

fence, it is a controversy under that section. A decision by the fence viewers of a controversy relating to a partition fence may include an assignment of shares of the cost of construction, repair, or maintenance of a partition fence in accordance with the need and benefit of each party. Except as provided in this section, all other controversies relating to partition fences shall conform to chapter 344.

## Sec. 2. LOCAL APPROVAL.

This act is effective the day after the St. Louis county board complies with Minnesota Statutes, section 645.021, subdivision 3.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 1:48 p.m.

## CHAPTER 520—H.F.No. 1980

*An act relating to insurance; clarifying interest on accidental death benefits; regulating the structure and functions of the Minnesota automobile insurance plan; amending Minnesota Statutes 1990, sections 61A.011, by adding a subdivision; 65B.01; 65B.02, subdivisions 1, 4, and 7; 65B.03, subdivision 1; 65B.04, subdivisions 3, 4, and by adding a subdivision; 65B.05; 65B.06; 65B.07, subdivision 4; 65B.08, subdivisions 1 and 2; 65B.09; 65B.10; and 65B.12, subdivision 1; repealing Minnesota Statutes 1990, sections 65B.04, subdivisions 1 and 2; and 65B.07, subdivision 2.*

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

Section 1. Minnesota Statutes 1990, section 61A.011, is amended by adding a subdivision to read:

Subd. 7. ACCIDENTAL DEATH BENEFITS. Payments of accidental death benefits under an individual or group policy, whether payable in connection with a separate policy issued solely to provide that type of coverage or otherwise, are subject to this section. If the applicable rate of interest cannot be determined as provided in this section, the rate of interest for purposes of subdivision 1 is the rate provided in section 549.09, subdivision 1, paragraph (c).

Sec. 2. Minnesota Statutes 1990, section 65B.01, is amended to read:

### 65B.01 PURPOSES, CONSTRUCTION AND SCOPE.

Subdivision 1. **PURPOSE.** The purposes of ~~Laws 1971, chapter 813 sections 65B.01 to 65B.12~~ are to provide the guarantee that automobile insurance coverage will be available to any person who is unable to procure such insurance through ordinary methods by providing a facility for the placement of automobile insurance risks with insurers, and to preserve to the public the benefits of

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price competition by encouraging maximum use of the normal private insurance system. ~~Laws 1971, chapter 813~~ Sections 65B.01 to 65B.12 shall be liberally construed to effect the purposes stated.

Subd. 2. **SCOPE AND MEMBERSHIP.** Every insurer authorized to write ~~and writing~~ automobile ~~bodily injury liability, property damage~~ liability or physical damage insurance in this state, as a condition precedent to being licensed or to retain such license to write such insurance in this state, shall be a member of the facility and shall participate therein under the terms and provisions of ~~Laws 1971, chapter 813.~~ Every such insurer shall be a member of such a facility on a date specified by the commissioner of commerce sections 65B.01 to 65B.12.

Sec. 3. Minnesota Statutes 1990, section 65B.02, subdivision 1, is amended to read:

Subdivision 1. Unless the language or context clearly indicates a different meaning is intended, the following terms shall, for the purposes of ~~Laws 1971, chapter 813~~ sections 65B.01 to 65B.12, have the meanings ascribed to them.

Sec. 4. Minnesota Statutes 1990, section 65B.02, subdivision 4, is amended to read:

Subd. 4. "Participating Member" means an insurer who is required by ~~Laws 1971, chapter 813~~ sections 65B.01 to 65B.12, to be a member of the facility ~~and who in the second preceding calendar year, has written automobile insurance in this state.~~

Sec. 5. Minnesota Statutes 1990, section 65B.02, subdivision 7, is amended to read:

Subd. 7. "Participation ratio" means the ratio of the ~~participating~~ member's Minnesota premiums, or other measure of business written approved by the commissioner, in relation to the comparable statewide totals for all ~~participating~~ members.

(1) For private passenger nonfleet automobile insurance coverages the participation ratio shall be based on voluntary car years written in this state for the calendar year ending December 31 of the second prior year, as reported by the statistical agent of each ~~participating~~ member as private passenger nonfleet exposures.

(2) For insurance coverages on all other automobiles, including insurance for fleets, commercial vehicles, public vehicles and garages, the ratio shall be based on the total Minnesota gross, direct automobile insurance premiums written, including both policy and membership fees less return premiums and premiums on policies not taken, without including reinsurance assumed and without deducting reinsurance ceded, and less the amount of such premiums reported as received for insurance on private passenger nonfleet vehicles, for the calendar year ending December 31 of the second prior year.

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(3) For the purpose of determining each ~~participating~~ member's responsibility for expenses and assessments, the ratio shall be based on each ~~participating~~ member's total Minnesota car years and gross, direct premiums written, including both policy and membership fees less return premiums and premiums on policies not taken, without including reinsurance assumed and without deducting reinsurance ceded, for the calendar year ending December 31 of the second prior year, provided, however, that the preliminary determination of each ~~participating~~ member's responsibility for expenses and assessments may use the calendar year ending December 31 of the third prior year.

Sec. 6. Minnesota Statutes 1990, section 65B.03, subdivision 1, is amended to read:

Subdivision 1. **MEMBERSHIP.** ~~The commissioner shall direct that An election must be held among every insurer subject to ~~this chapter sections 65B.01 to 65B.12,~~ for the election of insurer representatives on the facility governing committee. The governing committee shall be made up of nine individuals, five of whom shall be elected by ~~participating~~ members of the facility and four who shall be public members. Public members may include licensed insurance agents. The public members shall be appointed by the commissioner. ~~Each insurer member of the governing committee shall be a participating member.~~ The term of office for members of the governing committee is two years.~~

Each ~~participating~~ member serving on the governing committee shall be represented by a salaried employee of that ~~participating~~ member, and not more than one ~~participating~~ member in a group under the same management shall serve on the governing committee at the same time.

Sec. 7. Minnesota Statutes 1990, section 65B.04, is amended by adding a subdivision to read:

Subd. 1a. PLAN. The plan of operation consists of the operation procedures of the facility.

Sec. 8. Minnesota Statutes 1990, section 65B.04, subdivision 3, is amended to read:

Subd. 3. **AMENDMENTS.** The plan of operation may be amended by a majority vote of the governing committee, the approval of the commissioner and ratification by a majority of the ~~participating~~ members. An order by the commissioner disapproving an amendment to the plan of operation must be issued within 30 days of receipt by the commissioner of the proposed amendment, certified by the governing committee as having been adopted by that committee by a majority vote, or the amendment shall be deemed approved by the commissioner. An order of disapproval may be ~~reviewed as provided in subdivision 4~~ and appealed as provided in chapter 14.

Sec. 9. Minnesota Statutes 1990, section 65B.04, subdivision 4, is amended to read:

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Subd. 4. **ADHERENCE TO PLAN.** Every insurer authorized to write ~~and writing~~ automobile bodily injury liability, property damage liability or physical damage insurance in this state, as a condition to maintaining its authorization to transact the business of insurance in this state, shall adhere to the plan of operation.

Sec. 10. Minnesota Statutes 1990, section 65B.05, is amended to read:

**65B.05 POWER OF FACILITY, GOVERNING COMMITTEE.**

The governing committee shall have the power to direct the operation of the facility in all pursuits consistent with the purposes and terms of ~~Laws 1974, chapter 843~~ sections 65B.01 to 65B.12, including but not limited to the following:

(1) To sue and be sued in the name of the facility and to assess each ~~participating~~ member in accord with its participation ratio to pay any judgment against the facility as an entity, provided, however, that no judgment against the facility shall create any liabilities in one or more ~~participating~~ members disproportionate to their participation ratio or an individual representing ~~participating~~ members on the governing committee.

(2) To delegate ministerial duties, to hire a manager and to contract for goods and services from others.

(3) To assess ~~participating~~ members on the basis of participation ratios to cover anticipated costs of operation and administration of the facility.

(4) To impose limitations on cancellation or nonrenewal by ~~participating~~ members of insureds covered pursuant to placement through the facility in addition to the limitations imposed by chapter 72A and sections 65B.13 to 65B.21.

Sec. 11. Minnesota Statutes 1990, section 65B.06, is amended to read:

**65B.06 DISTRIBUTION OF RISKS; COVERAGE.**

Subdivision 1. With respect to private passenger, nonfleet automobiles, the facility shall provide for the equitable distribution of qualified applicants to ~~participating~~ members in accordance with the participation ratio.

Subd. 2. With respect to private passenger, nonfleet automobiles, the facility shall provide for the issuance of policies of automobile insurance by ~~participating~~ members with coverage as follows:

(1) Bodily injury liability and property damage liability coverage in the minimum amounts specified in section 65B.49, subdivision 3;

(2) Uninsured ~~motorists coverage~~ and underinsured motorist coverages as required by section 65B.49, ~~subdivision 4~~ subdivisions 3a and 4a;

(3) A reasonable selection of higher limits of liability coverage up to

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\$50,000 because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to \$100,000 because of bodily injury to or death of two or more persons in any one accident, and up to \$25,000 because of injury to or destruction of property of others in any one accident, or higher limits of liability coverage as recommended by the governing committee and approved by the commissioner;

(4) Basic economic loss benefits, as required by section 65B.44, and other optional coverages as recommended by the governing committee and approved by the commissioner; and

(5) Automobile physical damage coverage, including coverage of loss by collision, subject to ~~optional deductibles~~ deductible options.

~~No coverage available under clause (5) shall be provided by a carrier that has been licensed to provide the coverage made available under clause (1) or (2), unless the qualified applicant has requested coverage pursuant to clause (1) or (2) as well as physical damage coverage. If a qualified applicant requests only physical damage coverage, the coverage shall be provided by an insurer not writing the coverage specified in clauses (1) and (2).~~

Subd. 3. With respect to all automobiles not included in subdivisions 1 and 2, the facility shall provide:

(1) Only the insurance coverage required by law;

(2) For the equitable distribution of qualified applicants for this coverage among the ~~participating~~ members in accord with the applicable participation ratio; and

(3) For a school district or contractor transporting school children under contract with a school district, that amount of automobile liability insurance coverage, not to exceed \$1,000,000, required by the school district by resolution or contract, or that portion of such \$1,000,000 of coverage for which the school district or contractor applies and for which it is eligible under section 65B.10.

Subd. 4. Coverage made available under this section shall be the standard automobile policy and endorsement forms, as approved by the commissioner, with such changes, additions and amendments as are adopted by the governing committee and approved by the commissioner.

Sec. 12. Minnesota Statutes 1990, section 65B.07, subdivision 4, is amended to read:

Subd. 4. The facility shall provide an annual financial statements statement on the facility's operation to the commissioner, and shall provide an annual report of operations to the commissioner and to all ~~participating~~ members ~~and to the commissioner so requesting.~~

Sec. 13. Minnesota Statutes 1990, section 65B.08, subdivision 1, is amended to read:

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Subdivision 1. **FILING.** As agent for ~~participating~~ members, the facility shall file with the commissioner all manuals of classification, all manuals of rules and rates, all rating plans, and any modifications of same, proposed for use for private passenger nonfleet automobile insurance placed through the facility. The classifications, rules and rates and any amendments thereto shall be subject to prior written approval by the commissioner. Rates, surcharge points, and increased limits factors filed by the facility shall not be excessive, inadequate, or unfairly discriminatory. No other entity, service or organization shall make filings for the facility or the ~~participating~~ members to apply to insurance placed through the facility.

Sec. 14. Minnesota Statutes 1990, section 65B.08, subdivision 2, is amended to read:

Subd. 2. **USE OF RATES.** Every ~~participating~~ member shall be authorized to use the rates and rules approved by the commissioner for use by the facility on business placed through the facility, and shall use no other rates on ~~private passenger nonfleet~~ automobiles placed through the facility.

Sec. 15. Minnesota Statutes 1990, section 65B.09, is amended to read:

**65B.09 AGENTS.**

Subdivision 1. **AGENTS' RESPONSIBILITY.** Every ~~agent person licensed under section 60A.17~~ who is authorized to solicit, negotiate or effect automobile insurance on behalf of any ~~participating~~ member shall:

(1) Offer to place coverage through the facility for any qualified applicant who is ineligible or unacceptable for coverage in the insurer or insurers for whom the agent is authorized to solicit, negotiate or effect automobile insurance. Provided, that the failure of an agent to make such an offer to a qualified applicant shall not subject the agent to any liability to the applicant;

(2) Forward to the facility all applications and any deposit premiums which are required by the plan of operation, rules and procedures of the facility, if the qualified applicant accepts the offer to have coverage placed through the facility;

(3) Be entitled to receive a ~~commission~~ compensation for placing insurance through the facility at the uniform rates of ~~commission~~ compensation as provided in the plan of operation, and all ~~participating~~ members shall be entitled to pay ~~commissions~~ to such ~~agents~~ compensation.

Subd. 2. **AGENTS' CONTRACTS.** A ~~participating~~ member may not include the premiums and losses incurred from risks insured through the facility in determining the loss ratio of any of its agents, or otherwise use the experience from such risks as cause for altering the relationship between the ~~participating~~ member and its agent.

Sec. 16. Minnesota Statutes 1990, section 65B.10, is amended to read:

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**65B.10 ELIGIBILITY.**

Subdivision 1. **ELIGIBILITY FOR COVERAGE.** To be eligible for coverage through the facility an otherwise qualified applicant must have been rejected, canceled or refused renewal with respect to automobile insurance by a ~~participating~~ member.

Subd. 2. **TERMINATION OF ELIGIBILITY.** Eligibility for placement through the facility will terminate if an insured is offered equivalent coverage in the voluntary market at a rate lower than the facility rate. If the ~~participating~~ member that is required to provide coverage by the facility makes such an offer after giving 30 days' advance written notice to the agent of record before making the offer, the ~~participating~~ member shall have no further obligation to the agent of record.

Subd. 3. **REVIEW OF INSUREDS.** At least annually, every ~~participating~~ member shall review every applicant which it insures through the facility and determine whether or not such applicant is acceptable for voluntary insurance at a rate lower than the facility rate. If such applicant is acceptable, the ~~participating~~ member shall make an offer to insure the applicant under voluntary coverage at such lower rate.

Sec. 17. Minnesota Statutes 1990, section 65B.12, subdivision 1, is amended to read:

Subdivision 1. Any ~~participating~~ member, applicant or person insured under a policy placed through the facility may request a formal hearing and ruling by the governing committee on any alleged violation of the plan of operation or any alleged improper act or ruling of the facility. The request for hearing must be filed within 30 days after the date of the alleged act or decision.

**Sec. 18. REPEALER.**

Minnesota Statutes 1990, sections 65B.04, subdivisions 1 and 2; and 65B.07, subdivision 2, are repealed.

**Sec. 19. EFFECTIVE DATE.**

Section 1 is effective the day following final enactment for accidental death benefits payable on deaths that occur on or after that date.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 1:49 p.m.

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