

Sec. 3. **EFFECTIVE DATE.** This act is effective the day following its final enactment.

Approved April 11, 1980

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**CHAPTER 556—S.F.No. 1775**

*An act relating to workers' compensation; creating a fund to meet the expenses of certain intervenors in workers' compensation rate hearings; revising the procedure for division of payroll; defining family farm; permitting the workers' compensation reinsurance association to incorporate; exempting the reinsurance association from taxation; providing for amendment to the reinsurance association plan of operation; making changes in rules, requirements and procedures affecting members of the reinsurance association; amending Minnesota Statutes 1978, Section 176.011, Subdivision 11a; and Minnesota Statutes, 1979 Supplement, Sections 79.071, by adding subdivisions; 79.211, Subdivision 2; 79.34; 79.35; 79.36; 79.37; and 79.38; repealing Minnesota Statutes, 1979 Supplement, Sections 79.41 and 79.42.*

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

Section 1. Minnesota Statutes, 1979 Supplement, Section 79.071, is amended by adding a subdivision to read:

Subd. 6a. At the time of filing a petition for a change in the schedule of rates, the association shall estimate the total increase in manual premiums which would be collected as a result of the proposed change on all new and renewal policies with an effective date of 12 months or less following the date at which the association is requesting its petition to be implemented.

Sec. 2. Minnesota Statutes, 1979 Supplement, Section 79.071, is amended by adding a subdivision to read:

Subd. 6b. The association shall deposit into a special account in the office of the commissioner of insurance a sum of not less than one percent of the amount calculated pursuant to subdivision 6a. The money in the account shall be allocated as follows:

(a) 50 percent shall be for the use of the commissioner of insurance for payments authorized in subdivision 6.

(b) 25 percent shall be for the use of a representative of business selected pursuant to subdivision 6c.

(c) 25 percent shall be for use of a representative of labor selected pursuant to subdivision 6c.

Sec. 3. Minnesota Statutes, 1979 Supplement, Section 79.071, is amended by adding a subdivision to read:

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Subd. 6c. Within five days following the receipt of a petition for a change in the schedule of rates, the commissioner shall convene a meeting of the commissioner and the chairpersons of the senate employment committee and the house of representatives labor management relations committee. They shall, by majority vote, select one representative of business and one representative of labor to formally intervene in the hearing held pursuant to the petition if the commissioner orders the hearing. The representative of business shall be selected on the basis of extent of membership, its representation of both large and small employers, statewide representation of membership, representation of members in the aggregate with payrolls containing at least 50 percent of the job classifications contained in the workers' compensation and employers liability insurance manual, its demonstrated interest in Minnesota workers' compensation insurance legislation and rates and its willingness and ability to participate actively and effectively in the hearing process.

The representative of labor shall be selected on the basis of extent of membership, statewide representation of membership, demonstrated interest in workers' compensation legislation and insurance rates, the variety of trades represented by its membership, and its willingness and ability to participate actively and effectively in the hearing process. The intervenors shall have their costs of intervention in the hearing paid from the fund established pursuant to subdivision 6b.

Costs of intervenors shall include attorneys' fees, costs of the office of hearing examiner, expert witness fees, consultant fees, and reasonable costs and disbursements. The commissioner of insurance shall authorize payments from the fund when presented with statements of cost submitted to him by other intervenors in the form he may prescribe. All money not disbursed to intervenors, together with investment income earned thereon, shall be refunded to the association after the hearing, and all subsequent judicial actions, if any, have been completed.

Sec. 4. Minnesota Statutes, 1979 Supplement, Section 79.071, is amended by adding a subdivision to read:

Subd. 6d. If a petition for a change in the schedule of rates does not result in an increase in the manual premiums or if the increase is so small as to not cover the costs of the office of hearing examiner, the association shall deposit into the special fund established in subdivision 6b, an amount adequate to pay the costs of the hearing.

Sec. 5. Minnesota Statutes, 1979 Supplement, Section 79.071, is amended by adding a subdivision to read:

Subd. 6e. There is appropriated to the commissioner of insurance from the special account established in subdivision 6b, a sum sufficient to make the payments authorized in subdivision 6c.

Sec. 6. Minnesota Statutes, 1979 Supplement, Section 79.211, Subdivision 2, is amended to read:

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Subd. 2. **DIVISION OF PAYROLL.** ~~The rating association of~~ An insurer shall permit an employer to divide his payroll among ~~relevant~~ the rating classifications most closely fitting the work actually performed for purposes of premium calculation when the employer's records provide adequate support for a division.

Sec. 7. Minnesota Statutes, 1979 Supplement, Section 79.34, is amended to read:

**79.34 CREATION OF REINSURANCE ASSOCIATION.** Subdivision 1. ~~An unincorporated,~~ A nonprofit association known as the workers' compensation reinsurance association is created, which may be incorporated under chapter 317 with all the powers of a corporation formed under that chapter, except that if the provisions of that chapter are inconsistent with sections 79.34 to 79.42 or any amendments thereto, sections 79.34 to 79.42 shall govern. Each insurer as defined by section 79.01, subdivision 2, shall as a condition of its authority to transact workers' compensation insurance in this state, be a member of the reinsurance association and shall be bound by the plan of operation of the reinsurance association. Each self-insurer approved pursuant to section 176.181 shall ~~also,~~ as a condition of its authority to self-insure workers' compensation liability in this state, 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 insurance with respect to the reinsurance association shall not be subject to chapter 15. The reinsurance association shall be exempt from taxation under the laws of this state and all property owned by the association shall be exempt from taxation. The reinsurance association shall not be obligated to make any payments or pay any assessments to any funds or pools established pursuant to chapters 79 or 176 or any other law.

Subd. 2. ~~(1)~~ (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 relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of \$300,000 or \$100,000 retention limit, at the option of the member, ~~provided that \$300,000 and \$100,000.~~ In case of occupational disease causing disablement on and after October 1, 1979, each person suffering such disablement shall be considered to be involved in a separate loss occurrence. Each retention limit shall be increased ~~to the nearest \$10,000, on October 1, 1980~~ January 1, 1981 and on each ~~October~~ January 1 thereafter by the percentage increase in the statewide average weekly wage ~~for the previous calendar year as determined pursuant to clause (2),~~ as determined in accordance with section 176.011, subdivision 20. 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 for workers' compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. ~~An ultimate~~ A loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs, and a member is liable for a loss up to its retention limit in effect at the time that the

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loss was incurred, except that members which are determined by the reinsurance association to be controlled by or under common control with another member, and which are liable for claims from one or more employees entitled to compensation for a single compensable event, including aggregate losses relating to a single loss occurrence, may aggregate their losses and obtain indemnification from the reinsurance association for the aggregate losses in excess of the higher retention limit in effect at the time the loss was incurred. Each member is liable for payment of its ultimate loss and shall be entitled to indemnification from the reinsurance association for the ultimate loss in excess of the member's retention limit in effect at the time of the loss occurrence.

A member that chooses the higher retention limit shall retain the liability for all losses below the higher retention limit itself and shall not transfer the liability to any other entity or reinsure or otherwise contract for reimbursement or indemnification for losses below its retention limit, except in the following cases: (a) when the reinsurance or contract is with another member which, directly or indirectly, through one or more intermediaries, control or are controlled by or are under common control with the member; (b) when the reinsurance or contract provides for reimbursement or indemnification of a member if and only if the total of all claims which the member pays or incurs, but which are not reimbursable or subject to indemnification by the reinsurance association for a given period of time, exceeds a dollar value or percentage of premium written or earned and stated in the reinsurance agreement or contract; (c) when the reinsurance or contract is a pooling arrangement with other insurers where liability of the member to pay claims pursuant to chapter 176 is incidental to participation in the pool and not as a result of providing workers' compensation insurance to employers on a direct basis under chapter 176; or (d) any other reinsurance or contract approved by the commissioner upon his determination that the reinsurance or contract is not inconsistent with the bases for exception provided under clauses (a), (b) and (c) above.

(2) For the purposes of this section statewide 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 statewide average weekly wage.

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

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

Subd. 4. 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 self-insurer, or another insurer, which provides insurance required by chapter 176, has reinsured a member's entire business, the member and successors in interest of the member shall remain liable for the member's obligations.

Subd. 6. ~~No insurer or self-insurer may establish 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. The commissioner shall require each member to identify the portion of all losses which exceed its retention limit selected under this section in any report filed with the workers' compensation insurers rating association of Minnesota or filed with the insurance division for use in reviewing the workers' compensation schedule of rates.~~

Sec. 8. Minnesota Statutes, 1979 Supplement, Section 79.35, is amended 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 79.34;
- (b) Establish procedures by which members shall promptly report to the reinsurance association each claim which, on the basis of the injury sustained, may reasonably be anticipated to involve liability to the reinsurance association if the member is held liable under chapter 176. Solely for the purpose of reporting claims, the member shall in all instances consider itself legally liable for the injury. The member shall advise the reinsurance association of subsequent developments likely to materially affect the interest of the reinsurance association in the claim;
- (c) Maintain relevant loss and expense data relative to all liabilities of the reinsurance association and require each member to furnish statistics in connection with liabilities of the reinsurance association at the times and in the form and detail as may be required by the plan of operation;
- (d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur in excess of the higher retention limit but less than \$500,000, together with incurred or estimated

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to be incurred operating expenses, and 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 a proportion of the total premium in an amount equal to a percentage, equal to that charged other members, of that member's total gross written premiums, less returned premiums, written its proportion of the total standard earned premium of all members during the period preceding that to which the reinsurance association premium will apply, as determined by the commissioner. An equitable basis for premium charges to self insurers shall be established by the board. Members Each member exercising the lower retention option shall also be charged a premium established by the board as sufficient to cover incurred or estimated to be incurred claims for the liability the reinsurance association is likely to incur between the lower and higher retention limits for the period to which the premium applies. Each member's premium shall include an amount determined by the board to equitably distribute excess or deficient premiums from previous periods. An equitable basis for determining standard earned premium for self-insurers shall be established by the commissioner. The premium premiums charged to members shall not be unfairly discriminatory as defined in section 79.074. The premium may reflect excessive or deficient premiums from previous periods All premiums shall be approved by the commissioner;

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

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

(g) Establish procedures for reviewing claims procedures and practices of members of the reinsurance association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the reinsurance association, the reinsurance association may undertake, or may contract with another person, including another member, to adjust or assist in the adjustment of claims which create a potential liability to the association 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. 9. Minnesota Statutes, 1979 Supplement, Section 79.36, is amended to read:

79.36 **ADDITIONAL POWERS.** In addition to the powers granted in section 79.35, the reinsurance association may do the following:

(a) Sue and be sued. A judgment against the reinsurance association shall not create any direct liability against the individual members of the reinsurance association. The reinsurance association may shall provide in the plan of operation for the indemnification, to the extent provided in the plan of operation, of

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the members, members of the board of directors of the reinsurance association, and officers, employees and other persons lawfully acting on behalf of the reinsurance association;

(b) Reinsure all or any portion of its potential liability, including potential liability in excess of \$500,000, with reinsurers licensed to transact insurance in this state or otherwise approved by the commissioner;

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

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

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

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

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

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

~~(h)~~ (i) Perform other acts not specifically enumerated in this section which are necessary or proper to accomplish the purposes of the reinsurance association and which are not inconsistent with sections 79.34 to 79.42 or the plan of operation.

Sec. 10. Minnesota Statutes, 1979 Supplement, Section 79.37, is amended 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 association consistent with the plan of operation and sections 79.34 to 79.42. 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,

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three members of the board shall represent employers, at least one, but not more than two, of whom shall represent self-insurers, and two members of the board shall represent employees. Members shall elect the insurer directors, and the commissioner shall appoint the employer and employee directors, for the terms authorized in the plan of operation. 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. 11. Minnesota Statutes, 1979 Supplement, Section 79.38, is amended to read:

79.38 **PLAN OF OPERATION.** Subdivision 1. The plan of operation shall provide for all of the following:

- (a) The establishment of necessary facilities;
- (b) The management and operation of the reinsurance association;
- (c) A preliminary premium, payable by each member in proportion to its total premium in the year preceding the inauguration of the reinsurance association, for initial expenses necessary to commence operation of the reinsurance association;
- (d) Procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods;
- (e) Procedures governing the actual payment of premiums to the reinsurance association;
- (f) Reimbursement of each member of the board by the reinsurance association for actual and necessary expenses incurred on reinsurance association business;
- (g) The composition, terms, compensation and other necessary rules consistent with section 79.37 for boards of directors of the reinsurance association to succeed the initial board provided in section 79.41;
- (h) The investment policy of the reinsurance association; and
- (i) Any other matters required by or necessary to effectively implement sections 79.34 to 79.42.

Subd. 2. If the reinsurance association is incorporated pursuant to chapter 317, the plan of operation shall be filed with and accepted by the secretary of state as the corporation's articles of incorporation and bylaws. The plan of operation shall be valid as articles of incorporation and bylaws under chapter 317, notwithstanding that one or more of the required provisions for articles and bylaws under chapter 317 is not included or requirements of form are not followed.

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

**(b) EMERGENCY BOARD POWER TO AMEND WITH DELAYED MEMBERS' RATIFICATION.** The board shall have emergency powers to amend the plan at a meeting duly called for that purpose, without ratification by the members; provided that a meeting of members shall be scheduled to consider ratification of the amendment within 90 days.

**(c) COMMISSIONER'S POWER TO AMEND.** If the board proposes an amendment which the members decline to ratify, the commissioner is authorized, upon request of the board, to amend the plan as proposed by the board when he determines that failure to adopt the proposed amendment may seriously impair the ability of the reinsurance association to meet its financial obligations.

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

Sec. 12. Minnesota Statutes 1978, Section 176.011, Subdivision 11a, is amended to read:

**Subd. 11a. FAMILY FARM.** "Family farm" means any farm operation which pays or is obligated to pay less than ~~\$4,000~~ \$8,000 in cash wages, exclusive of machine hire, to farm laborers for services rendered during the preceding calendar year. For purposes of this subdivision, farm laborer does not include any spouse, parent or child, regardless of age, of a farmer employed by the farmer, or any executive officer of a family farm corporation as defined in section 500.24, subdivision 1, or any spouse, parent or child, regardless of age, of such an officer employed by that family farm corporation, or other farmers in the same community or members of their families exchanging work with the employer. Notwithstanding any law to the contrary, a farm laborer shall not be considered as an independent contractor for the purposes of this chapter.

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Sec. 13. **REPEALER.** Minnesota Statutes, 1979 Supplement, Sections 79.41 and 79.42 are repealed.

Sec. 14. **EFFECTIVE DATE.** Sections 1 to 13 are effective the day following final enactment. Sections 1 to 5 shall expire June 30, 1982. Expiration of these sections shall not apply to any rate hearing on or before that date.

Approved April 11, 1980

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**CHAPTER 557—S.F.No. 407**

*An act relating to regional development commissions; requiring a report on the commission's effectiveness; providing procedures for terminating commissions; amending Minnesota Statutes 1978, Section 462.393; and Chapter 462, by adding a section.*

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

Section 1. Minnesota Statutes 1978, Section 462.393, is amended to read:

462.393 **REPORTS.** Subdivision 1. On or before ~~February~~ August 1 of each year, the commission shall prepare a report for the governmental units, the public within the region, the legislature and the governor. The report shall include:

- (1) A statement of the commission's receipts and expenditures by category since the preceding report;
- (2) A detailed budget for the year in which the report is filed and a tentative budget for the following year including an outline of its program for such period;
- (3) A description of any comprehensive plan adopted in whole or in part for the region;
- (4) Summaries of any studies and the recommendations resulting therefrom made for the region;
- (5) A listing of all applications for federal grants or loans made by governmental units within the region together with the action taken by the commission in relation thereto;
- (6) A listing of plans of local governmental units submitted to the region, and actions taken in relationship thereto; ~~and~~
- (7) Recommendations of the commission regarding federal and state programs, cooperation, funding, and legislative needs; ~~and~~
- (8) A summary of any report made during the previous year by the state auditor relative to the commission.

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