tions as defined by section 360.013, subdivision 11, who causes or authorizes the operation of aircraft, with or without the right of legal control (in capacity of owner, lessee or otherwise) of the aircraft, shall be responsible for determining that there is in force such minimal insurance coverages required by this chapter for the protection of passengers and third persons from damages for personal injury or death, or property damage, resulting in the operation of any such aircraft; provided that in any case and subject to the penalties provided for herein, every commercial operator causing or authorizing the operation of such aircraft shall disclose to such authorized pilot using or operating such aircraft both the limits and extent of any liability insurance coverages that may be applicable to the operation of such aircraft. Whoever violates or fails to comply with this section is guilty of a misdemeanor.

Sec. 6. This act is effective July 1, 1976.

Approved April 13, 1976.

CHAPTER 242—H.F.No.348

[Coded]

An act relating to insurance; establishing a temporary joint underwriting association for medical malpractice insurance; requiring membership; setting standards; providing for appeals; recovery of contributions and reporting of financial conditions; extending the required inclusion of chiropractic services under group accident and health policies and subscriber contracts; amending Minnesota Statutes 1974, Section 62A.15, by adding a subdivision.

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

Section 1. Minnesota Statutes 1974, Section 62A.15, is amended by adding a subdivision to read:

Subd. 4. **MEDICAL MALPRACTICE INSURANCE; DENIAL OF BENEFITS.** No carrier referred to in subdivision 1 shall, in the payment of claims to employees in this state, deny benefits payable for services covered by the policy or contract if the services are lawfully performed by a duly licensed chiropractor.

Sec. 2. **[62F.01] CITATION.** Sections 2 to 15 may be cited as the "Temporary Joint Underwriting Association Act."

Sec. 3. **[62F.02] JOINT UNDERWRITING ASSOCIATION.** Subdivision 1. **CREATION.** There is created a temporary joint underwriting association to provide medical malpractice insurance coverage to any licensed health care provider unable to obtain this insurance through ordinary methods. Every insurer authorized to write and writing per-

sonal injury liability insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Subd. 2. **DIRECTORS.** The association shall have a board of directors composed of 11 persons chosen annually as follows: five persons elected by members of the association at a meeting called by the commissioner; three members who are health care providers appointed by the commissioner prior to the election by the association; and three public members, as defined in section 214.02, appointed by the governor prior to the election by the association.

Sec. 4. **[62F.03] DEFINITIONS.** Subdivision 1. As used in sections 2 to 15, the following words shall have the meanings given.

Subd. 2. "Association" means the temporary joint underwriting association.

Subd. 3. "Commissioner" means the commissioner of insurance.

Subd. 4. "Medical malpractice insurance" means insurance against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed health care provider.

Subd. 5. "Member" means every insurer authorized to write and writing personal injury liability insurance in this state.

Subd. 6. "Net direct premiums" means gross direct premiums written on personal injury liability insurance, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits.

Subd. 7. "Personal injury liability insurance" means insurance described in section 60A.06, subdivision 1, clause (13).

Sec. 5. **[62F.04] AUTHORIZATION TO ISSUE INSURANCE.** Subdivision 1. If the commissioner determines after a hearing that medical malpractice insurance cannot be made available for either physicians, hospitals or other specific types of health care providers in the voluntary market, he shall authorize the association to issue medical malpractice insurance on a primary basis for physicians, hospitals or other health care providers. If the commissioner determines after a hearing that insurance issued by the association can be made available in the voluntary market, he shall revoke the association's authorization to issue that insurance which can be made available.

Subd. 2. If the association is authorized by the commissioner to issue insurance, it shall:

(a) Issue or cause to be issued insurance policies to applicants, including incidental coverages, subject to limits as specified in the plan of operation but not to exceed one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year;

(b) Underwrite the insurance and adjust and pay losses with respect thereto, or appoint service companies to perform those functions;

(c) Assume reinsurance from its members; and

(d) Cede reinsurance.

Sec. 6. **[62F.05] PLAN OF OPERATION.** Subdivision 1. Within 45 days following the effective date of this act, the directors of the association shall submit to the commissioner for his review, a proposed plan of operation, consistent with the provisions of sections 2 to 15.

The plan of operation shall provide for economic, fair and nondiscriminatory administration and for prompt and efficient providing of medical malpractice insurance. It may contain other provisions, including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

Subd. 2. The plan of operation shall be subject to approval by the commissioner after consultation with the members of the association, representatives of the public and other affected individuals and organizations. If the commissioner disapproves all or any part of the proposed plan of operation, the directors shall within 15 days submit for review an appropriate revised plan of operation or part thereof. If a revised plan is not submitted within 15 days, the commissioner shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the commissioner shall become effective and operational upon order of the commissioner.

Subd. 3. Amendments to the plan of operation may be made by the commissioner or by the directors of the association, subject to the approval of the commissioner.

Sec. 7. **[62F.06] POLICY FORMS AND RATES.** Subdivision 1. A policy issued by the association shall provide for a continuous period of coverage beginning with its effective date and terminating automatically at 12:01 a.m. on September 1, 1978, or sooner as provided in sections 2 to 15. The policy shall be issued subject to the group retro-

spective rating plan and the stabilization reserve fund authorized by section 10. The policy shall be written to apply to injury which results from acts or omissions during the policy period. No policy form shall be used by the association unless it has been filed with the commissioner, and the commissioner may disapprove the form within 30 days if he determines it is misleading or violates public policy.

Subd. 2. If an insured fails to pay a stabilization reserve fund charge the association may cancel a policy by mailing or delivering to the insured at the address shown on the policy at least ten days written notice stating the date the cancellation is effective.

Subd. 3. The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to chapter 70A. Rates shall be on an actuarially sound basis, giving consideration to the group retrospective rating plan and the stabilization reserve fund. The commissioner shall take all appropriate steps to make available to the association the loss and expense experience of insurers previously writing medical malpractice insurance in this state.

Subd. 4. All policies issued by the association are subject to a nonprofit group retrospective rating plan approved by the commissioner under which the final premium for the insureds of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee, on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, rating classifications and territories then in effect. The maximum premium for all policyholders of the association, as a group, shall be limited as provided in sections 2 to 15.

Subd. 5. The commissioner shall examine the business of the association as often as he deems appropriate to insure that the group retrospective rating plan is operating in a manner consistent with sections 2 to 15. If he finds that the operation is deficient or inconsistent with sections 2 to 15, he may order the association to take corrective action.

Subd. 6. The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within 60 days after such certification, the commissioner shall authorize the association to recover the members' respective shares of the deficit by one of the following procedures:

(a) Applying a surcharge determined by the association at a rate not to exceed two percent of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association; or

(b) Deducting the members' share of the deficit from past or future premium taxes due the state.

If the commissioner fails to authorize a procedure in 60 days, the association may recover its deficit pursuant to clause (b). The association shall submit an amended certification and shall adjust the recovery procedure as its incurred losses become finalized.

Subd. 7. If sufficient funds are not available for the sound financial operation of the association, pending recovery as provided in subdivision 6, all members shall, on a temporary basis contribute to the association in the manner provided in section 8. The contribution shall be reimbursed to the members by the recovery procedure authorized in subdivision 6.

Sec. 8. **[62F.07] PARTICIPATION.** A member of the association shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of the member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members. The member's participation in the association shall be determined annually on the basis of net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the member with the commissioner.

Sec. 9. **[62F.08] PROCEDURES.** Subdivision 1. Beginning on the effective date of the plan of operation, a licensed health care provider may apply to the association for medical malpractice insurance. An application may be made by an authorized agent of the health care provider.

Subd. 2. If the association determines that the applicant meets the underwriting standards of the association as described in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, including failure to make written objection to premium charges within 30 days after billing, the association, upon receipt of the premium or portion thereof as is prescribed in the plan of operation, shall issue a policy of medical malpractice insurance.

Sec. 10. **[62F.09] STABILIZATION RESERVE FUND.** Subdivision 1. There is created a stabilization reserve fund administered by three directors, as follows: the commissioner; a representative of the association appointed by the commissioner; and a representative of the policyholders of the association, appointed by the commissioner.

Subd. 2. The directors shall act by majority vote with two directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors shall serve without salary, but shall be reimbursed for expenses in the manner provided for state employees. The directors shall not be subject to personal liability or accountability in the administration of the fund.

Subd. 3. Each policyholder shall pay to the association a stabilization reserve fund charge of 33 percent of each premium payment due for insurance through the association. This charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

Subd. 4. The association shall promptly pay into the stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan.

Subd. 5. All moneys paid into the fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the moneys held in trust, subject to the approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The moneys held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If all moneys accruing to the fund are exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the directors.

Sec. 11. **[62F.10] INVESTIGATION.** The commissioner shall investigate the association at least annually. The investigation shall be conducted and a report filed in the manner prescribed in section 60A.031. The expenses of the examination shall be paid by the association in the manner prescribed by section 60A.03, subdivision 5.

Sec. 12. **[62F.11] PRIVILEGED COMMUNICATIONS.** No cause of action of any nature shall arise against the association, the commissioner or his authorized representatives or any other person or organization, for any statements made in good faith by them during any proceedings or concerning any matters within the scope of sections 2 to 15.

Sec. 13. **[62F.12] APPEALS AND JUDICIAL REVIEW.** Any applicant to the association, any person insured pursuant to sections 2 to

15, or their representatives, or any affected insurer, may appeal to the commissioner within 30 days after any ruling, action or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters.

Sec. 14. **[62F.13] PUBLIC OFFICERS OR EMPLOYEES.** No director of the stabilization reserve fund who is otherwise a public officer or employee shall forfeit his office or employment or lose the rights and privileges pertaining thereto, by reason of membership on the board of directors of the stabilization reserve fund.

Sec. 15. **[62F.14] ANNUAL STATEMENTS.** On March 1 of each year the association shall file with the commissioner, a report of its transactions, financial condition, and operations during the preceding year. The report shall be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information to assist in evaluating the scope, operation and experience of the association.

Sec. 16. Sections 2 to 15 of this act shall expire two years after their effective date.

Sec. 17. Sections 2 to 16 of this act shall be effective the day following final enactment.

Approved April 13, 1976.

CHAPTER 243—H.F.No.354

[Coded in Part]

An act relating to public welfare; providing for the licensing of facilities and services for the handicapped and children; prescribing penalties; amending Minnesota Statutes 1974, Section 252.28, Subdivision 2; repealing Minnesota Statutes 1974, Sections 245.78; 245.79; 245.80; 245.81; 245.82; 257.081; 257.082; 257.091; 257.101; 257.102; 257.111; 257.123; and 257.124.

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

Section 1. **PUBLIC WELFARE; DAY CARE AND RESIDENTIAL FACILITIES FOR CHILDREN AND HANDICAPPED; PURPOSE.** The purpose of the licensing of day care and residential facilities, services and agencies for all children and for mentally retarded, physically handicapped, mentally ill, emotionally disturbed or chemically dependent adults is to regulate the provision of care and services and to assure protection, proper care, and the habilitation and rehabilitation necessary to health, safety and development.

Sec. 2. **[245.781] PUBLIC WELFARE LICENSING ACT, CITA-**