance plans;

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

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

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

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

9.6 Sec. 6. **REPEALER.**

9.7 Minnesota Statutes 2016, section 176.181, subdivision 6, is repealed.

APPENDIX
Repealed Minnesota Statutes: 17-0088

176.181 INSURANCE.

Subd. 6. **Financial statements.** No employer shall be required to provide financial statements certified by an "independent certified public accountant" or "certified public accountant" as a condition of approval for group self-insurance.