

Sec. 46. The appropriation made to the department of administration by Laws 1978, Chapter 786, Section 23, is available until expended.

Approved June 7, 1979.

CHAPTER 3—S.F.No.1

An act relating to workers' compensation; changing certain insurance rate making procedures; increasing the membership of the workers' compensation court of appeals; directing certain studies; providing for certain schedules and lists; increasing certain staff; relocating workers' compensation court of appeals; changing availability and amounts for certain benefits; changing rehabilitation procedures; changing certain presumptions; changing basis for attorneys' fees; changing notice provisions; establishing a workers' compensation reinsurance association; transferring self-insuring duties to the commissioner of insurance; establishing a reopened case fund; appropriating money; amending Minnesota Statutes 1978, Sections 79.01, by adding subdivisions; 79.095; 79.10; 79.21; 79.22; 79.25; 175.006, Subdivision 1; 175.08; 176.011, Subdivisions 9 and 15; 176.021, Subdivision 3; 176.061, Subdivision 5; 176.081, Subdivision 5; 176.101, Subdivisions 1, 3 and 4; 176.111, Subdivision 1; 176.131, Subdivisions 3, 10 and by adding a subdivision; 176.132, Subdivision 2; 176.135, by adding a subdivision; 176.141; 176.155, Subdivision 2; 176.179; 176.181, Subdivision 2, and by adding a subdivision; 176.191; 176.221; 176.231, Subdivisions 1 and 2; 176.235; 176.241; 176.271; 176.391, Subdivision 2; 176.521, Subdivision 1; Chapters 79, by adding sections; and 176, by adding sections; repealing Minnesota Statutes 1978, Sections 79.05; 79.06; 79.07; 175.092; and 176.101, Subdivision 7.

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

Section 1. Minnesota Statutes 1978, Section 79.01, is amended by adding subdivisions to read:

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 insurance division.

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.

Sec. 2. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

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[79.071] RATES; HEARINGS. Subdivision 1. The commissioner shall adopt a schedule of workers' compensation insurance rates for use in this state for each classification under which business is written. The schedule of rates shall not be excessive, inadequate, or unfairly discriminatory. In adopting a schedule of rates, the commissioner may act on the written petition of the association or any other interested party requesting that a hearing be held for modification of the schedule of rates. The commissioner may include the expense of a reasonable charge for the services of an agent of record, for the service of rejected risks as set forth in sections 79.24 to 79.27.

Subd. 2. Upon receipt of a petition requesting a hearing for modification of an existing schedule of rates, the commissioner shall determine whether the petition sufficiently sets forth facts that show that the existing schedule of rates is excessive, inadequate, unfairly discriminatory, or otherwise in need of modification so as to indicate the need to hold a hearing. The commissioner may decline to grant a hearing if the association has failed to provide information requested by previous orders modifying the schedule of rates, provided that the request was not unreasonable. The commissioner may accept or reject the petition for a hearing and shall give notice of his determination to the petitioning party within 30 days of receipt of the petition. If the commissioner rejects the petition, he shall notify the petitioning party of the reasons for the rejection.

Subd. 3. If the commissioner accepts the petition for hearing, the commissioner shall order a hearing on matters set forth in the petition requesting modification of the schedule of rates. The hearing shall be held pursuant to the contested case procedures set forth in sections 15.0411 to 15.052. The burden of proof shall be on the petitioning party. The hearing examiner may admit documentary and statistical evidence accepted and relied upon by an expert whose field of expertise may have some relevance to workers' compensation rate matters, without the requirement of traditional evidentiary foundation. Within 30 days after the close of the hearing record, the hearing examiner shall transmit to the commissioner the entire record of the hearing, including the transcript, exhibits, and all other material properly accepted into evidence, together with the finding of facts, conclusions, and recommended order made by the hearing examiner. The time for filing the report may be extended by the chief hearing examiner for good cause.

Subd. 4. The commissioner may accept, reject, or modify, in whole or in part, matters raised in the petition for modification of the schedule of rates or matters raised in the findings and recommendations of the hearing examiner. The commissioner's determination shall be based upon substantial evidence.

Subd. 5. The commissioner shall make a final determination with respect to adoption of a schedule of rates within 90 days after receipt of the hearing examiner's report. If the commissioner fails to act within the 90 day period, the findings, conclusions, and recommended order of the hearing examiner become the final order of the commissioner.

Subd. 6. The commissioner may hire a consulting actuary and other experts he deems necessary to assist in the hearing for modification of the schedule of rates. The costs of conducting the hearing provided under subdivision 3, including the costs of hiring a consulting actuary and other experts, shall be assessed against the rating association and

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its members.

Subd. 7. The office of hearing examiners, upon approval of the chief hearing examiner, may hire consultants necessary to assist the hearing examiner assigned to a given workers' compensation rate proceeding.

Sec. 3. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.072] PETITION FOR REHEARING. Subdivision 1. Any interested party may petition the commissioner for rehearing and reconsideration of a determination made pursuant to section 2. The petition for rehearing and reconsideration shall be served upon the commissioner and all parties to the rate hearing within 30 days after service of the commissioner's final order. The petition shall set forth factual grounds the petitioning party deems to exist in support of its petition. An interested party adversely affected by a petition for review and reconsideration shall be afforded 15 days to respond to factual matters so alleged in the petition.

Subd. 2. At his discretion, the commissioner may grant a rehearing upon the filing of a petition under subdivision 1. Upon rehearing, the commissioner may limit the scope of factual matters that are subject to rehearing and reconsideration. The rehearing is subject to the provisions of section 2.

Subd. 3. Following rehearing, the commissioner may modify the terms of the initial order adopting a change in the schedule of rates upon a determination that adequate factual grounds exist to support modification. Adequate factual grounds shall include, but need not be limited to, erroneous testimony by any witness or party to the hearing, material change in Minnesota loss or expense data occurring after a petition for modification of the schedule of rates has been filed, or any other mistake of fact that has a substantial effect upon the schedule of rates adopted in the initial order of the commissioner.

Sec. 4. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.073] JUDICIAL REVIEW. Final orders of the commissioner pursuant to sections 2 and 3 are subject to judicial review by writ of certiorari brought in the district court in Ramsey County by an interested party of record adversely affected thereby. The operation of the commissioner's order is not suspended during judicial review; provided that in the event of a judicial determination against the validity of the commissioner's order, the order under review and any subsequent order shall be modified so as to give effect to the court's ruling. For purposes of further judicial review, the commissioner is an aggrieved party to the extent that his orders are modified or set aside by the district court.

Sec. 5. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.074] DISCRIMINATION. Subdivision 1. RATES. One rate is unfairly
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discriminatory in relation to another if it clearly fails to reflect equitably the differences in expected losses, expenses, and the degree of risk. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy.

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.

Sec. 6. Minnesota Statutes 1978, Chapter 79, is amended, by adding a section to read:

[79.075] AUTOMATIC ADJUSTMENT OF RATES. The commissioner shall, by rule, establish a formula by which a schedule of rates may be automatically adjusted to reflect benefit changes that have been mandated by operation of law subsequent to the most recent change in the statewide schedule of rates. This adjustment shall also reflect the annual change in the maximum weekly compensation made pursuant to section 176.101, an adjustment in the assessment rate for the financing of the special fund, and the annual adjustment made pursuant to section 176.645. Any automatic adjustment made pursuant to this subdivision is effective on October 1 or as soon thereafter as possible and is not otherwise subject to sections 15.0411 to 15.052.

At each rate hearing held pursuant to section 2 or rehearing pursuant to section 3, following an automatic adjustment, the commissioner shall review the rate adjustment to assure that the schedule of rates adopted subsequent to the adjustment are not excessive, inadequate, or unfairly discriminatory. If the commissioner finds that the schedule of rates adopted subsequent to the adjustment are excessive, inadequate, or unfairly discriminatory, the commissioner shall order appropriate remedial action.

Sec. 7. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.076] RATE REVISION ORDER; EFFECT. Subdivision 1. Following adoption of a revised schedule of rates pursuant to sections 2 or 3, the revised rates apply to new and renewal policies issued after the effective date of the commissioner's final order.

Subd. 2. The revised schedule of rates apply to all insureds and prospective insureds pursuant to the provisions of the workers' compensation rating manual adopted by the association and approved by the commissioner, provided that the manual:

(1) is deemed to have met the applicable requirements of sections 15.0411 to 15.052

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as of the effective date of sections 2 and 3.

(2) Shall not be amended except by a contested case proceeding held pursuant to sections 2 and 3.

Sec. 8. Minnesota Statutes 1978, Section 79.095, is amended to read:

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 43.067.

Sec. 9. Minnesota Statutes 1978, Section 79.10, is amended to read:

79.10 **REVIEW OF ACTS OF INSURERS.** The commissioner, upon its own motion or upon the written complaint of any person having a direct interest, may review the acts of any insurer, bureau, or agent subject to the provisions of sections 79.01 to 79.23, and make findings and orders requiring compliance with the provisions thereof. Not less than ten days notice of this review before the commissioner shall be given to the parties interested in its findings or orders shall be made after a hearing before it and is subject to a review by a writ of certiorari brought in the supreme court. The operation of the commissioner's order is suspended during such review; but in the event of final determination against an insurer any overcharge made during the pendency of the proceedings shall be refunded to the person entitled thereto. All written complaints under this section shall be verified and may be upon information and belief of the person complaining. A copy of the complaint shall be served upon the insurer, bureau, or person against whom the complaint is directed and each party in interest is entitled to at least ten days notice of any hearing thereon. The insurance division 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 sections 79.01 to 79.23 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 15.0411 to 15.052. 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.

Sec. 10. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.171] **INFORMATION.** In addition to other information that the commissioner requests pursuant to section 2, the rating association shall: (a) separate the incurred but not reported losses of its members; (b) separate paid and outstanding losses of its

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members; (c) provide information indicating cases in which its members have established a reserve in excess of \$50,000; and (d) provide information on the income on invested reserves of its members.

The commissioner shall consider this information in an appropriate manner in adopting a schedule of rates and shall decline to grant a hearing pursuant to section 2 if the association fails to provide the information.

Sec. 11. Minnesota Statutes 1978, Section 79.21, is amended to read:

79.21 RATES TO BE UNIFORM; EXCEPTIONS. No insurer shall write insurance at a rate ~~other than that exceeds~~ that made and put into force by the bureau and approved as ~~adequate and~~ reasonable by the commissioner. The bureau may reduce or increase a rate by the application to individual risks of the system of merit or experience rating which has been approved by the commissioner. This reduction or increase shall be set forth in the policy or by indorsement thereon. An insurer may write insurance at rates that are lower than the rates approved by the commissioner provided the rates are not unfairly discriminatory.

Sec. 12. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.211] CERTAIN PREMIUM DETERMINATION PRACTICES. Subdivision 1. CERTAIN WAGES EXCLUDED FOR RATE MAKING. 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. The rating association or an insurer shall permit an employer to divide his payroll among relevant rating classifications for purposes of premium calculation when the employer's records provide adequate support for a division.

Sec. 13. Minnesota Statutes 1978, Section 79.22, is amended to read:

79.22 DUTIES OF COMMISSIONER. Subdivision 1. The commissioner of insurance shall require these insurers, or their agents, to file with him on such blanks as he may prescribe such reports as in the judgment of the commissioner, may be necessary for the purposes of sections 79.01 to 79.23; and this information when so filed shall be available for the use of the commissioner. No information regarding the writings of any insurer shall be made public by the commissioner or the bureau, or any of its employees, except as required by law.

Subd. 2. The commissioner shall annually examine the reopened case fund established in section 43 to determine whether the fund has sufficient assets to cover claims charged against the fund including the maintenance of reasonable reserves. If upon this examination the commissioner deems it necessary for the maintenance of the required assets he shall determine the amount to be assessed against insurers and self-insured employers and shall notify the commissioner of labor and industry of the determination.

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Sec. 14. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.221] INDEPENDENT CONTRACTORS; PAYROLL DETERMINATION. Pursuant to the contested case procedures in sections 15.0411 to 15.052, the commissioner may establish a formula to be used to determine the remuneration of independent contractors whose actual payroll cannot be determined.

Sec. 15. Minnesota Statutes 1978, Section 79.25, is amended to read:

79.25 BUREAU TO FIX PREMIUM RATES. Subdivision 1. When any such rejected risk is called to its attention and it ~~appearing~~ appears that the risk is in good faith entitled to coverage the bureau shall fix the initial premium therefor and may fix an additional charge to compensate the agent of record for his services and, upon its payment, the bureau shall designate a member, whose duty it shall be to issue a policy containing the usual and customary provisions found in such policies therefor, but for which undertaking all members of the bureau shall be reinsurers as among themselves in the amount which the compensation insurance written in this state during the preceding calendar year by that member bears to the total compensation insurance written in this state during the preceding year by all the members of the bureau.

Subd. 2. An insurer that issues a policy pursuant to this section shall not receive an expense allowance that exceeds the expense allowance approved by the commissioner for other insurers.

Sec. 16. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.33] ADDITIONAL DUTIES OF THE COMMISSIONER. In addition to other duties prescribed to the commissioner, he may: (a) study the feasibility of extending the experience rating system to employers who are not covered by it; and (b) require insurers when establishing reserves to use life expectancy tables, when available, that are appropriate for persons with equivalent disabilities. If these life expectancy tables are not available, the commissioner shall require insurers to develop them unless their development is not feasible.

Sec. 17. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.34] CREATION OF REINSURANCE ASSOCIATION. Subdivision 1. An unincorporated, nonprofit association known as the workers' compensation reinsurance association is created. 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 shall be bound by the plan of operation of the reinsurance association. Each self-insurer approved pursuant to section 176.181 shall also be a member of the reinsurance association and shall be bound by its plan of operation. The reinsurance association shall not be deemed a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of

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insurance with respect to the reinsurance association shall not be subject to chapter 15.

Subd. 2. (1) 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 under chapter 176 in excess of \$300,000 or \$100,000 at the option of the member, provided that \$300,000 and \$100,000 shall be increased, to the nearest \$10,000, on October 1, 1980 and on each October 1 thereafter by the percentage increase in the state-wide average weekly wage for the previous calendar year as determined pursuant to clause (2) of this subdivision. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid or payable by the member and shall not include claim expenses. An ultimate loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs.

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.

(2) For the purposes of this section state-wide average weekly wage means that wage determined by the commissioner in the following manner: On or before the July 1 preceding the October 1 on which the increase is to be applicable, the total wages reported to the department of economic security for the preceding 12 months ending on December 31 shall be divided by the total employment reported to that department for the same period to arrive at an average annual wage, which shall be divided by 52 to determine the state-wide average weekly wage.

Subd. 3. An insurer may withdraw from the reinsurance association only upon ceasing to write workers' compensation insurance in this state.

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

Subd. 4. 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. When a member has been merged or consolidated into another 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. No insurer or self-insurer may establish a reserve in a financial statement filed with the commissioner of insurance in excess of its maximum liability under this section for a single claim or occurrence.

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Sec. 18. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[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 17;

(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 \$500,000, together with operating expenses, administrative expenses and actual claim payments for claims in excess of \$500,000 for the period to which this premium is applicable. The premium shall include an amount to cover any excess or deficient premiums from previous periods. Each member shall be charged an amount equal to a percentage, equal to that charged other members, of that member's total gross written premiums, less returned premiums, written during the period preceding that to which the reinsurance association premium will apply. An equitable basis for premium charges to self insurers shall be established by the board. Members exercising the lower retention option shall be charged a premium established by the board as sufficient to cover incurred claims for the liability the association is likely to incur for the period to which the premium applies. The premium shall not be unfairly discriminatory as defined in section 5. The premium may reflect excessive or deficient premiums from previous periods;

(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

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liability to the association and may charge the cost of the adjustment to the member; 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.

Sec. 19. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.36] ADDITIONAL POWERS. In addition to the powers granted in section 18, 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 may provide for the indemnification 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 with reinsurers licensed to transact insurance in this state;

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

(f) Intervene at any time, in any proceeding under chapters 79 or 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) Hear and determine complaints of a company or other interested party concerning the operation of the reinsurance association; and

(h) 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 17 to 25 or the plan of operation.

Sec. 20. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.37] BOARD OF DIRECTORS. A board of directors of the reinsurance association is created and shall be responsible for the operation of the reinsurance

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association consistent with the plan of operation and sections 17 to 25. The board shall consist of nine directors and the commissioner of insurance who shall be an ex officio member. Four members of the board shall represent insurers, three members of the board shall represent employers, and two members of the board shall represent employees. Each board member shall be 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 chairman and other officers it deems appropriate.

A majority of the board shall constitute a quorum, notwithstanding any vacancies. Action may be taken by a majority vote of the directors present.

Sec. 21. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.38] PLAN OF OPERATION. 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 20 for boards of directors of the reinsurance association to succeed the initial board provided in section 24;

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

(i) Any other matters required by or necessary to effectively implement sections 17 to 25.

Sec. 22. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[79.39] APPLICABILITY OF CHAPTER 79. The reinsurance association is subject
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to all the provisions of this chapter. The commissioner or an authorized representative of the commissioner may visit the reinsurance association at any time and examine the reinsurance association's operations, records and practices.

Sec. 23. Minnesota Statutes 1978, Chapter 79, is amended by adding a section to read:

[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.

Sec. 24. **[79.41] ORGANIZATIONAL MEETING.** Not more than 30 days after the effective date of this section, the commissioner shall convene an organizational meeting of the board. The board shall be initially composed of nine members appointed by the commissioner as follows: four representatives of insurers, three representatives of employers, and two representatives of employees. The commissioner or his designee shall serve as an ex officio member. The initial directors shall serve until their replacements are elected and installed. The commissioner may appoint replacement directors as necessary until a full board is elected and installed.

Sec. 25. **[79.42] SUBMISSION OF PLAN. Subdivision 1.** Not more than 60 days after the initial organizational meeting of the board, the board shall submit to the commissioner for approval a proposed plan of operation consistent with the objectives and provisions of sections 17 to 25 which shall provide for the economical, fair, and nondiscriminatory administration of the reinsurance association and for the prompt and efficient payment of losses. If a plan is not submitted within this 60 day period, the commissioner shall formulate and place into effect a plan consistent with this chapter.

Subd. 2. The plan of operation, unless approved sooner in writing, shall be considered to meet the requirements of sections 17 to 25 if it is not disapproved by written order of the commissioner within 30 days after the date of its submission. Before disapproval of all or any part of the proposed plan of operation, the commissioner shall notify the board in what respect the plan of operation fails to meet the requirements and objectives of sections 17 to 25. If the board fails to submit a revised plan of operation which meets the requirements and objectives of sections 17 to 25 within 30 days of the commissioner's notice of the inadequacy of the first plan, the commissioner shall immediately formulate and place into effect a plan consistent with the requirements and objectives of sections 17 to 25.

Subd. 3. The proposed plan of operation or amendments to the plan of operation shall be subject to approval by the board, with voting rights being apportioned according to the premiums charged, and shall be subject to approval by the commissioner.

Subd. 4. Upon approval by the commissioner and ratification by the members of the submitted plan, or upon the promulgation of a plan by the commissioner, each insurer authorized to write workers' compensation insurance shall be bound by and shall formally subscribe to and participate in the approved plan as a condition of maintaining its authority to transact insurance in this state.

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Sec. 26. Minnesota Statutes 1978, Section 175.006, Subdivision 1, is amended to read:

175.006 DIVISION OF WORKERS' COMPENSATION. Subdivision 1. **CREATION AND ORGANIZATION.** The division of workers' compensation, generally administering the workers' compensation law, is created within the department of labor and industry. There is created as a separate appellate tribunal for workers' compensation, the workers' compensation court of appeals.

The workers' compensation court of appeals shall be composed of ~~three~~ five judges ~~learned in the law~~; each serving in the unclassified service of the state civil service. Of the five judges, at least three shall be learned in the law. Each judge of the workers' compensation court of appeals shall be appointed by the governor, by and with the advice and consent of the senate, for a term of six years. The judges of the workers' compensation court of appeals as now created shall be the judges of the workers' compensation court of appeals until the expiration of the terms for which they have been appointed and qualified.

Sec. 27. Minnesota Statutes 1978, Section 175.08, is amended to read:

175.08 OFFICE. The workers' compensation court of appeals and the department of labor and industry shall maintain their main offices within the Minneapolis-Saint Paul metropolitan area and be provided by the commissioner of administration with suitable rooms and necessary furniture. The offices of the workers' compensation court of appeals and the department of labor and industry shall be in separate buildings. They may hold sessions at any other place in the state when their convenience and that of the parties interested so requires.

Sec. 28. Minnesota Statutes 1978, Section 176.011, Subdivision 9, is amended to read:

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

- (1) an alien;
- (2) a minor;

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

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(4) a county assessor;

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

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

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

(8) a voluntary uncompensated worker engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision thereof, shall be ~~employees~~ an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of ~~such~~ the injury or death for similar services where ~~such~~ the services are performed by paid employees;

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

(10) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 85.041 shall be an employee. The daily wage of the worker for the purpose of calculating compensation payable under this chapter, shall be the usual going wage paid at the time of injury or death for similar services where ~~such~~ the services are performed by paid employees;

(11) a member of the military forces, as defined in section 190.05, while in "active service" or "on duty" as defined in section 190.05, when the service or duty is ordered by state authority. The daily wage of the member for the purpose of calculating compensation payable under this chapter shall be based on the member's usual earnings

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in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

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

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

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

Sec. 29. Minnesota Statutes 1978, Section 176.011, Subdivision 15, is amended to read:

Subd. 15. **OCCUPATIONAL DISEASE.** "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where ~~such~~ the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes ~~such~~ the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment. If immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota highway patrol, conservation officer service, state crime bureau, as a forest officer by the department of natural resources, or sheriff or full time deputy sheriff of any county, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of his employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota highway patrol, conservation officer service, state crime bureau, department of natural resources, or sheriff's

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department of any county, which examination and report negated any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of his employment.

Sec. 30. Minnesota Statutes 1978, Section 176.021, Subdivision 3, is amended to read:

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

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be ascertained and the right shall not be abrogated by the employee's death prior to the making of the payment.

Sec. 31. Minnesota Statutes 1978, Section 176.061, Subdivision 5, is amended to read:

Subd. 5. **CUMULATIVE REMEDIES.** Where an injury or death for which compensation is payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4, do not apply, or the party other than the employer is not then insured, or self-insured as provided by this chapter, legal proceedings may be taken by the employee or his dependents against the other party to recover damages, notwithstanding the payment by the employer or his liability to pay compensation. If the action against ~~such~~ the other party is brought by the injured employee or his dependents and a judgment is obtained and paid or settlement is made with the other party, the employer may deduct from the compensation payable by him the amount actually received by the employee or dependents in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer, upon application the court may grant the employer the right to intervene in any such action for the prosecution thereof. If the injured employee or his dependents agree to receive compensation from the employer or institute proceedings to recover the same or accept from the employer any payment on account of such compensation, the employer is subrogated to the rights of the employee or his dependents. This employer may maintain an action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the dependents or in the name of the employer against ~~such~~ the other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or his dependents the right to intervene in the action for the prosecution thereof. The proceeds of ~~such~~ the action or settlement thereof shall be paid in accordance with subdivision 6. ~~Such~~ The party is not liable to any person other than the employee or his dependents for any damages resulting from the injury or death.

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

Sec. 32. Minnesota Statutes 1978, Section 176.081, Subdivision 5, is amended to read:

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

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

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

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

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

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

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

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

Sec. 33. Minnesota Statutes 1978, Section 176.101, Subdivision 1, is amended to read:

176.101 COMPENSATION SCHEDULE. Subdivision 1. **TEMPORARY TOTAL DISABILITY.** For injury producing temporary total disability, 66 2/3 percent of the daily wage at the time of injury subject to the following limitations:

(1) provided that during the year commencing on October 1, ~~1977~~ 1979, and each year thereafter, commencing on October 1, the maximum weekly benefits payable shall be the statewide average weekly wage for the period ending December 31, of the preceding year.

(2) The minimum weekly compensation benefits for temporary total disability shall be not less than 50 percent of the statewide average weekly wage or the injured employee's actual weekly wage, whichever is less. In no case shall a weekly benefit be less than 20 percent of the statewide average weekly wage.

This compensation shall be paid during the period of disability, payment to be made at the intervals when the wage was payable, as nearly as may be.

Sec. 34. Minnesota Statutes 1978, Section 176.101, Subdivision 3, is amended to read:

Subd. 3. **PERMANENT PARTIAL DISABILITY.** ~~For the permanent partial disability from the loss of a member the compensation for total disability during the healing period shall be as stated in subdivision 1. For partial disability during the healing period the compensation shall be as stated in subdivision 2. The healing period shall not exceed 104 weeks. Thereafter and in addition thereto, compensation shall be that named~~

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in the following schedule, subject to a maximum compensation equal to the statewide weekly wage:

(1) For the loss of a thumb, 66 2/3 percent of the daily wage at the time of injury during 65 weeks;

(2) For the loss of a first finger, commonly called index finger, 66 2/3 percent of the daily wage at the time of injury during 40 weeks;

(3) For the loss of a second finger, 66 2/3 percent of the daily wage at the time of injury during 35 weeks;

(4) For the loss of a third finger, 66 2/3 percent of the daily wage at the time of injury during 25 weeks;

(5) For the loss of a fourth finger, commonly called the little finger, 66 2/3 percent of the daily wage at the time of injury during 20 weeks;

(6) The loss of the first phalange of the thumb or of any finger, is considered equal to the loss of one-half of the thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the thumb or finger;

(7) The loss of one and one-half or more phalanges is considered equal to the loss of the entire finger or thumb; but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) For the loss of a great toe, 66 2/3 percent of the daily wage at the time of injury during 35 weeks;

(9) For the loss of a toe other than a great toe, 66 2/3 percent of the daily wage at the time of injury during 15 weeks;

(10) The loss of the first phalange of any toe is considered equal to the loss of one-half of the toe, and compensation shall be paid at the prescribed rate during one-half the time specified for the loss of the toe;

(11) The loss of one and one-half or more phalanges is considered equal to the loss of the entire toe;

(12) For the loss of a hand, not including the wrist movement, 66 2/3 percent of the daily wage at the time of injury during 195 weeks;

(13) For the loss of a hand, including wrist movement, 66 2/3 percent of the daily wage at the time of injury during 220 weeks;

(14) For the loss of an arm, 66 2/3 percent of the daily wage at the time of injury during 270 weeks;

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(15) Amputation of the arm below the elbow is considered the loss of a hand, including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it is considered the loss of an arm;

(16) For the loss of a foot, not including ankle movement, 66 2/3 percent of the daily wage at the time of injury during 140 weeks;

(17) For the loss of a foot, including ankle movement, 66 2/3 percent of the daily wage at the time of injury during 165 weeks;

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66 2/3 percent of the daily wage at the time of injury during 195 weeks;

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66 2/3 percent of the daily wage at the time of injury during 220 weeks;

(20) Amputation of a leg below the knee is considered as equal to the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered as equal to the loss of a leg;

(21) For the loss of an eye, 66 2/3 percent of the daily wage at the time of injury during 160 weeks;

(22) For the complete permanent loss of hearing in one ear, 66 2/3 percent of the daily wage at the time of injury during 85 weeks;

(23) For the complete permanent loss of hearing in both ears, 66 2/3 percent of the daily wage at the time of injury during 170 weeks;

(24) For the loss of an eye and a leg, 66 2/3 percent of the daily wage at the time of injury during 475 weeks;

(25) For the loss of an eye and an arm, 66 2/3 percent of the daily wage at the time of injury during 475 weeks;

(26) For the loss of an eye and a hand, 66 2/3 percent of the daily wage at the time of injury during 450 weeks;

(27) For the loss of an eye and a foot, 66 2/3 percent of the daily wage at the time of injury during 400 weeks;

(28) For the loss of two arms, other than at the shoulder, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(29) For the loss of two hands, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

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(30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(31) For the loss of two feet, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(32) For the loss of one arm and the other hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(33) For the loss of one hand and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(34) For the loss of one leg and the other foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(35) For the loss of one leg and one hand, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(36) For the loss of one arm and one foot, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(37) For the loss of one arm and one leg, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(38) For loss of the voice mechanism, 66 2/3 percent of the daily wage at the time of injury during 500 weeks;

(39) For head injuries ~~resulting in permanent partial disability~~, 66 2/3 percent of the daily wage at the time of injury for that proportion of 500 weeks which is represented by ~~the its~~ percentage of ~~such~~ the permanent partial disability to the entire body as is determined from competent testimony ~~adduced~~ at a hearing before a compensation judge, a the commissioner, or the board workers' compensation court of appeals;

(40) For permanent partial disability resulting from injury to any internal organ, including the heart until such time as the commissioner of labor and industry shall promulgate a schedule of internal organs and thereafter for internal organs covered by the schedule of internal organs established by the commissioner of labor and industry, 66 2/3 percent of the daily wage at time of injury for that proportion of 500 weeks, not to exceed 500 weeks, as determined by the commissioner of labor and industry, which is the proportionate amount of permanent partial disability caused to the entire body by the injury ~~and~~ as is determined from competent testimony ~~adduced~~ at a hearing before a compensation judge, a the commissioner, or the workers' compensation court of appeals;

(41) For disfigurement or scarring not resulting from the loss of a member or other injury specifically compensated, affecting the employability or advancement opportunity of the injured person in the employment in which he was injured or other employment for which the employee is then qualified or for which the employee has become qualified, 66

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2/3 percent of the daily wage at the time of injury during ~~such the~~ the period as the parties agree to or the compensation judge or the workers' compensation court of appeals in cases on appeal determines, not ~~beyond~~ exceeding 90 weeks;

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

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

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

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

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

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

(47) The commissioner of ~~the department~~ of labor and industry with the workers' compensation court of appeals may make or revise rules for the determination of the

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extent of the impairment of the industrial use of one or both eyes taking into account all primary coordinate factors of vision. These rules shall be made or revised after consultation with experts on industrial vision and after public notice to and hearing of interested parties;

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

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

Sec. 35. Minnesota Statutes, 1978, Section 176.101, Subdivision 4, is amended to read:

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

Sec. 36. **[176.102] REHABILITATION.** Subdivision 1. SCOPE. Vocational
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rehabilitation shall train an employee so he may be returned to a job related to his former employment or to a job in another work area which produces an economic status as close as possible to that he would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.

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

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

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

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

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

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

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

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

(a) a physical impairment that does not allow the employee to pursue the vocation being trained for;

(b) the employee's performance level indicates he cannot complete the plan successfully; or

(c) an employee does not cooperate with a plan.

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

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

(a) Cost of vocational rehabilitation diagnosis and preparation of a plan;

(b) Cost of all rehabilitation services and supplies necessary for implementation of the plan;

(c) Reasonable cost of tuition, books and travel; and, in addition, reasonable costs of board and lodging when rehabilitation requires residence away from the employee's customary residence; and

(d) Any other expense agreed to be paid.

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

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

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

Sec. 37. Minnesota Statutes 1978, Section 176.111, Subdivision 1, is amended to read:

176.111 DEPENDENTS, ALLOWANCES. Subdivision 1. **PERSONS WHOLLY DEPENDENT, PRESUMPTION.** For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent:

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(a) ~~wife spouse~~, unless it be shown that ~~she was the spouse and decedent were~~ voluntarily living apart from ~~her husband~~ at the time of his the injury or death;

(b) children under 18 years of age, or a child under the age of ~~24~~ 25 years who is regularly attending as a full time student at a high school, college, or university, or regularly attending as a full time student in a course of vocational or technical training.

Sec. 38. Minnesota Statutes 1978, Section 176.131, is amended by adding a subdivision to read:

Subd. 1a. If an employee is employed in an on the job retraining program pursuant to section 36 and the employee incurs a personal injury that aggravates the personal injury for which the employee has been certified to enter the on the job retraining program, the on the job training employer shall pay the medical expenses and compensation required by this chapter, but shall be reimbursed from the special compensation fund for the compensation and medical expense that is attributable to the aggravated injury. The employer, at the time of the personal injury for which the employee has been certified for retraining, is liable for the portion of the disability that is attributable to that injury.

Sec. 39. Minnesota Statutes 1978, Section 176.131, Subdivision 3, is amended to read:

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

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

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

Sec. 40. Minnesota Statutes 1978, Section 176.131, Subdivision 10, is amended to read:

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

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

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compensation fund the difference between the amounts actually paid for such the dependency benefits and \$5,000; but in no event shall the employer pay the commissioner of ~~the department~~ of labor and industry less than \$1,000;

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

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

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

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

Such Sums as are paid to the commissioner of the department of labor and industry pursuant to the provisions hereof, shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by chapter 176. All money heretofore arising from the provisions of this section or similar law shall be transferred to this special compensation fund. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund.

The state treasurer shall be the custodian of this special fund and the workers' compensation division and the workers' compensation court of appeals in cases before it shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of clause

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(1) and dependency later is shown, or if deposit is or has been made pursuant to either clause (1) or (2) by mistake or inadvertence, or under ~~such~~ circumstances that justice requires a refund thereof, the state treasurer is ~~hereby~~ authorized to refund ~~such the~~ deposit under order of the workers' compensation division or the workers' compensation court of appeals. There is appropriated to the persons entitled to ~~such the~~ refunds from the fund an amount sufficient to make the refund and payment.

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

Sec. 41. *Minnesota Statutes 1978, Section 176.132, Subdivision 2, is amended to read:*

Subd. 2. **AMOUNT.** (a) The supplementary benefit payable under this section shall be the difference between the amount the employee receives on or after January 1, 1976, under section 176.101, subdivision 1 or subdivision 4, and ~~60~~ 65 percent of the statewide average weekly wage as computed annually.

(b) In the event an eligible recipient is currently receiving no compensation or is receiving a reduced level of compensation because of a credit being applied as the result of a third party liability or damages, the employer or insurer shall compute the offset credit as if the individual were entitled to the actual benefit or ~~60~~ 65 percent of the statewide average weekly wage as computed annually, whichever is greater. If this results in the use of a higher credit than otherwise would have been applied and the employer or insurer becomes liable for compensation benefits which would otherwise not have been paid, the additional benefits resulting shall be handled according to this section.

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

(d) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of prior limitations in the maximum amount payable for permanent total disability or because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and ~~60~~ 65 percent of the statewide average weekly wage as computed annually.

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

Sec. 42. **[176.132] EFFECTIVE DATE OF BENEFIT CHANGES.** Unless otherwise specified in the act making the change, any workers' compensation benefit

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change shall be effective on the October 1 next following its final enactment.

Sec. 43. [176.134] **REOPENED CASE FUND.** Subdivision 1. CREATED. The commissioner of labor and industry shall assess insurers and self-insured employers the amount determined as necessary by the commissioner of insurance pursuant to section 13 and shall deposit these assessments with the state treasurer for the benefit of a special account to be known as the reopened case fund.

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

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

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

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

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

Subd. 5. The reopened case fund is liable for injuries which occur after the effective date of this section.

Sec. 44. Minnesota Statutes 1978, Section 176.135, is amended by adding a subdivision to read:

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

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Sec. 45. Minnesota Statutes 1978, Chapter 176, is amended by adding a section to read:

[176.136] MEDICAL FEE REVIEW. The commissioner of labor and industry shall by rule establish procedures for determining whether the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups. If the commissioner determines that the charge for a health service is excessive, he may limit payment to the reasonable charge for that service; however, the commissioner shall by rule establish procedures allowing for a provider to appeal such determination. The commissioner may contract with a review organization as defined in section 145.6] in making any determinations as to whether or not a charge is excessive.

Sec. 46. [176.139] NOTICE OF RIGHTS POSTED. A notice, in form approved by the commissioner of labor and industry, shall be posted in a conspicuous place at each place of employment, advising employees of their rights and obligations under chapter 176, assistance available to them, and the operation of the workers' compensation system.

Sec. 47. Minnesota Statutes 1978, Section 176.141, is amended to read:

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

Sec. 48. Minnesota Statutes 1978, Section 176.155, Subdivision 2, is amended to read:

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

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

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

Sec. 49. Minnesota Statutes 1978, Section 176.179, is amended to read:

176.179 PAYMENTS OF COMPENSATION RECEIVED IN GOOD FAITH. Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division or court of appeals relative to a claim by an injured employee or his survivors, and received in good faith by the employee or his survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that ~~such the~~ payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken as a credit against future benefit entitlement; provided, however, that the credit applied against further payments of temporary total disability, temporary partial disability, permanent total disability, retraining benefits or death benefits shall not exceed 20 percent of the amount that would otherwise be payable.

Sec. 50. Minnesota Statutes 1978, Section 176.181, Subdivision 2, is amended to

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read:

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

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payments to be enforced in like manner as the award may be enforced.

(2)(a) No association, corporation, partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan under rules adopted pursuant to this subdivision unless it is licensed to do so by the commissioner of insurance. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner of insurance is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner of insurance may issue a license subject to restrictions or limitations, including restrictions or limitations on the type of services which may be supplied or the activities which may be engaged in. The license is for a two year period.

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

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

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

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

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

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

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

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

Sec. 51. Minnesota Statutes 1978, Section 176.181, is amended by adding a subdivision to read:

Subd. 5. A political subdivision or association of political subdivisions which is self insured, may be indemnified by the special compensation fund for payments for which the political subdivision or association is liable under chapter 176. This indemnification shall be made only if all other assets together with the interest earned thereon which have

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been contributed by the subdivision pursuant to rules adopted by the commissioner of insurance as provided for in this section have been exhausted.

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

Sec. 52. Minnesota Statutes 1978, Section 176.191, is amended to read:

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

When liability has been determined, the party held liable for the benefits shall be ordered to reimburse any other party for payments which the latter has made, including interest at the rate of five percent ~~per annum~~ a year. The claimant may also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

An order directing payment of benefits pending a determination of liability may not be used as evidence before ~~any commissioner~~, a compensation judge, the workers' compensation court of appeals, or court in which the dispute is pending.

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

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

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

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

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

Sec. 53. Minnesota Statutes 1978, Section 176.221, is amended to read:

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT. Subdivision 1. **DENIAL OF LIABILITY, REQUEST FOR EXTENSION OF TIME.** Within 30 days from the date of notice to or knowledge by the employer of an injury compensable under the chapter, and unless within that 30 day period the employer or the insurer files with the commissioner of the department of labor and industry a denial of liability or a request for an extension of time within which to determine liability, the person responsible for payment of compensation, charges for treatment under section 176.135 or retraining expenses under subdivision 9 of section 36 shall begin payment of compensation or charges for treatment.

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

Subd. 3. **PAYMENTS TO SPECIAL COMPENSATION FUND.** Where an employer or insurer fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under subdivision 9 of section 36, or to file a denial of liability, or to request an extension of time within the 30 day period referred to in subdivision 1, he shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled because of the injury. In addition, each day subsequent to the end of the 30 day period and until a compensation payment is made to the injured employee, the person responsible for payment of compensation shall pay to the special compensation fund an amount equal to the total compensation to which injured employee is entitled.

Subd. 4. **FAILURE TO MAKE PAYMENTS AFTER EXTENSION.** Where an employer or insurer has been granted an extension of time within which to determine liability and fails to begin payment of compensation, charges for treatment under section 176.135 or retraining expenses under subdivision 9 of section 36 or to file a denial of liability within such extended period, he shall make the payments provided in subdivision 3.

Subd. 5. **DOUBLE PAYMENTS TO SPECIAL COMPENSATION FUND.** Where an employer or insurer has failed to make the payments required by subdivision 3 or subdivision 4 within 60 days from the end of the 30 day period or the extended period, the division may require him to pay to the special compensation fund, each day subsequent to the end of the period and until a compensation payment is made to the injured employee, a sum equal to double the total amount of compensation to which the

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employee is entitled because of the injury. In addition, the person responsible for compensation, charges for treatment under section 176.135 or retraining expenses under subdivision 9 of section 36 shall pay to the special compensation fund an amount equal to the total amount of compensation to which the employee is entitled.

Subd. 6. **ASSESSMENT OF PENALTIES.** The division shall assess the penalty payments provided for by subdivisions 3 to 5 against either the employer or the insurer depending upon to whom the delay is attributable in making payment of compensation, charges for treatment under section 176.135 or retraining expenses under subdivision 9 of section 36. The insurer is not liable for a penalty payment assessed against the employer.

Subd. 7. **INTEREST.** Any payment of compensation, charges for treatment under section 176.135 or retraining expenses under subdivision 9 of section 36 not made when due shall bear interest at the rate of eight percent per annum from the due date to the date the payment is made.

Sec. 54. Minnesota Statutes 1978, Section 176.231, Subdivision 1, is amended to read:

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY. Subdivision 1. **TIME LIMITATION.** Where death or serious injury occurs to an employee during the course of employment, the employer shall report the same injury or death to the commissioner of the ~~department~~ of labor and industry and insurer within 48 hours after its occurrence. Where any other injury occurs which wholly or partly incapacitates the employee from performing labor or service for three days or longer, the employer shall report the injury to the commissioner of the ~~department~~ of labor and industry and insurer within 15 days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commissioner of the ~~department~~ of labor and industry and insurer within 48 hours after he receives notice of such this fact.

Sec. 55. Minnesota Statutes 1978, Section 176.231, Subdivision 2, is amended to read:

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

Sec. 56. Minnesota Statutes 1978, Section 176.235, is amended to read:

176.235 NOTICE TO EMPLOYERS AND INJURED EMPLOYEE OF RIGHTS AND DUTIES. Subdivision 1. When the commissioner of the ~~department~~ of labor and industry has received notice or information that an employee has sustained an injury which may be compensable under this chapter, the commissioner of the ~~department~~ of

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labor and industry shall mail a ~~form letter notice brochure~~, written in language easily readable and understandable by a person of average intelligence and education, to the employee stating briefly and simply explaining the rights and duties obligations of the employee in such case. , the assistance available to the employee, the operation of the workers' compensation system, and

The notice:

(1) shall summarize the duty of the employer to pay compensation and to furnish medical and hospital treatment;

(2) shall invite the employee to ask the advice of the division with reference to any doubt or dispute which the employee has concerning the injury;

(3) may contain whatever other relevant information the commissioner of the department of labor and industry deems necessary.

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

Sec. 57. Minnesota Statutes 1978, Section 176.241, is amended to read:

176.241 NOTICE TO DIVISION OF INTENTION TO DISCONTINUE COMPENSATION PAYMENTS. Subdivision 1. NECESSITY FOR NOTICE AND SHOWING; CONTENTS. Where an employee claims that the right to compensation continues, or refuses to sign or objects to signing a final receipt for compensation, the employer may not discontinue payment of compensation until he notifies the division in writing of his intention to do so he provides the division with notice in writing of his intention to do so, together with a statement of facts clearly indicating the reasons for the discontinuance.

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

Subd. 2. CONTINUANCE OF EMPLOYER'S LIABILITY; SUSPENSION. Except where the commissioner of the department of labor and industry orders otherwise, until the notice and reports have been filed with the division, the liability of the employer to make payments of compensation continues.

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

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provided in the following subdivisions:

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

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

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

Sec. 58. Minnesota Statutes 1978, Section 176.271, is amended to read:

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

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

Sec. 59. Minnesota Statutes 1978, Section 176.391, Subdivision 2, is amended to read:

Subd. 2. **APPOINTMENT OF PHYSICIANS, SURGEONS, AND OTHER EXPERTS.** The workers' compensation court of appeals, or a judge of the workers' compensation court of appeals or compensation judge assigned to a matter, or the

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commissioner of the department of labor and industry, may appoint one or more ~~impartial~~ neutral physicians or surgeons from the list established by the commissioner to examine the injury of the employee and report thereon. Where necessary to determine the facts, the services of other experts may also be employed.

Sec. 60. Minnesota Statutes 1978, Section 176.521, Subdivision 1, is amended to read:

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

Sec. 61. **STUDY OF INFORMATION SYSTEMS FOR DEPARTMENT OF LABOR AND INDUSTRY.** The commissioner of administration shall study and make recommendations for the improvement of the department of labor and industry's workers' compensation record-keeping and information systems. In making this study the commissioner shall give special attention to the application of computer and microfilming systems, and the commissioner may, if it is appropriate, hire outside consultants to assist in the study.

Sec. 62. ~~{176.105}~~ **COMMISSIONER TO ESTABLISH DISABILITY SCHEDULES.** Subdivision 1. The commissioner of labor and industry may by rule establish a schedule of degrees of disability resulting from different kinds of injuries.

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

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

Sec. 63. **ADDITIONAL HEARING ROOMS.** The commissioner of administration shall provide two hearing rooms in Minneapolis and one in Saint Paul, in addition to those already in existence, for the use of the workers' compensation division.

Sec. 64. **SECOND OPINION STUDY.** The commissioner of labor and industry shall conduct a study on the effect of requiring a mandatory second surgical opinion for non-emergency surgical procedures pursuant to section 44 of this act. The study shall include data regarding the quality and cost of medical care, and other appropriate information. The commissioner shall report his findings to the legislature no later than January 1, 1983.

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Sec. 65. Section 7, subdivision 2, clause (1), shall not apply to those parts of the manual which concern the (1) basis of premium found in part VI of the most recent manual; (2) standard exceptions found in part VIII, paragraph 8, of the most recent manual; (3) experience rating plan; and (4) rules for the division of payroll. These parts of the manual shall be approved by the commissioner of insurance pursuant to section 2 if a petition for a hearing is made pursuant to section 2 within 90 days of the effective date of this section. If no such petition is made, subdivision 2, clause (1), shall apply to these parts of the manual.

Workers' compensation premiums charged to insureds during the pendency of the proceeding held pursuant to the petition shall be based on the current manual.

Sec. 66. Upon the effective date of section 26, the governor shall appoint two judges to the workers' compensation court of appeals in order to bring the number of judges to the required complement.

Sec. 67. **WORKERS' COMPENSATION STATE FUND LEGISLATIVE STUDY COMMISSION.** Subdivision 1. A legislative study commission is created to study and report on the feasibility of a state competitive fund to provide workers' compensation insurance.

Subd. 2. The commission shall consist of six members of the house of representatives appointed in the usual manner and six members of the senate appointed by the subcommittee on committees.

Subd. 3. The commission shall report its findings and recommendations to the governor and legislature not later than January 1, 1981.

Subd. 4. The commission shall hold meetings and hearings at the times and places it designates to accomplish the purposes set forth in this section. It shall select a chairman and other officers from its membership as it deems necessary.

Subd. 5. The commission shall make use of existing legislative facilities and staff of the house and senate research departments and senate counsel, but it may also request the legislative coordinating commission to supply it with additional necessary staff, office space, and administrative services. All additional personnel shall be hired and supervised by the directors of the house and senate research departments and senate counsel. The commission shall have full authority to contract for expert services and opinions relevant to the purposes of this section.

Sec. 68. **REVISOR'S NOTE.** In the next and subsequent editions of Minnesota Statutes, the revisor of statutes shall substitute the word "association" for the word "bureau" wherever it occurs in Minnesota Statutes, Chapter 79.

Sec. 69. **APPROPRIATION.** Subdivision 1. The sums set forth in this subdivision are appropriated from the general fund to the agencies and for the purposes indicated, to be available for the fiscal year ending June 30 in the years indicated.

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	<u>1980</u>	<u>1981</u>
<u>(a) Attorney general, for legal services to the commissioner of insurance.</u>	<u>\$35,000</u>	<u>\$72,500</u>

The approved complement of the office of attorney general is increased by 1 person in fiscal year 1980 and by 3 persons in fiscal year 1981.

<u>(b) Commissioner of insurance, for the purposes of sections 2 to 15 and to carry out other duties prescribed by</u>	<u>\$189,700</u>	<u>\$184,100</u>
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law. The approved complement of the department of commerce is increased by 7 persons. These additional persons shall be provided to the insurance division.

<u>(c) Commissioner of labor and industry, for the purposes of sections 26, 27, 36, 45, 46, 48, 55, 56, 62, 63 and 64 and to carry out other duties prescribed by law.</u>	<u>\$383,600</u>	<u>\$323,700</u>
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The approved complement of the department of labor and industry is increased by 8 persons.

Subd. 2. There is appropriated from the general fund to the legislative coordinating commission the sum of \$25,000 for the period ending June 30, 1981 to pay the expenses incurred by the legislative study commission created by section 67.

Sec. 70. REPEALER. Minnesota Statutes 1978, Sections 79.05; 79.06; 79.07; 175.092; and 176.101, Subdivision 7; are repealed.

Sec. 71. EFFECTIVE DATE. Section 1, subdivision 6, and sections 17 through 20, 22 and 23 are effective October 1, 1979. Section 1, subdivisions 7 and 8 and sections 2 through 16, 21, 24 and 25 are effective the day following final enactment.

Approved June 7, 1979.