

Sec. 13. EFFECTIVE DATE.

This act is effective July 1, 1985.

Approved May 24, 1985

CHAPTER 234 — S.F.No. 986

An act relating to workers' compensation; excluding certain injuries from coverage; providing the conditions for organization of certain insurance associations; providing for the workers' compensation benefits; transferring certain duties from the department of commerce to the department of labor and industry; providing for miscellaneous changes; amending Minnesota Statutes 1984, sections 66A.08, subdivision 4; 79.37; 176.021, by adding subdivisions; 176.101, subdivisions 3e, 3i, and 3t; 176.102, subdivisions 3 and 8; 176.103, subdivision 3; 176.136, by adding a subdivision; 176.138; 176.191, subdivisions 3 and 5; 176.511, subdivisions 1 and 2; 176.66, subdivision 10; and 352E.03; proposing coding for new law in Minnesota Statutes, chapter 176; repealing Minnesota Statutes 1984, sections 176.081, subdivision 4; and 176.134.

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

Section 1. Minnesota Statutes 1984, section 66A.08, subdivision 4, is amended to read:

Subd. 4. EMPLOYERS' LIABILITY AND WORKERS' COMPENSATION. (1) ORGANIZATION. (a) SUBSCRIBERS AND ARTICLES OF INCORPORATION. Twenty or more persons may form an incorporated mutual employers' liability insurance association for the purpose of insuring themselves and such other persons, firms, or corporations as may become subscribers to the association against liability for compensation payable under the terms of the workers' compensation law and for the purpose of insuring against loss or damage by the sickness, bodily injury, or death by accident of any person employed by the insured or for whose injury or death the insured is responsible.

They shall subscribe and acknowledge a certificate specifying:

(aa) The name, general nature of its business, and the principal place of transacting the same; (such name shall distinguish it from all other corporations, domestic or foreign, authorized to do business in this state and end with "company," "corporation," "association," or the word "incorporated");

(bb) The period of its duration;

(cc) The names and places of residence of the incorporators;

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(dd) In what board its management shall be vested and the names and addresses of those composing the board until the first election, a majority of whom shall always be residents of the state;

(ee) The highest amount of indebtedness or liability to which the corporation shall at any time be subject; and

(ff) The territory within which the association may do business.

It may contain any other lawful provisions defining and regulating the powers or business of the corporation, its officers, directors, trustees, and members.

The certificate of incorporation of every such corporation shall be submitted to the commissioner for his approval and, if he approves the same, one copy thereof shall be filed with the secretary of state and one copy with the commissioner.

(b) **BYLAWS AND SEAL.** Such association shall have the power to make bylaws for the government of its officers and the conduct of its affairs, to alter and amend the same, and to adopt a common seal.

(c) **ANNUAL MEETING; VOTING RIGHTS.** The annual meeting for the election of directors shall be held at such time ~~in the month of January~~ as the bylaws of the association may direct. Of the time and place of the meeting at least 30 days previous written or printed notice shall be given to the subscribers, or the notice may be given by publication, not less than three times, in at least two daily or weekly newspapers published in the city or county wherein the association has its principal office and in the legal periodical, if any, designated by the rules of court of the proper county for the publication of legal notices. Subscribers who, during the preceding calendar year, have paid into the treasury of the association premiums amounting to more than one-half of the total premiums received by it during that year, shall constitute a quorum. At this annual meeting the subscribers shall elect, by ballot, from their own number, not less than five directors, a majority of whom shall be residents of this state, to serve for at least one year and until their successors are duly chosen. The association may provide in its bylaws for the division of its board of directors into two, three, or four classes, and for the election thereof at its annual meetings in such manner that the members of one class only shall retire and their successors be chosen each year. Vacancies may be filled by election by the board until the next annual meeting. In the choice of directors and in all meetings of the association, each subscriber shall be entitled to one vote for every \$100, or any fraction thereof, paid by him in premiums into the treasury of the association during the preceding calendar year. Subscribers may vote by proxy and the record of all votes shall be made by the secretary and show whether the same were cast in person or by proxy and shall be evidence of all these elections. Not less than three directors shall constitute a quorum. The directors shall annually

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choose by ballot a president, who shall be a member of the board; a secretary; a treasurer, who may be either the president or secretary; and such other officers as the bylaws may provide; and fix the salaries of the president and the secretary, as well as the salaries or compensation of such other officers and agents as the bylaws prescribe. Vacancies in any office may be filled by the directors or by the subscribers, as the bylaws shall prescribe.

(2) **REQUIREMENTS. (a) NUMBER OF RISKS TO QUALIFY.** These associations shall not begin to issue policies until a list of subscribers with the number of employees of each which, in the aggregate, must number not less than 5,000, together with such other information as the commissioner may require, shall have been filed at the department of commerce, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement of all the subscribers that they will take the policies subscribed for within 30 days of the granting of a license by the commissioner. In case of associations organized exclusively for the purpose of insuring creameries, cheese factories, and livestock shipping associations, these associations may begin to issue policies when the number of employees insured aggregates 300.

Upon the filing of the certificate provided for in this section, the commissioner shall make such investigations as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

(b) **NUMBER OF RISKS REQUIRED TO CONTINUE IN BUSINESS.** If at any time the number of subscribers falls below 20, or the number of subscribers' employees within the state falls below 5,000, no further policies shall be issued until the total number of subscribers amounts to not less than 20, whose employees within the state are not less than 5,000. In case of associations organized for the purpose of insuring creameries, cheese factories, and livestock shipping associations, the number of subscribers must not fall below 200, nor the number of subscribers' employees within the state below 300.

(3) **ADDITIONAL POWERS. (a) MAY WRITE AUTOMOBILE INSURANCE.** Any such company authorized to write workers' compensation or liability insurance under this subdivision, when its articles of incorporation so provide, shall be permitted to insure against loss or damage to automobiles or other vehicles and their contents by collision, fire, burglary, or theft, and other perils of operation, and against liability for damage to persons or property of others by collision with such vehicles, and to insure against any loss or hazard incident to the ownership, operation, or use of motor or other vehicles, as specified in section 60A.06, subdivision 1, clause (12).

(b) **MAY WRITE GLASS INSURANCE.** Any company authorized to write workers' compensation or liability insurance under this subdivision when its articles of incorporation so provide shall be permitted to insure against loss or damage by breakage of glass located or in transit.

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(c) **SPECIAL POWERS.** Any company organized under this subdivision which, for 15 years prior to the passage of Laws 1935, Chapter 136, has exclusively insured creameries, cheese factories, and livestock shipping associations, and which has assets of \$100,000 or more, may write public liability and compensation insurance coverage of creameries, cheese factories, shipping associations, farmers' elevators, cooperatively owned warehouses, cooperative filling stations, cooperative oil companies and all cooperatively owned or organized enterprises.

(4) **INTERNAL OPERATION.** (a) **POLICIES.** Policies of insurance issued by any such association may be made either with or without the seal thereof and they shall be signed by the president, or such other officers as may be designated by the directors for that purpose, and attested by the secretary.

(b) **CLASSIFICATION OF RISKS.** The board of directors may divide the subscribers into groups in accordance with the nature of their business and the probable risk of injury therein. In such case they shall fix all premiums, make all assessments, and determine and pay all dividends by and for each group in accordance with the experience thereof, but all funds of the association and the contingent liability of all subscribers shall be available for the payment of any claim against the association; provided, that (as between the association and its subscribers) until the whole of the contingent liability of the members of any group shall be exhausted, the general funds of the association and the contingent liability of the members of other groups shall not be available for the payment of losses and expenses incurred by such group in excess of the earned premiums paid by the members thereof.

(c) **CLASSIFICATION TO BE FILED.** A statement of any proposed distribution of subscribers into groups shall be filed with the department of commerce.

(d) **RATES.** The board of directors shall determine the amount of premiums which the subscribers of the association shall pay for their insurance in accordance with the nature of the business in which the subscribers are engaged and the probable risk of injury to their employees under existing conditions, and it shall fix premiums at such amounts as in its judgment shall be sufficient to enable the association to pay to its subscribers all sums which may become due and payable to their employees under provisions of law and the expenses of conducting the business of the association. In fixing the premium payable by any subscriber, the board of directors may take into account the condition of the plant, workroom, shop, farm, or premises of the subscriber in respect to the safety of those employed therein as shown by the report of any inspector appointed by the board and it may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the plant, workroom, shop, farm, or premises of the subscribers in respect to the safety of their employees may justify and may increase the premiums of any

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subscriber neglecting to provide safety devices required by law, or disobeying the rules or regulations made by the board of directors in accordance with the provisions of clause (4) (g) of this subdivision.

(e) **PREMIUMS; CONTINGENT LIABILITY.** Every such company shall charge and collect on each policy a premium equal to one year's premium on the policy issued and state in the policy the estimated annual premium and provide in its bylaws for the determination of the actual premium and for the payment of same when determined. The premium thus determined shall be known as the annual premium on the policy. The company shall provide in its bylaws and specify in its policies the maximum contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash fund. The contingent liability of a member shall not be less than a sum equal and in addition to one annual premium, nor more than a sum equal to five times the amount of the annual premium or, in case of a policy written for less than one year, the contingent liability shall not be less than the proportionate fractional part of the annual premium, nor more than five times the proportionate fractional part of the annual premium. The contingent liability of the policyholder shall be plainly and legibly stated in each policy as follows: "The maximum contingent liability of the policyholder under this policy shall be a sum equal to annual premium (or premiums)."

(f) **ASSESSMENTS.** When the liabilities, including unearned premiums and such other reserves as are or may be required by law and the commissioner, are in excess of the admitted assets computed on the basis allowed for its annual statement, it shall make an assessment upon its policyholders based upon the amount of one annual premium as written in the policy and not to exceed the amount of five annual premiums.

If it becomes necessary to levy the assessment, as provided by this section, no policies shall be issued until the admitted assets of the association are in excess of its liabilities.

(g) **POWER OF BOARD OF DIRECTORS.** The board of directors shall be entitled to inspect the plant, workroom, shop, farm, or premises of any subscriber and for this purpose to appoint inspectors, who shall have free access to all such premises during regular working hours, and the board of directors shall likewise from time to time be entitled to examine by their auditor or other agent the books, records, and payrolls of any subscribers for the purpose of determining the amount of premium chargeable to the subscriber.

The board of directors shall make reasonable rules and regulations for the prevention of injuries upon the premises of subscribers; and may refuse to insure, or may terminate the insurance of, any subscriber who refuses to permit these examinations and disregards such rules or regulations, and forfeit all premiums previously paid by him, but the termination of the insurance of any subscriber shall not release him from liability for the payment of assessments then or

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thereafter made by the board of directors to make up deficiencies existing at the termination of his insurance.

(h) **INVESTMENTS.** The association shall invest and keep invested all its funds of every description, excepting such cash as may be required in the transaction of its business, in accordance with the laws of this state or relating to the investment of funds of domestic insurance companies.

No such association shall purchase, hold, or convey real estate except as provided by section 60A.11, subdivision 6.

(i) **WITHDRAWAL OF SUBSCRIBER.** Any subscriber of the association who has complied with all its rules and regulations may withdraw therefrom by written notice to that effect sent by the subscriber by certified mail to the association and this withdrawal shall become effective on the first day of the month immediately following the tenth day after the receipt of the notice, but the withdrawal shall not release the subscriber from liability for the payment of assessments thereafter made by the board of directors to make up deficiencies existing at the date of his withdrawal and the subscriber shall be entitled to his share of any dividends earned at the date of his withdrawal.

(5) **MISCELLANEOUS.** (a) **PERJURY BY OFFICER.** If any officer of the association shall falsely make oath to any certificate required to be filed with the commissioner, he shall be guilty of perjury.

(b) **FOREIGN MUTUAL EMPLOYERS' LIABILITY ASSOCIATION.** Any mutual employers' liability insurance association of another state, upon compliance with all laws governing such corporations in general and the provisions of this subdivision may be admitted to transact business in this state. These associations shall pay to the department of commerce the fees prescribed by section 60A.14, subdivision 1.

(c) **WINDING UP AFFAIRS.** When the contracts of insurance issued by these associations shall cover in the aggregate less than 5,000 employees or, in the case of associations organized for the purpose of insuring creameries, cheese factories, and livestock shipping associations, less than 300 employees, the association shall forthwith notify the commissioner of that fact and if, at the expiration of six months from the notice, the aggregate number of employees covered by the contracts of insurance shall be less than 5,000, or, in the case of associations organized for the purpose of insuring creameries, cheese factories, and livestock shipping associations, less than 300 employees, the commissioner shall proceed under the provisions of chapter 60B.

Sec. 2. Minnesota Statutes 1984, section 79.37, is amended to read:

79.37 BOARD OF DIRECTORS.

A board of directors of the reinsurance association is created and is responsible for the operation of the reinsurance association consistent with the

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plan of operation and sections 79.34 to 79.42. The board consists of 13 directors. Four directors shall represent insurers, ~~six two~~ two directors shall represent employers, ~~at least one, but not more than three of whom two~~ two shall represent self-insurers; ~~and three two~~ two directors shall represent employees; the commissioner of finance and the executive director of the state board of investment or their designees shall serve as directors; and one director shall represent the public. ~~Insurer~~ Insurer members of the reinsurance association shall elect the directors who represent insurers; ~~self-insurer members of the reinsurance association shall elect the directors who represent self-insurers;~~ self-insurer members of the reinsurance association shall elect the directors who represent self-insurers; and the commissioner of ~~commerce~~ commerce labor and industry shall appoint the ~~remaining directors who represent employers and employees~~ remaining directors for the terms authorized in the plan of operation. Each director is 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 directors currently holding office constitutes a quorum. Action may be taken by a majority vote of the directors present.

The board shall take reasonable and prudent action regarding the management of the reinsurance association including but not limited to determining the entity who shall manage the daily affairs of the reinsurance association. The board shall report to the governor of its actions regarding the entity selected to manage the reinsurance association and the reasons for the selection.

Sec. 3. Minnesota Statutes 1984, section 176.021, is amended by adding a subdivision to read:

Subd. 3b. TEMPORARY AND PERMANENT PARTIAL. If an employee has returned to work for at least six months and has, if applicable, completed a rehabilitation plan, this section does not prevent the payment of compensation for permanent partial disability because the employee is receiving compensation for temporary partial disability. This subdivision is procedural and applies regardless of the date of injury.

Sec. 4. Minnesota Statutes 1984, section 176.021, is amended by adding a subdivision to read:

Subd. 9. EMPLOYER RESPONSIBILITY FOR WELLNESS PROGRAMS. Injuries incurred while participating in voluntary recreational programs sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.

Sec. 5. Minnesota Statutes 1984, section 176.101, subdivision 3e, is amended to read:

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Subd. 3e. **END OF TEMPORARY TOTAL COMPENSATION.** (a) 90 days after an employee has reached maximum medical improvement or 90 days after the end of an approved retraining program, whichever is later, the employee's temporary total compensation shall cease. This cessation shall occur at an earlier date if otherwise provided by this chapter.

(b) If at any time prior to the end of the 90-day period described in clause (a) the employee retires or the employer furnishes work to the employee that is consistent with an approved plan of rehabilitation and meets the requirements of section 176.102, subdivision 1, or, if no plan has been approved, that the employee can do in his or her physical condition and that job produces an economic status as close as possible to that the employee would have enjoyed without the disability, or the employer procures this employment with another employer or the employee accepts this job with another employer, temporary total compensation shall cease and the employee shall, if appropriate, receive impairment compensation pursuant to subdivision 3b. This impairment compensation is in lieu of economic recovery compensation under subdivision 3a, and the employee shall not receive both economic recovery compensation and impairment compensation. Temporary total compensation and impairment compensation shall not be paid concurrently. Once temporary total compensation ceases no further temporary total compensation is payable except as specifically provided by this section.

(c) Upon receipt of a written medical report indicating that the employee has reached maximum medical improvement, the employer or insurer shall serve a copy of the report upon the employee and shall file a copy with the division. The beginning of the 90-day period shall commence on the day this report is served on the employee for the purpose of determining whether a job offer consistent with the requirements of this subdivision is made. A job offer may be made before the employee reaches maximum medical improvement.

(d) The job which is offered or procured by the employer or accepted by the employee under clause (b) does not necessarily have to commence immediately but shall commence within a reasonable period after the end of the 90-day period described in clause (a). Temporary total compensation shall not cease under this subdivision until the job commences.

(e) If the job offered under clause (a) is not the job the employee had at the time of injury it shall be offered in writing and shall state the nature of the job, the rate of pay, the physical requirements of the job, and any other information necessary to fully and completely inform the employee of the job duties and responsibilities.

The employee has 14 calendar days to accept or reject the job offer. If the employee does not respond within this period it is deemed a refusal of the offer. Where there is an administrative conference to determine suitability under section 176.242, the period begins to run on the date of the commissioner's decision.

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(f) Self-employment may be an appropriate job under this subdivision.

The commissioner shall monitor application of this subdivision and may adopt rules to assure its proper application.

Sec. 6. Minnesota Statutes 1984, section 176.101, subdivision 3i, is amended to read:

Subd. 3i. **LAY OFF BECAUSE OF LACK OF WORK OR RELEASED FOR OTHER THAN SEASONAL CONDITIONS.** (a) If an employee accepts a job under subdivision 3e and begins work at that job and is subsequently unemployed at that job because of economic conditions, other than seasonal conditions, the employee shall receive monitoring period compensation pursuant to clause (b). In addition, the employer who was the employer at the time of the injury shall provide rehabilitation consultation by a qualified rehabilitation consultant if the employee remains unemployed for 45 calendar days. The commissioner may waive this rehabilitation consultation if the commissioner deems it appropriate. Further rehabilitation, if deemed appropriate, is governed by section 176.102.

(b) Upon the employee's initial return to work the monitoring period begins to run. If the employee is unemployed for the reason in clause (a), prior to the end of the monitoring period the employee shall receive monitoring period compensation. This compensation shall be paid for the lesser of until (1) the weeks remaining in the monitoring period expires, or (2) the weeks equal to the monitoring period minus the impairment compensation paid to the employee. For purposes of this clause the impairment compensation shall be converted to weeks by dividing the impairment compensation received by the employee by the employee's compensation rate for temporary total disability at the time of the injury the sum of monitoring period compensation paid and impairment compensation paid or payable is equal to the amount of economic recovery compensation that would have been paid if that compensation were payable, whichever occurs first. No monitoring period compensation is payable if the unemployment occurs after the expiration of the monitoring period. Monitoring period compensation is payable at the same intervals and ~~in~~ at the same amount rate as when temporary total compensation ceased, provided that the minimum monitoring period compensation rate is 66-2/3 percent of the weekly wage for permanent partial disability as determined by section 176.011, subdivision 18 and subject to the maximums specified therein.

(c) Compensation under this subdivision shall not be escalated pursuant to section 176.645.

(d) If the employee returns to work and is still receiving monitoring period compensation, this compensation shall cease. Any period remaining in the monitoring period upon this return to work shall be used to determine further benefits if the employee is again unemployed under clause (a).

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(e) Upon the employee's return to work pursuant to this section the insurer shall notify the employee of the length of the employee's monitoring period and shall notify the employee of the amount of impairment to be paid and the date of payment.

Sec. 7. Minnesota Statutes 1984, section 176.101, subdivision 3t, is amended to read:

Subd. 3t. **MINIMUM ECONOMIC RECOVERY COMPENSATION.**

(a) Economic recovery compensation pursuant to this section shall be at least 120 percent of the impairment compensation the employee would receive if that compensation were payable to the employee. ~~The monitoring period shall be at least 120 percent of the weeks during which impairment compensation would be payable if paid weekly.~~

(b) Where an employee has suffered a personal injury for which temporary total compensation is payable but which produces no permanent partial disability and the employee is unable to return to his former employment for medical reasons attributable to the injury, the employee shall receive 26 weeks of economic recovery compensation. This paragraph shall not be used to determine monitoring period compensation under subdivision 3i and shall not be a minimum for determining the amount of compensation when an employee has suffered a permanent partial disability.

Sec. 8. Minnesota Statutes 1984, section 176.102, subdivision 3, is amended to read:

Subd. 3. **REVIEW PANEL.** There is created a rehabilitation review panel composed of the commissioner or a designee, who shall serve as an ex officio member and two members each from employers, insurers, rehabilitation, and medicine, one member representing chiropractors, and four members representing labor. The members shall be appointed by the commissioner 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 review and make a determination with respect to (a) appeals regarding eligibility for rehabilitation services, rehabilitation plans and rehabilitation benefits under subdivisions 9 and 11; (b) appeals on any other rehabilitation issue the commissioner determines under this section; and (c) appeals regarding fee disputes, penalties, discipline, certification approval or revocation of registration of qualified rehabilitation consultants and approved vendors. The panel shall continuously study rehabilitation services and delivery and develop and recommend rehabilitation rules to the commissioner.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one labor member, one employer or insurer member, and one member representing medicine, chiropractic, or rehabilitation.

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Sec. 9. Minnesota Statutes 1984, section 176.102, subdivision 8, is amended to read:

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

(a) a physical impairment that does not allow the employee to pursue the rehabilitation plan;

(b) the employee's performance level indicates the plan will not be successfully completed;

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

(d) that the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives.

An employee may request a change in a rehabilitation plan once because the employee feels ill-suited for the type of work for which rehabilitation is being provided. If the rehabilitation plan includes retraining, this request must be made within 90 days of the beginning of the retraining program. Any decision of the commissioner regarding a change in a plan may be appealed to the rehabilitation review panel within 30 days of the decision.

Sec. 10. Minnesota Statutes 1984, section 176.103, subdivision 3, is amended to read:

Subd. 3. **MEDICAL SERVICES REVIEW BOARD; SELECTION; POWERS.** (a) There is created a medical services review board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person representing hospital administrators, and six physicians representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers or insurers, and one person representing the general public. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board shall appoint from among its clinical members a clinical advisory subcommittee on clinical quality and a clinical advisory subcommittee on clinical cost containment. Each subcommittee shall consist of at least three members one of whom shall be a member who is not a chiropractor or licensed physician.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one chiropractor, one hospital administrator, three physicians, one employee representative, one employer or insurer representative, and one representative of the general public.

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The clinical quality subcommittee shall review clinical results for adequacy and recommend to the commissioner scales for disabilities and apportionment.

The clinical cost containment subcommittee shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The subcommittees shall make regular reports to the board and the commissioner which shall evaluate the reports for the purpose of determining whether or not a particular health care provider continues to qualify for payment under chapter 176 or is subject to any other sanctions or penalties authorized under this section and to determine whether an employee has been off work longer than necessary.

In evaluating the clinical consequences of the services provided to an employee by a clinical health care provider, the board shall consider the following factors in the priority listed:

- (1) the clinical effectiveness of the treatment;
- (2) the clinical cost of the treatment; and
- (3) the length of time of treatment.

In its consideration of these factors, the board shall utilize the information and recommendations developed by the subcommittees. In addition, the board shall utilize any other data developed by the subcommittees pursuant to the duties assigned to the subcommittees under this section.

After making a determination, the board shall submit its recommendation in writing to the commissioner. The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

(b) The board shall appoint three of its members to hear appeals from decisions of the commissioner regarding quality control and supervision of medical care; any other disputes regarding medical, surgical, and hospital care; decisions regarding the eligibility of medical providers to receive payments; or any other determinations of the commissioner pursuant to subdivision 2. The three-member panel shall be composed of one member who does not represent a health care specialty, one member who represents the same specialty as the specialty at issue or, if the same specialty is not available, one member whose specialty is as close as possible considering the board's composition, and one member representing a different specialty. The three-member panel shall conduct a hearing in the same manner, giving the same notice and following other procedures required of the rehabilitation review panel in section 176.102, subdivision 3a. A majority vote of the three-member panel constitutes the decision of the full board. This decision may be appealed to the workers' compensation court of appeals.

(c) In any situation where a conflict of interest prevents the appointment of a full three-member panel or in any other situation where the commissioner

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deems it necessary to resolve a conflict of interest, the commissioner may appoint a temporary substitute board member to serve until the situation creating the conflict of interest has been resolved.

(d) The board may adopt rules of procedure. The rules may be joint rules with the rehabilitation review panel.

Sec. 11. Minnesota Statutes 1984, section 176.136, is amended by adding a subdivision to read:

Subd. 5. PERMANENT RULES. Where permanent rules have been adopted to implement this section, the commissioner shall annually give notice in the State Register of the 75th percentile to meet the requirements of subdivision 1. The notice shall be in lieu of the requirements of chapter 14 if the 75th percentile for the service meets the requirements of paragraphs (a) to (e).

(a) The data base includes at least three different providers of the service.

(b) The data base contains at least 20 billings for the service.

(c) The standard deviation as a percentage of the mean of billings for the service is 50 percent or less.

(d) The means of the Blue Cross and Blue Shield data base and of the department of human services data base for the service are within 20 percent of each other.

(e) The data is taken from the data base of Blue Cross and Blue Shield or the department of human services.

Sec. 12. Minnesota Statutes 1984, section 176.138, is amended to read:

176.138 **MEDICAL DATA; ACCESS.**

Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the department of labor and industry, shall not require prior approval of any party to the claim. This section does not preclude the release of medical data under section 175.10 or 176.231, subdivision 9. Requests for pertinent data shall be made in writing to the person or organization that collected or currently possesses the data. The data shall be provided by the collector or possessor within seven working days of receiving the request. In all cases of a request for the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made. This data shall be treated as private data by the party who requests or receives the data and the employee or the employee's attorney shall be provided with a copy of all data requested by the requester.

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Medical data which is not directly related to a current injury or disability shall not be released without prior authorization of the employee.

The commissioner may impose a penalty of up to \$200 payable to the special compensation fund against a party who does not release the data in a timely manner. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor. This section applies only to written medical data which exists at the time the request is made.

Sec. 13. Minnesota Statutes 1984, section 176.191, subdivision 3, is amended to read:

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 up to the limits of the applicable coverage and shall make any disability payments otherwise payable by that insurer in the absence of or in addition to workers' compensation liability. 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 payments made under this subdivision by the insurer, including interest at a rate of 12 percent a year. If a payment pursuant to this subdivision exceeds the reasonable value as permitted by sections 176.135 and 176.136, the provider shall reimburse the workers' compensation insurer for all the excess as provided by rules promulgated by the commissioner.

Sec. 14. Minnesota Statutes 1984, section 176.191, subdivision 5, is amended to read:

Subd. 5. Where a dispute exists between an employer, insurer, the special compensation fund, the reopened case fund, or the workers' compensation reinsurance association, regarding benefits payable under this chapter, the dispute may be submitted with consent of all interested parties to binding arbitration pursuant to the rules of the American arbitration association. The decision of the arbitrator shall be conclusive with respect to all issues presented except as provided in subdivisions 6 and 7. Consent of the employee is not required for submission of a dispute to arbitration pursuant to this section and the employee is not bound by the results of the arbitration. An arbitration award shall not be admissible in any other proceeding under this chapter. Notice of the proceeding shall be given to the employee.

The employee, or any person with material information to the facts to be arbitrated, shall attend the arbitration proceeding if any party to the proceeding deems it necessary. Nothing said by an employee in connection with any arbitration proceeding may be used against the employee in any other proceeding under this chapter. Reasonable expenses of meals, lost wages, and travel of the employee or witnesses in attending shall be reimbursed on a pro rata basis.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Arbitration costs shall be paid by the parties, except the employee, on a pro rata basis.

Sec. 15. [176.2421] RECOMMENCEMENT OF TEMPORARY TOTAL; CONFERENCE.

Subdivision 1. WHEN RIGHT ACCRUES. Following the receipt of temporary total compensation, an employee who has returned to work but is unable to continue working for at least 14 days because of medical reasons associated with the injury has a right to an administrative conference under this section to determine whether compensation shall be recommenced.

Subd. 2. WHEN HELD. A request for an administrative conference under this section shall be made within ten calendar days after the employee ceased working. The commissioner shall schedule an administrative conference within ten calendar days after receiving a timely request. The conference shall be held in accordance with section 176.243, subdivision 4, and the provisions of section 176.243, subdivisions 5 to 7, are applicable.

Sec. 16. Minnesota Statutes 1984, section 176.511, subdivision 1, is amended to read:

Subdivision 1. PARTIES NOT AWARDED COSTS. Except as provided otherwise by this chapter and specifically by this section, in appeals before the workers' compensation court of appeals or hearings before a compensation judge, the rehabilitation review panel, or the medical services review board costs shall not be awarded to either party.

Sec. 17. Minnesota Statutes 1984, section 176.511, subdivision 2, is amended to read:

Subd. 2. DISBURSEMENTS, TAXATION. The compensation judge, the commissioner on behalf of the rehabilitation review panel or the medical services review board or on appeals to the workers' compensation court of appeals, the workers' compensation court of appeals may award the prevailing party reimbursement for actual and necessary disbursements. These disbursements shall be taxed upon five days written notice to adverse parties.

Sec. 18. Minnesota Statutes 1984, section 176.66, subdivision 10, is amended to read:

Subd. 10. MULTIPLE EMPLOYERS OR INSURERS; LIABILITY. The employer liable for the compensation for a personal injury under this chapter is the employer in whose employment the employee was last exposed in a significant way to the hazard of the occupational disease. In the event that the employer who is liable for the compensation had multiple insurers during the employee's term of employment, the insurer who was on the risk during the employee's last significant exposure to the hazard of the occupational disease is the liable party. ~~If this last employer had coverage for workers' compensation~~

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liability from more than one insurer during the employment, the insurer on the risk during the last period during which the employee was last exposed to the hazard of the occupational disease shall pay benefits as provided under section 176.191, subdivision 1, whether or not this insurer was on risk during the last significant exposure. The party making payments under this section shall be reimbursed by the party who is subsequently determined to be liable for the occupational disease, including interest at a rate of 12 percent a year. For purposes of this section, a self-insured employer shall be considered to be an insurer and an employer. Where there is a dispute as to which employer is liable under this section, the employer in whose employment the employee is last exposed to the hazard of the occupational disease shall pay benefits pursuant to section 176.191, subdivision 1. If this last employer had coverage for workers' compensation liability from more than one insurer during the employment the insurer on the risk during the last period during which the employee was last exposed to the hazard of the occupational disease shall pay benefits as provided under section 176.191, subdivision 1, whether or not this insurer was on risk during the last significant exposure. The party making payments under this section shall be reimbursed by the party who is subsequently determined to be liable for the occupational disease, including interest at a rate of 12 percent a year. For purposes of this section, a self-insured employer shall be considered to be an insurer and an employer.

Sec. 19. Minnesota Statutes 1984, section 352E.03, is amended to read:

352E.03 WORKERS' COMPENSATION COURT OF APPEALS COURTS.

Eligibility to receive benefits as herein provided shall be determined by the workers' compensation court of appeals courts in the manner provided by chapter 176. A decision of the workers' compensation court of appeals hereunder may be reviewed by the Minnesota supreme court in the same manner and subject to the same procedures governing all other appeals from the decisions of the workers' compensation court of appeals. The time limitation for commencing an action under this chapter is determined by section 176.151, clause (2).

Sec. 20. TRANSFER OF POWER.

The duties and responsibilities of the department of commerce under Minnesota Statutes 1984, sections 79.34 to 79.40, except section 79.34, subdivision 3, are hereby transferred to the department of labor and industry.

Sec. 21. INSTRUCTIONS TO THE REVISOR.

The revisor of statutes shall substitute the term "commissioner of labor and industry" or "department of labor and industry" or similar terms as appropriate for the terms "commissioner of commerce" or "department of commerce" or similar terms wherever they appear in Minnesota Statutes, sections 79.34 to 79.40, except section 79.34, subdivision 3.

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Sec. 22. REPEALER.

Minnesota Statutes 1984, sections 176.081, subdivision 4; and 176.134, are repealed.

Sec. 23. EFFECTIVE DATE.

Section 2 is effective on June 1, 1985. Within 30 days thereafter, the insurer members of the reinsurance association shall elect directors to replace those whose terms expire within the next year; the self-insurer members of the association shall elect two directors to replace the present self-insurer representative and an employer representative whose term expires within the next year; the commissioner of labor and industry shall appoint a public director to replace an employer director whose term expires in 1986 and an employer director to replace an employer director whose term expires in 1986; the commissioner of finance, or the commissioner's designee, shall replace an employee director whose term expires within the next year; and the executive director of the state board of investment, or the executive director's designee, shall replace an employer representative whose term shall expire in 1987. The remaining directors will be replaced as provided in section 2 as their terms expire.

Sections 20 and 21 are effective the day following final enactment.

Sec. 24. EFFECTIVE DATE.

Sections 3, 5 to 14, 16 to 19, and 22 are effective the day after final enactment. Section 15 is effective July 1, 1985.

Became law without the governor's signature May 22, 1985

CHAPTER 235 — S.F.No. 1088

An act relating to the revenue recapture act; including the University of Minnesota in the definition of claimant agency; amending Minnesota Statutes 1984, sections 270A.02; and 270A.03, subdivision 2.

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

Section 1. Minnesota Statutes 1984, section 270A.02, is amended to read:

270A.02 PURPOSE.

The purpose of this chapter is to establish a system of collecting debts owed to state government, the University of Minnesota, or to certain local governmental units by applying any of the debtor's tax refunds to the amount of his debt. To further this purpose a policy of cooperation is established between

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