secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a vehicle is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor took reasonable steps to terminate use of the vehicle by the offender.

(d) A motor vehicle is subject to forfeiture under this section only if its owner knew or should have known of the unlawful use or intended use.

(e) A vehicle subject to a security interest, based upon a loan or other financing arranged by a financial institution, is subject to the interest of the financial institution.

Sec. 10. Minnesota Statutes 1994, section 171.30, subdivision 3, is amended to read:

Subd. 3. **CONDITIONS ON ISSUANCE.** The commissioner shall issue a limited license restricted to the vehicles whose operation is permitted only under a Class A, Class B, or Class CC license whenever a Class A, Class B, or Class CC license has been suspended under section 171.18, or revoked under section 171.17, for violation of the highway traffic regulation act committed in a private passenger motor vehicle. This subdivision shall not apply to any persons described in section 171.04, subdivision 1, clauses (4), (5), (6), (8), (9), and (11), or any person whose license or privilege has been suspended or revoked for a violation of section 169.121 or 169.123, or a statute or ordinance from another state in conformity with either of those sections.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 8, and 10 are effective August 1, 1995, and apply to designated offenses committed on or after that date.

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 8:44 a.m.

CHAPTER 231—H.F.No. 642

An act relating to workers' compensation; modifying provisions relating to insurance, procedures and benefits; providing penalties; appropriating money; amending Minnesota Statutes 1994, sections 13.69, subdivision 1; 13.82, subdivision 1; 79.074, subdivision 2; 79.085; 79.211, subdivision 1; 79.251, subdivision 2, and by adding a subdivision; 79.253, by adding a subdivision; 79.34, subdivision 2; 79.35; 79.50; 79.51, subdivisions 1 and 3; 79.52, by adding subdivisions; 79.53, subdivision 1; 79.55, subdivisions 2, 5, and by adding subdivi-

sions; 79.56, subdivisions 1 and 3; 79.60, subdivision 1; 79A.01, subdivisions 1, 4, and by adding a subdivision; 79A.02, subdivisions 1, 2, and 4; 79A.03, by adding a subdivision; 79A.04, subdivisions 2 and 9; 79A.09, subdivision 4; 79A.15; 168.012, subdivision 1; 175.16; 176.011, subdivisions 16 and 25; 176.021, subdivisions 3 and 3a; 176.061, subdivision 10; 176.081, subdivisions 1, 7, 7a, 9, and by adding a subdivision; 176.101, subdivisions 1, 2, 4, 5, 6, 8, and by adding a subdivision; 176.102, subdivisions 3a and 11; 176.103, subdivisions 2 and 3; 176.104, subdivision 1; 176.105, subdivision 4; 176.106; 176.129, subdivisions 9 and 10; 176.130, subdivision 9; 176.135, subdivision 1; 176.1351, subdivisions 1 and 5; 176.136, subdivisions 1a, 1b, and 2; 176.138; 176.139, subdivision 2; 176.178; 176.179; 176.181, subdivisions 7 and 8; 176.182; 176.183, subdivisions 1 and 2; 176.185, subdivision 5a; 176.191, subdivisions 1, 5, 8, and by adding a subdivision; 176.194, subdivision 4; 176.215, by adding a subdivision; 176.221, subdivisions 1, 3, 3a, 6a, and 7; 176.225, subdivisions 1 and 5; 176.231, subdivision 10; 176.238, subdivisions 6 and 10; 176.261; 176.2615, subdivision 7; 176.275, subdivision 1; 176.281; 176.285; 176.291; 176.305, subdivision 1a; 176.645; 176.66, subdivision 11; 176.82; 176.83, subdivision 5; 176.84, subdivision 2; and 268.08, subdivision 3; Laws 1994, chapter 625, article 5, section 7; proposing coding for new law in Minnesota Statutes, chapters 79; 79A; 176; and 182; repealing Minnesota Statutes 1994, sections 79.53, subdivision 2; 79.54; 79.56, subdivision 2; 79.57; 79.58; 176.011, subdivision 26; 176.081, subdivisions 2, 5, and 8; 176.101, subdivisions 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3k, 3l, 3m, 3n, 3o, 3p, 3q, 3r, 3s, 3t, and 3u; 176.103, subdivision 2a; 176.132; 176.133; 176.191, subdivision 2; 176.232; and 176.86; Laws 1990, chapter 521, section 4.

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

ARTICLE 1

Section 1. Minnesota Statutes 1994, section 79.50, is amended to read:

79.50 **PURPOSES.**

The purposes of chapter 79 are to:

(a) Promote public welfare by regulating insurance rates so that premiums are not excessive, inadequate, or unfairly discriminatory;

(b) Promote quality and integrity in the databases used in workers' compensation insurance ratemaking;

(c) Prohibit price fixing agreements and anticompetitive behavior by insurers;

(d) ~~Promote price competition and provide rates that are responsive to competitive market conditions;~~

~~(e) Provide a means of establishment of proper rates if competition is not effective;~~

~~(f)~~ Define the function and scope of activities of data service organizations;

~~(g) Provide for an orderly transition from regulated rates to competitive market conditions;~~ and

~~(h)~~ (c) Encourage insurers to provide alternative innovative methods whereby employers can meet the requirements imposed by section 176.181.

Sec. 2. Minnesota Statutes 1994, section 79.51, subdivision 1, is amended to read:

Subdivision 1. **ADOPTION; WHEN.** The commissioner shall adopt rules to implement provisions of this chapter. ~~The rules shall be finally adopted after May 1, 1982. By January 15, 1982, the commissioner shall provide the legislature a description and explanation of the intent and anticipated effect of the rules on the various factors of the rating system.~~

Sec. 3. Minnesota Statutes 1994, section 79.51, subdivision 3, is amended to read:

Subd. 3. **RULES; SUBJECT MATTER.** (a) The commissioner in issuing rules shall consider:

(1) data reporting requirements, including types of data reported, such as loss and expense data;

(2) experience rating plans;

(3) retrospective rating plans;

(4) general expenses and related expense provisions;

(5) minimum premiums;

(6) classification systems and assignment of risks to classifications;

(7) loss development and trend factors;

(8) the workers' compensation reinsurance association;

(9) requiring substantial compliance with the rules mandated by this section as a condition of workers' compensation carrier licensure;

(10) imposing limitations on the functions of workers' compensation data service organizations consistent with the introduction of competition;

(11) the rules contained in the workers' compensation rating manual adopted by the workers' compensation insurers rating association or other licensed data service organizations; ~~and~~

(12) the supporting data and information required in filings under section 79.56, including but not limited to, the experience of the filing insurer and the extent to which the filing insurer relies upon data service organization loss infor-

mation, descriptions of the actuarial and statistical methods employed in setting rates, and the filing insurers interpretation of any statistical data relied upon; and

(13) any other factors that the commissioner deems relevant to achieve the purposes of this chapter.

(b) The rules shall provide for the following:

(1) ~~competition in workers' compensation insurance rates in such a way that the advantages of competition are introduced with a minimum of employer hardship;~~

~~(2)~~ adequate safeguards against excessive or discriminatory rates in workers' compensation;

~~(3)~~ (2) encouragement of workers' compensation insurance rates which are as low as reasonably necessary, but shall make provision against inadequate rates, insolvencies and unpaid benefits;

~~(4)~~ (3) assurances that employers are not unfairly relegated to the assigned risk pool;

~~(5)~~ (4) requiring all appropriate data and other information from insurers for the purpose of issuing rules, making legislative recommendations pursuant to this section ~~and monitoring the effectiveness of competition~~; and

~~(6)~~ (5) preserving a framework for risk classification, data collection, and other appropriate joint insurer services ~~where these will not impede the introduction of competition in premium rates~~.

Sec. 4. Minnesota Statutes 1994, section 79.53, subdivision 1, is amended to read:

Subdivision 1. **METHOD OF CALCULATION.** Each insurer shall establish premiums to be paid by an employer according to its filed rates and rating plan as follows:

Rates shall be applied to an exposure base to yield a base premium which may be further ~~modified~~ increased or decreased up to 25 percent by merit rating, premium discounts, and other appropriate factors contained in the rating plan of an insurer to produce premium if the increase or decrease is not unfairly discriminatory. Nothing in this chapter shall be deemed to prohibit the use of any premium, provided the premium is not excessive, inadequate or unfairly discriminatory.

Sec. 5. Minnesota Statutes 1994, section 79.55, subdivision 2, is amended to read:

Subd. 2. **EXCESSIVENESS.** ~~No premium is excessive in a competitive market. In the absence of a competitive market, premiums~~ Rates and rating

plans are excessive if the expected underwriting profit, together with expected income from invested reserves ~~for the market in question~~, that would accrue to an insurer under the rates and rating plans would be unreasonably high in relation to the risk undertaken by the insurer in transacting the business. The burden is on the insurer to establish that profit is not unreasonably high.

Sec. 6. Minnesota Statutes 1994, section 79.55, subdivision 5, is amended to read:

Subd. 5. **DISCOUNTS PERMITTED.** An insurer may offer a ~~discount from~~ scheduled credit or debit to a manual premium of up to 25 percent if the premium otherwise complies with this section. ~~The commissioner shall not by rule, or otherwise, prohibit a credit or discount from a manual premium solely because it is greater than a certain fixed percentage of the premium.~~

Sec. 7. Minnesota Statutes 1994, section 79.55, is amended by adding a subdivision to read:

Subd. 6. **RATING FACTORS.** In determining whether a rate filing complies with this section, separate consideration shall be given to: (i) past and prospective loss experience within this state and outside this state to the extent necessary to develop credible rates; (ii) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; and (iii) a reasonable allowance for expense and profit. An allowance for expense shall be presumed reasonable if it reflects expenses that are 22.5 percent greater or less than the average expense for all insurers writing workers' compensation insurance in this state. An allowance for after-tax profit shall consider anticipated investment income from premium receipts net of disbursements and from allocated surplus, based on the current five-year United States Treasury note yield and an assumed premium to surplus ratio of 2.25 to one. The allowance for after-tax profit shall be presumed reasonable if the corresponding return on equity target is equal to or less than the sum of: (i) the current yield on five-year United States Treasury securities; and (ii) an appropriate equity risk premium that reflects the risks of writing workers' compensation insurance. The risk premium shall not be less than the average, since 1926, of the differences in return between: (i) the annual return, including dividend income, for the Standards and Poors 500 common stock index or predecessor index for each year; and (ii) the five-year United States Treasury note yield as of the start of the corresponding year. Profit and expense allowances not presumed reasonable under this subdivision, are reasonable if the circumstances of an insurer, the market, or other factors justify them.

Sec. 8. Minnesota Statutes 1994, section 79.55, is amended by adding a subdivision to read:

Subd. 7. **EXTERNAL FACTORS.** That portion of a rate or rating plan related to assessments from the assigned risk plan, reinsurance association, guarantee fund, special compensation fund, agent commission, premium tax and any other state-mandated surcharges shall not cause the rate or rating plan to be considered excessive, inadequate, or unfairly discriminatory.

Sec. 9. Minnesota Statutes 1994, section 79.56, subdivision 1, is amended to read:

Subdivision 1. ~~**AFTER EFFECTIVE DATE**~~ **PREFILING OF RATES.** Each insurer shall file with the commissioner a complete copy of its rates and rating plan, and all changes and amendments thereto, ~~within 15 days after their~~ and such supporting data and information that the commissioner may by rule require, at least 60 days prior to its effective ~~dates~~ date. ~~An insurer need not file a rating plan if it uses a rating plan filed by a data service organization. If an insurer uses a rating plan of a data service organization but deviates from it, then all deviations must be filed by the insurer.~~ The commissioner shall advise an insurer within 30 days of the filing if its submission is not accompanied with such supporting data and information that the commissioner by rule may require. The commissioner may extend the filing review period and effective date for an additional 30 days if an insurer, after having been advised of what supporting data and information is necessary to complete its filing, does not provide such information within 15 days of having been so notified. If any rate or rating plan filing or amendment thereto is not disapproved by the commissioner within the filing review period, the insurer may implement it. For the period August 1, 1995 to December 31, 1995, the filing shall be made at least 90 days prior to the effective date and the department shall advise an insurer within 60 days of such filing if the filing is insufficient under this section.

Sec. 10. Minnesota Statutes 1994, section 79.56, subdivision 3, is amended to read:

Subd. 3. **PENALTIES.** Any insurer using a rate or a rating plan which has not been filed shall be subject to a fine of up to $100 for each day the failure to file continues. The commissioner may, after a hearing on the record, find that the failure is willful. A willful failure to meet filing requirements shall be punishable by a fine of up to $500 for each day during which a willful failure continues. These penalties shall be in addition to any other penalties provided by law. Notwithstanding this subdivision, an employer that generates $500,000 in annual written workers' compensation premium under the rates and rating plan of an insurer before the application of any large deductible rating plans, may be written by that insurer using rates or rating plans that are not subject to disapproval but which have been filed. The $500,000 threshold shall be increased on January 1, 1996, and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, to the nearest $1,000. The commissioner shall advise insurers licensed to write workers' compensation insurance in this state of the annual threshold adjustment.

Sec. 11. **[79.561] DISAPPROVAL OF RATES OR RATING PLANS.**

Subdivision 1. **DISAPPROVAL; TIME PERIOD.** The commissioner may disapprove a rate and rating plan or amendment thereto prior to its effective date, as provided under section 79.56, subdivision 1, if the commissioner determines that it is excessive, inadequate, or unfairly discriminatory. If the commis-

sioner disapproves any rate or rating plan filing or amendment thereto, the commissioner shall advise the filing insurer what rate and rating plan the commissioner has reason to believe would be in compliance with section 79.55, and the reasons for that determination. An insurer may not implement a rate and rating plan or amendment thereto which has been disapproved under this subdivision. If the commissioner disapproves any rate and rating plan filing or amendment thereto, an insurer may use its current rate and rating plan for writing any workers' compensation insurance in this state. Following any disapproval, the commissioner and insurer may reach agreement on a rate or rating plan filing or amendment thereto. Notwithstanding any law to the contrary, in such cases, the rate or rating plan filing or amendment thereto may be implemented by the insurer immediately.

Subd. 2. **HEARING.** If an insurer's rate or rating plan filing or amendment thereto is disapproved under subdivision 1, the insurer may request a contested case hearing under chapter 14. The insurer shall have the burden of proof to justify that its rate and rating plan or amendment thereto is in compliance with section 79.55. The hearing must be scheduled promptly and in no case later than three months from the date of disapproval or else the rate and rating plan or amendment thereto shall be considered effective and may be implemented by the insurer. A determination pursuant to chapter 14 must be made within 90 days following the closing of the hearing record.

Subd. 3. **CONSULTANTS AND COSTS.** The commissioner may retain consultants, including a consulting actuary or other experts, that the commissioner determines necessary for purposes of this chapter. The salary limit set by section 43A.17 does not apply to a consulting actuary retained under this subdivision. A consulting actuary shall be a fellow in the casualty actuarial society and shall have demonstrated experience in workers' compensation insurance ratemaking. Any individual not so qualified shall not render an opinion or testify on actuarial aspects of a filing, including but not limited to, data quality, loss development, and trending. The costs incurred in retaining any consulting actuaries and experts shall be reimbursed by the special compensation fund.

Sec. 12. Minnesota Statutes 1994, section 175.16, is amended to read:

175.16 **DIVISIONS.**

Subdivision 1. **ESTABLISHED.** The department of labor and industry shall consist of the following divisions: division of workers' compensation, division of boiler inspection, division of occupational safety and health, division of statistics, division of steamfitting standards, division of voluntary apprenticeship, division of labor standards, and such other divisions as the commissioner of the department of labor and industry may deem necessary and establish. Each division of the department and persons in charge thereof shall be subject to the supervision of the commissioner of the department of labor and industry and, in addition to such duties as are or may be imposed on them by statute, shall perform such other duties as may be assigned to them by said commissioner.

Subd. 2. **FRAUD INVESTIGATION UNIT.** The department of labor and industry shall contain a fraud investigation unit for the purposes of investigating fraudulent or other illegal practices of health care providers, employers, insurers, attorneys, employees, and others related to workers' compensation and to investigate other matters under the jurisdiction of the department.

An investigator of the fraud investigation unit of the department of labor and industry has the inspection authority of the commissioner provided under section 182.659 and may apply this authority to subjects of investigations under this subdivision.

Sec. 13. Minnesota Statutes 1994, section 176.011, subdivision 25, is amended to read:

Subd. 25. **MAXIMUM MEDICAL IMPROVEMENT.** "Maximum medical improvement" means the date after which no further significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability~~.~~, irrespective and regardless of subjective complaints of pain. Except where an employee is medically unable to continue working under section 176.101, subdivision 1, paragraph (e), clause (2), once the date of maximum medical improvement has been determined, no further determinations of other dates of maximum medical improvement for that personal injury is permitted. The determination that an employee has reached maximum medical improvement shall not be rendered ineffective by the worsening of the employee's medical condition and recovery therefrom.

Sec. 14. Minnesota Statutes 1994, section 176.021, subdivision 3, is amended to read:

Subd. 3. **COMPENSATION, COMMENCEMENT OF PAYMENT.** All employers shall commence payment of compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the division. Except for medical, burial, and other nonperiodic benefits, payments shall be made as nearly as possible at the intervals when the wage was payable, provided, however, that payments for permanent partial disability shall be governed by section 176.101. If doubt exists as to the eventual permanent partial disability, payment ~~for the economic recovery compensation or impairment compensation, whichever is due, pursuant to section 176.101,~~ shall be then made when due for the minimum permanent partial disability ascertainable, and further payment shall be made upon any later ascertainment of greater permanent partial disability. Prior to or at the time of commencement of the payment of ~~economic recovery compensation or lump sum or periodic payment of impairment~~ permanent partial compensation, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based and all other medical reports which the insurer has that indicate a permanent partial disability rating, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. After receipt of all reports available to the insurer that indi-

cate a permanent partial disability rating, the employee shall make available or permit the insurer to obtain any medical report that the employee has or has knowledge of that contains a permanent partial disability rating which the insurer does not already have. ~~Economic recovery compensation or impairment~~ Permanent partial compensation pursuant to section 176.101 is payable in addition to but not concurrently with compensation for temporary total disability but is payable pursuant to section 176.101. Impairment compensation is payable concurrently and in addition to compensation for permanent total disability pursuant to section 176.101. ~~Economic recovery compensation or impairment compensation~~ Permanent partial compensation pursuant to section 176.101 shall be withheld pending completion of payment for temporary total disability, and no credit shall be taken for payment of ~~economic recovery compensation or impairment~~ permanent partial compensation against liability for temporary total or future permanent total disability. Liability on the part of an employer or the insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or occupational disease and compensation is payable accordingly, subject to section 176.101. ~~Economic recovery compensation or impairment~~ Permanent partial compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in addition to payment for any other compensation, subject to section 176.101. The right to receive temporary total, temporary partial, or permanent total disability payments vests in the injured employee or the employee's dependents under this chapter or, if none, in the employee's legal heirs at the time the disability can be ascertained and the right is not abrogated by the employee's death prior to the making of the payment.

The right to receive ~~economic recovery~~ permanent partial compensation ~~or impairment compensation~~ vests in an injured employee at the time the disability can be ascertained provided that the employee lives for at least 30 days beyond the date of the injury. Upon the death of an employee who is receiving economic recovery compensation or impairment compensation, further compensation is payable pursuant to section 176.101. Impairment compensation is payable under this paragraph if vesting has occurred, the employee dies prior to reaching maximum medical improvement, and the requirements and conditions under section 176.101, subdivision 3e, are not met.

Disability ratings for permanent partial disability shall be based on objective medical evidence.

Sec. 15. Minnesota Statutes 1994, section 176.021, subdivision 3a, is amended to read:

Subd. 3a. **PERMANENT PARTIAL BENEFITS, PAYMENT.** Payments for permanent partial disability as provided in section 176.101, subdivision ~~3~~ 2a, shall be made in the following manner:

(a) If the employee returns to work, payment shall be made ~~by lump sum~~ at the same intervals as temporary total payments were made;

(b) If temporary total payments have ceased, but the employee has not returned to work, payment shall be made at the same intervals as temporary total payments were made;

(c) If temporary total disability payments cease because the employee is receiving payments for permanent total disability or because the employee is retiring or has retired from the work force, then payment shall be made ~~by lump sum~~ at the same intervals as temporary total payments were made;

(d) If the employee completes a rehabilitation plan pursuant to section 176.102, but the employer does not furnish the employee with work the employee can do in a permanently partially disabled condition, and the employee is unable to procure such work with another employer, then payment shall be made ~~by lump sum~~ at the same intervals as temporary total payments were made.

Sec. 16. Minnesota Statutes 1994, section 176.061, subdivision 10, is amended to read:

Subd. 10. **INDEMNITY.** Notwithstanding the provisions of chapter 65B or any other law to the contrary, an employer has a right of indemnity for any compensation paid or payable pursuant to this chapter, including temporary total compensation, temporary partial compensation, permanent partial ~~disability, economic recovery compensation, impairment~~ compensation, medical compensation, rehabilitation, death, and permanent total compensation.

Sec. 17. Minnesota Statutes 1994, section 176.101, subdivision 1, is amended to read:

Subdivision 1. **TEMPORARY TOTAL DISABILITY.** (a) For injury producing temporary total disability, the compensation is 66-2/3 percent of the weekly wage at the time of injury.

(b) ~~During the year~~ (1) Commencing on October 1, ~~1992~~ 1995, ~~and each year thereafter,~~ the maximum weekly compensation payable is ~~105 percent of the statewide average weekly wage for the period ending December 31 of the preceding year~~ $615 per week.

(2) The workers' compensation advisory council may consider adjustment increases and make recommendations to the legislature.

(c) The minimum weekly compensation payable is ~~20 percent of the statewide average weekly wage for the period ending December 31 of the preceding year~~ $104 per week or the injured employee's actual weekly wage, whichever is less.

(d) ~~Subject to subdivisions 3a to 3u this~~ Temporary total compensation

shall be paid during the period of disability~~, payment to be made at the intervals when the wage was payable, as nearly as may be~~ subject to the cessation and recommencement conditions in paragraphs (e) to (l).

(e) Temporary total disability compensation shall cease when the employee returns to work. Except as otherwise provided in section 176.102, subdivision 11, temporary total disability compensation may only be recommenced following cessation under this paragraph, paragraph (h), or paragraph (j) prior to payment of 104 weeks of temporary total disability compensation and only as follows:

(1) if temporary total disability compensation ceased because the employee returned to work, it may be recommenced if the employee is laid off or terminated for reasons other than misconduct within one year after returning to work if the layoff or termination occurs prior to 90 days after the employee has reached maximum medical improvement. Recommenced temporary total disability compensation under this clause ceases when any of the cessation events in paragraphs (e) to (l) occurs; or

(2) if temporary total disability compensation ceased because the employee returned to work or ceased under paragraph (h) or (j), it may be recommenced if the employee is medically unable to continue at a job due to the injury. Where the employee is medically unable to continue working due to the injury, temporary total disability compensation may continue until any of the cessation events in paragraphs (e) to (l) occurs following recommencement. If an employee who has not yet received temporary total disability compensation becomes medically unable to continue working due to the injury after reaching maximum medical improvement, temporary total disability compensation shall commence and shall continue until any of the events in paragraphs (e) to (l) occurs following commencement. For purposes of commencement or recommencement under this clause only, a new period of maximum medical improvement under paragraph (j) begins when the employee becomes medically unable to continue working due to the injury. Temporary total disability compensation may not be recommenced under this clause and a new period of maximum medical improvement does not begin if the employee is not actively employed when the employee becomes medically unable to work. All periods of initial and recommenced temporary total disability compensation are included in the 104-week limitation specified in paragraph (k).

(f) Temporary total disability compensation shall cease if the employee withdraws from the labor market. Temporary total disability compensation may be recommenced following cessation under this paragraph only if the employee reenters the labor market prior to 90 days after the employee reached maximum medical improvement and prior to payment of 104 weeks of temporary total disability compensation. Once recommenced, temporary total disability ceases when any of the cessation events in paragraphs (e) to (l) occurs.

(g) Temporary total disability compensation shall cease if the total disability

ends and the employee fails to diligently search for appropriate work within the employee's physical restrictions. Temporary total disability compensation may be recommenced following cessation under this paragraph only if the employee begins diligently searching for appropriate work within the employee's physical restrictions prior to 90 days after maximum medical improvement and prior to payment of 104 weeks of temporary total disability compensation. Once recommenced, temporary total disability compensation ceases when any of the cessation events in paragraphs (e) to (l) occurs.

(h) Temporary total disability compensation shall cease if the employee has been released to work without any physical restrictions caused by the work injury.

(i) Temporary total disability compensation shall cease if the employee refuses an offer of work that is consistent with a plan of rehabilitation filed with the commissioner which meets the requirements of section 176.102, subdivision 4, or, if no plan has been filed, the employee refuses an offer of gainful employment that the employee can do in the employee's physical condition. Once temporary total disability compensation has ceased under this paragraph, it may not be recommenced.

(j) Temporary total disability compensation shall cease 90 days after the employee has reached maximum medical improvement, except as provided in section 176.102, subdivision 11, paragraph (b). For purposes of this subdivision, the 90-day period after maximum medical improvement commences on the earlier of: (1) the date that the employee receives a written medical report indicating that the employee has reached maximum medical improvement; or (2) the date that the employer or insurer serves the report on the employee and the employee's attorney, if any. Once temporary total disability compensation has ceased under this paragraph, it may not be recommenced except if the employee returns to work and is subsequently medically unable to continue working as provided in paragraph (e), clause (2).

(k) Temporary total disability compensation shall cease entirely when 104 weeks of temporary total disability compensation have been paid, except as provided in section 176.102, subdivision 11, paragraph (b). Notwithstanding anything in this section to the contrary, initial and recommenced temporary total disability compensation combined shall not be paid for more than 104 weeks, regardless of the number of weeks that have elapsed since the injury, except that if the employee is in a retraining plan approved under section 176.102, subdivision 11, the 104 week limitation shall not apply during the retraining, but is subject to the limitation before the plan begins and after the plan ends.

(l) Paragraphs (e) to (k) do not limit other grounds under law to suspend or discontinue temporary total disability compensation provided under chapter 176.

Sec. 18. Minnesota Statutes 1994, section 176.101, subdivision 2, is amended to read:

Subd. 2. **TEMPORARY PARTIAL DISABILITY.** (a) In all cases of temporary partial disability the compensation shall be 66-2/3 percent of the difference between the weekly wage of the employee at the time of injury and the wage the employee is able to earn in the employee's partially disabled condition. This compensation shall be paid during the period of disability except as provided in this section, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the maximum rate for temporary total compensation.

(b) ~~Except as provided under subdivision 3k,~~ Temporary partial compensation may be paid only while the employee is employed, earning less than the employee's weekly wage at the time of the injury, and the reduced wage the employee is able to earn in the employee's partially disabled condition is due to the injury. Except as provided in section 176.102, subdivision 11, ~~paragraph~~ paragraphs (b) and (c), temporary partial compensation may not be paid for more than 225 weeks, or after 450 weeks after the date of injury, whichever occurs first.

(c) Temporary partial compensation must be reduced to the extent that the wage the employee is able to earn in the employee's partially disabled condition plus the temporary partial disability payment otherwise payable under this subdivision exceeds 500 percent of the statewide average weekly wage.

Sec. 19. Minnesota Statutes 1994, section 176.101, is amended by adding a subdivision to read:

Subd. 2a. **PERMANENT PARTIAL DISABILITY.** (a) Compensation for permanent partial disability is as provided in this subdivision. Permanent partial disability must be rated as a percentage of the whole body in accordance with rules adopted by the commissioner under section 176.105. The percentage determined pursuant to the rules must be multiplied by the corresponding amount in the following table:

Impairment rating (percent)	Amount
0-25	$ 75,000
26-30	80,000
31-35	85,000
36-40	90,000
41-45	95,000
46-50	100,000
51-55	120,000
56-60	140,000
61-65	160,000
66-70	180,000
71-75	200,000
76-80	240,000
81-85	280,000

86-90	320,000
91-95	360,000
96-100	400,000

An employee may not receive compensation for more than a 100 percent disability of the whole body, even if the employee sustains disability to two or more body parts.

(b) Permanent partial disability is payable upon cessation of temporary total disability under subdivision 1. The compensation is payable in installments at the same intervals and in the same amount as the employee's temporary total disability rate on the date of injury. Permanent partial disability is not payable while temporary total compensation is being paid.

Sec. 20. Minnesota Statutes 1994, section 176.101, subdivision 4, is amended to read:

Subd. 4. **PERMANENT TOTAL DISABILITY.** For permanent total disability, as defined in subdivision 5, the compensation shall be 66-2/3 percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability and a minimum weekly compensation equal to ~~the minimum weekly compensation for a temporary total disability~~ 65 percent of the statewide average weekly wage. This compensation shall be paid during the permanent total disability of the injured employee but after a total of $25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision. This reduction shall also apply to any old age and survivor insurance benefits. Payments shall be made at the intervals when the wage was payable, as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of confinement in the institution, unless there is wholly dependent on the employee for support some person named in section 176.111, subdivision 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of confinement, shall be paid for the benefit of the dependent person during dependency. The dependency of this person shall be determined as though the employee were deceased. Permanent total disability shall cease at age 67 because the employee is presumed retired from the labor market. This presumption is rebuttable by the employee. The subjective statement the employee is not retired is not sufficient in itself to rebut the presumptive evidence of retirement but may be considered along with other evidence.

Sec. 21. Minnesota Statutes 1994, section 176.101, subdivision 5, is amended to read:

Subd. 5. **DEFINITION.** ~~(a)~~ For purposes of subdivision 4, permanent total disability means only:

(1) the total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties; or

(2) any other injury which totally and permanently incapacitates the employee from working at an occupation which brings the employee an income~~.~~, provided that the employee must also meet the criteria of one of the following clauses:

(a) the employee has at least a 17 percent permanent partial disability rating of the whole body;

(b) the employee has a permanent partial disability rating of the whole body of at least 15 percent and the employee is at least 50 years old at the time of injury; or

(c) the employee has a permanent partial disability rating of the whole body of at least 13 percent and the employee is at least 55 years old at the time of the injury, and has not completed grade 12 or obtained a GED certificate.

For purposes of this clause, "totally and permanently incapacitated" means that the employee's physical disability in combination with any one of clauses (a), (b), or (c) causes the employee to be unable to secure anything more than sporadic employment resulting in an insubstantial income. Other factors not specified in clause (a), (b), or (c), including the employee's age, education, training and experience, may only be considered in determining whether an employee is totally and permanently incapacitated after the employee meets the threshold criteria of clause (a), (b), or (c). The employee's age, level of physical disability, or education may not be considered to the extent the factor is inconsistent with the disability, age, and education factors specified in clause (a), (b), or (c).

~~(b) For purposes of paragraph (a), clause (2), "totally and permanently incapacitated" means that the employee's physical disability, in combination with the employee's age, education, training, and experience, causes the employee to be unable to secure anything more than sporadic employment resulting in an insubstantial income.~~

Sec. 22. Minnesota Statutes 1994, section 176.101, subdivision 6, is amended to read:

Subd. 6. **MINORS; APPRENTICES.** (a) If any employee entitled to the benefits of this chapter is an apprentice of any age and sustains a personal injury arising out of and in the course of employment resulting in permanent total or a compensable permanent partial disability, for the purpose of computing the compensation to which the employee is entitled for the injury, the compensation rate for temporary total, temporary partial, ~~a~~ or permanent total disability ~~or economic recovery compensation~~ shall be the maximum rate for temporary total disability under subdivision 1.

(b) If any employee entitled to the benefits of this chapter is a minor and sustains a personal injury arising out of and in the course of employment resulting in permanent total disability, for the purpose of computing the compensation to which the employee is entitled for the injury, the compensation rate for a permanent total disability shall be the maximum rate for temporary total disability under subdivision 1.

Sec. 23. Minnesota Statutes 1994, section 176.101, subdivision 8, is amended to read:

Subd. 8. ~~RETIREMENT~~ CESSATION OF BENEFITS. Temporary total disability payments shall cease at retirement. "Retirement" means that a preponderance of the evidence supports a conclusion that an employee has retired. The subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement but may be considered along with other evidence.

For injuries occurring after January 1, 1984, an employee who receives social security old age and survivors insurance retirement benefits under the Social Security Act, Public Law Number 98-21, as amended, is presumed retired from the labor market. This presumption is rebuttable by a preponderance of the evidence.

Sec. 24. Minnesota Statutes 1994, section 176.105, subdivision 4, is amended to read:

Subd. 4. **LEGISLATIVE INTENT; RULES; LOSS OF MORE THAN ONE BODY PART.** ~~(a)~~ For the purpose of establishing a disability schedule ~~pursuant to clause (b)~~, the legislature declares its intent that the commissioner establish a disability schedule which~~, assuming the same number and distribution of severity of injuries, the aggregate total of impairment compensation and economic recovery compensation benefits under section 176.101, subdivisions 3a to 3u be approximately equal to the total aggregate amount payable for permanent partial disabilities under section 176.101, subdivision 3, provided, however, that awards for specific injuries under the proposed schedule need not be the same as they were for the same injuries under the schedule pursuant to section 176.101, subdivision 3. The schedule~~ shall be determined by sound actuarial evaluation and shall be based on the benefit level which exists on January 1, 1983.

~~(b)~~ The commissioner shall by rulemaking adopt procedures setting forth rules for the evaluation and rating of functional disability and the schedule for permanent partial disability and to determine the percentage of loss of function of a part of the body based on the body as a whole, including internal organs, described in section 176.101, subdivision 3, and any other body part not listed in section 176.101, subdivision 3, which the commissioner deems appropriate.

The rules shall promote objectivity and consistency in the evaluation of permanent functional impairment due to personal injury and in the assignment of a numerical rating to the functional impairment.

Prior to adoption of rules the commissioner shall conduct an analysis of the current permanent partial disability schedule for the purpose of determining the number and distribution of permanent partial disabilities and the average compensation for various permanent partial disabilities. The commissioner shall consider setting the compensation under the proposed schedule for the most serious conditions higher in comparison to the current schedule and shall consider decreasing awards for minor conditions in comparison to the current schedule.

The commissioner may consider, among other factors, and shall not be limited to the following factors in developing rules for the evaluation and rating of functional disability and the schedule for permanent partial disability benefits:

(1) the workability and simplicity of the procedures with respect to the evaluation of functional disability;

(2) the consistency of the procedures with accepted medical standards;

(3) rules, guidelines, and schedules that exist in other states that are related to the evaluation of permanent partial disability or to a schedule of benefits for functional disability provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of ~~clause (a)~~ this section;

(4) rules, guidelines, and schedules that have been developed by associations of health care providers or organizations provided that the commissioner is not bound by the degree of disability in these sources but shall adjust the relative degree of disability to conform to the expressed intent of ~~clause (a)~~ this section;

(5) the effect the rules may have on reducing litigation;

(6) the treatment of preexisting disabilities with respect to the evaluation of permanent functional disability provided that any preexisting disabilities must be objectively determined by medical evidence; and

(7) symptomatology and loss of function and use of the injured member.

The factors in paragraphs (1) to (7) shall not be used in any individual or specific workers' compensation claim under this chapter but shall be used only in the adoption of rules pursuant to this section.

Nothing listed in paragraphs (1) to (7) shall be used to dispute or challenge a disability rating given to a part of the body so long as the whole schedule conforms with the expressed intent of ~~clause (a)~~ this section.

~~(c)~~ If an employee suffers a permanent functional disability of more than one body part due to a personal injury incurred in a single occurrence, the percent of the whole body which is permanently partially disabled shall be determined by the following formula so as to ensure that the percentage for all functional disability combined does not exceed the total for the whole body:

$$A + B (1 - A)$$

where: A is the greater percentage whole body loss of the first body part; and B is the lesser percentage whole body loss otherwise payable for the second body part. A + B (1-A) is equivalent to A + B - AB.

For permanent partial disabilities to three body parts due to a single occurrence or as the result of an occupational disease, the above formula shall be applied, providing that A equals the result obtained from application of the formula to the first two body parts and B equals the percentage for the third body part. For permanent partial disability to four or more body parts incurred as described above, A equals the result obtained from the prior application of the formula, and B equals the percentage for the fourth body part or more in arithmetic progressions.

Sec. 25. Minnesota Statutes 1994, section 176.178, is amended to read:

176.178 **FRAUD.**

Subdivision 1. **INTENT.** Any person who, with intent to defraud, receives workers' compensation benefits to which the person is not entitled by knowingly misrepresenting, misstating, or failing to disclose any material fact is guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3.

Subd. 2. **FORMS.** The text of subdivision 1 shall be placed on all forms prescribed by the commissioner for claims or responses to claims for workers' compensation benefits under this chapter. The absence of the text does not constitute a defense against prosecution under subdivision 1.

Sec. 26. Minnesota Statutes 1994, section 176.179, is amended to read:

176.179 **RECOVERY OF OVERPAYMENTS.**

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or the employee's survivors, and received in good faith by the employee or the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken ~~as a full credit against future lump sum benefit entitlement and~~ as a partial credit against future ~~weekly~~ periodic benefits. The credit applied against further payments of temporary total disability, temporary partial disability, permanent partial disability, permanent total

disability, retraining benefits, death benefits, or weekly payments of economic recovery or impairment compensation shall not exceed 20 percent of the amount that would otherwise be payable.

A credit may not be applied against medical expenses due or payable.

Where the commissioner or compensation judge determines that the mistaken compensation was not received in good faith, the commissioner or compensation judge may order reimbursement of the compensation. For purposes of this section, a payment is not received in good faith if it is obtained through fraud, or if the employee knew that the compensation was paid under mistake of fact or law, and the employee has not refunded the mistaken compensation.

Sec. 27. Minnesota Statutes 1994, section 176.221, subdivision 6a, is amended to read:

Subd. 6a. **MEDICAL, REHABILITATION, ~~ECONOMIC RECOVERY, AND IMPAIRMENT~~ AND PERMANENT PARTIAL COMPENSATION.** The penalties provided by this section apply in cases where payment for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivisions 9 and 11, ~~economic recovery compensation or impairment compensation~~ or permanent partial compensation are not made in a timely manner as required by law or by rule adopted by the commissioner.

Sec. 28. Minnesota Statutes 1994, section 176.645, is amended to read:

176.645 **ADJUSTMENT OF BENEFITS.**

Subdivision 1. **AMOUNT.** For injuries occurring after October 1, 1975 for which benefits are payable under section 176.101, subdivisions 1, 2 and 4, and section 176.111, subdivision 5, the total benefits due the employee or any dependents shall be adjusted in accordance with this section. On October 1, 1981, and thereafter on the anniversary of the date of the employee's injury the total benefits due shall be adjusted by multiplying the total benefits due prior to each adjustment by a fraction, the denominator of which is the statewide average weekly wage for December 31, of the year two years previous to the adjustment and the numerator of which is the statewide average weekly wage for December 31, of the year previous to the adjustment. For injuries occurring after October 1, 1975, all adjustments provided for in this section shall be included in computing any benefit due under this section. Any limitations of amounts due for daily or weekly compensation under this chapter shall not apply to adjustments made under this section. No adjustment increase made on or after October 1, 1977, but prior to October 1, 1992, under this section shall exceed six percent a year; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be six percent. No adjustment increase made on or after October 1, 1992, under this section shall exceed four percent a year; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be four percent. For injuries occurring on and after October 1, 1995, no adjustment increase made on or after October 1, 1995, shall exceed two percent a year; in those instances where the adjustment under the formula of this section would exceed this maximum, the increase shall be deemed to be two percent. The

workers' compensation advisory council may consider adjustment or other further increases and make recommendations to the legislature.

Subd. 2. **TIME OF FIRST ADJUSTMENT.** For injuries occurring on or after October 1, 1981, the initial adjustment made pursuant to subdivision 1 is deferred until the first anniversary of the date of the injury. For injuries occurring on or after October 1, 1992, the initial adjustment under subdivision 1 is deferred until the second anniversary of the date of the injury. The adjustment made at that time shall be that of the last year only. For injuries occurring on or after October 1, 1995, the initial adjustment under subdivision 1 is deferred until the fourth anniversary of the date of injury. The adjustment at that time shall be that of the last year only.

Sec. 29. Minnesota Statutes 1994, section 176.66, subdivision 11, is amended to read:

Subd. 11. **AMOUNT OF COMPENSATION.** The compensation for an occupational disease is 66-2/3 percent of the employee's weekly wage on the date of injury subject to a maximum compensation equal to the maximum compensation in effect on the date of last exposure. ~~The employee shall be eligible for supplementary benefits notwithstanding the provisions of section 176.132, after four years have elapsed since the date of last significant exposure to the hazard of the occupational disease if that employee's weekly compensation rate is less than the current supplementary benefit rate.~~

Sec. 30. Minnesota Statutes 1994, section 176.82, is amended to read:

176.82 **ACTION FOR CIVIL DAMAGES FOR OBSTRUCTING EMPLOYEE SEEKING BENEFITS.**

Subdivision 1. **RETALIATORY DISCHARGE.** Any person discharging or threatening to discharge an employee for seeking workers' compensation benefits or in any manner intentionally obstructing an employee seeking workers' compensation benefits is liable in a civil action for damages incurred by the employee including any diminution in workers' compensation benefits caused by a violation of this section including costs and reasonable attorney fees, and for punitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled. Damages awarded under this section shall not be offset by any workers' compensation benefits to which the employee is entitled.

Subd. 2. **REFUSAL TO OFFER CONTINUED EMPLOYMENT.** An employer who, without reasonable cause, refuses to offer continued employment to its employee when employment is available within the employee's physical limitations shall be liable in a civil action for one year's wages. The wages are payable from the date of the refusal to offer continued employment, and at the same time and at the same rate as the employee's preinjury wage, to continue during the period of the refusal up to a maximum of $15,000. These payments shall be in addition to any other payments provided by this chapter. In determining the availability of employment, the continuance in business of the employer shall be considered and written rules promulgated by the employer

with respect to seniority or the provisions or any collective bargaining agreement shall govern. These payments shall not be covered by a contract of insurance. The employer shall be served directly and be a party to the claim. This subdivision shall not apply to employers who employ 15 or fewer full-time equivalent employees.

Sec. 31. **[176.861] DISCLOSURE OF INFORMATION.**

Subdivision 1. **INSURANCE INFORMATION.** The commissioner may, in writing, require an insurance company to release to the commissioner any or all relevant information or evidence the commissioner deems important which the company may have in its possession relating to a workers' compensation claim including material relating to the investigation of the claim; statements of any person, and any other evidence relevant to the investigation. The writing from the commissioner requiring release of the information shall contain a statement that the commissioner has reason to believe a crime or civil fraud has been committed with respect to an insurance claim, payment, or application.

Subd. 2. **INFORMATION RELEASED TO AUTHORIZED PERSONS.** If an insurance company has evidence that a claim may be fraudulent, the company shall, in writing, notify the commissioner and provide the commissioner with all relevant material related to the company's inquiry into the claim.

Subd. 3. **GOOD FAITH IMMUNITY.** An insurance company or its agent acting in its behalf and in good faith who releases oral or written information under subdivisions 1 and 2 is immune from civil or criminal liability that might otherwise be incurred or imposed.

Subd. 4. **SELF-INSURER; ASSIGNED RISK PLAN.** For the purposes of this section "insurance company" includes a self-insurer and the assigned risk plan and their agents.

Sec. 32. Minnesota Statutes 1994, section 268.08, subdivision 3, is amended to read:

Subd. 3. **NOT ELIGIBLE.** An individual shall not be eligible to receive benefits for any week with respect to which the individual is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of the individual's weekly benefit amount in the form of:

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not; provided that if a termination, severance, or dismissal payment is made in a lump sum, such lump sum payment shall be allocated over a period equal to the lump sum divided by the employee's regular pay while employed by such employer; provided such payment shall be applied for a period immediately following the last day of employment but not to exceed 28 calendar days provided that 50 percent of the total of any such payments in excess of eight weeks shall be similarly allocated to the period immediately following the 28 days; or

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under the provisions of a collective bargaining agreement, or uniform vacation shutdown; or

(3) compensation for loss of wages under the workers' compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer ~~except that this does not apply to an individual who is receiving temporary partial compensation pursuant to section 176.101, subdivision 3k~~; or

(4) 50 percent of the pension payments from any fund, annuity or insurance maintained or contributed to by a base period employer including the armed forces of the United States if the employee contributed to the fund, annuity or insurance and all of the pension payments if the employee did not contribute to the fund, annuity or insurance; or

(5) 50 percent of a primary insurance benefit under title II of the Social Security Act, as amended, or similar old age benefits under any act of Congress or this state or any other state.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.231, the individual shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration; provided, further, that if the appropriate agency of such other state or the federal government finally determines that the individual is not entitled to such benefits, this provision shall not apply. If the computation of reduced benefits, required by this subdivision, is not a whole dollar amount, it shall be rounded down to the next lower dollar amount.

Sec. 33. **APPROPRIATION.**

$900,000 is appropriated from the special compensation fund for the biennium ending June 30, 1997, to the department of commerce for the purposes of rate regulation. The complement of the department of commerce is increased by 13 positions for the purposes of rate regulation.

Sec. 34. **APPROPRIATION.**

$110,000 is appropriated from the special compensation fund to the department of labor and industry for the biennium ending June 30, 1997, for the purposes of this act.

Sec. 35. **REPEALER.**

Minnesota Statutes 1994, section 176.132, is repealed.

Sec. 36. **REPEALER.**

(a) Minnesota Statutes 1994, sections 79.53, subdivision 2; 79.54; 79.56, subdivision 2; 79.57; and 79.58, are repealed.

(b) Minnesota Statutes 1994, sections 176.011, subdivision 26; and 176.101, subdivisions 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3k, 3l, 3m, 3n, 3o, 3p, 3q, 3r, 3s, 3t, and 3u, are repealed.

(c) Minnesota Statutes 1994, section 176.86, is repealed.

(d) Laws 1990, chapter 521, section 4, is repealed.

Sec. 37. **EFFECTIVE DATE.**

Sections 1 to 11 and 36, paragraph (a), are effective January 1, 1996. Rates and rating plans in use as of January 1, 1996, may continue to be used until such time as an amendment thereto or a new rate or rating plan is filed, at which time the filing is subject to sections 1 to 11.

Sections 23, 24, 26, 27, and 36, paragraph (b), are effective October 1, 1995.

Sections 13 to 22, 28, 29, 30, and 32 are effective October 1, 1995, and apply to personal injuries occurring on and after that date.

ARTICLE 2

Section 1. Minnesota Statutes 1994, section 13.69, subdivision 1, is amended to read:

Subdivision 1. **CLASSIFICATIONS.** (a) The following government data of the department of public safety are private data:

(1) medical data on driving instructors, licensed drivers, and applicants for parking certificates and special license plates issued to physically handicapped persons; and

(2) social security numbers in driver's license and motor vehicle registration records, except that social security numbers must be provided to the department of revenue for purposes of tax administration and the department of labor and industry for purposes of workers' compensation administration and enforcement.

(b) The following government data of the department of public safety are confidential data: data concerning an individual's driving ability when that data is received from a member of the individual's family.

Sec. 2. Minnesota Statutes 1994, section 13.82, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** This section shall apply to agencies which carry on a law enforcement function, including but not limited to municipal police departments, county sheriff departments, fire departments, the bureau of criminal apprehension, the Minnesota state patrol, the board of peace officer

standards and training, ~~and~~ the department of commerce, and the department of labor and industry fraud investigation unit.

Sec. 3. Minnesota Statutes 1994, section 79.074, subdivision 2, is amended to read:

Subd. 2. **DIVIDENDS.** Dividend plans are not unfairly discriminatory where different premiums result for different policyholders with similar loss exposures but different expense factors, or where different premiums result for different policyholders with similar expense factors but different loss exposures, so long as the respective premiums reflect the differences with reasonable accuracy. Every insurer ~~referred to in section 79.20~~ who issues participating policies shall file with the commissioner a true copy or summary as the commissioner shall direct of its participating dividend rates as to policyholders. The commissioner may study the participating dividend rates and make recommendations to the legislature concerning possible bases for unfair discrimination.

Sec. 4. Minnesota Statutes 1994, section 79.085, is amended to read:

79.085 **SAFETY PROGRAMS.**

All insurers writing workers' compensation insurance in this state shall provide safety and occupational health loss control consultation services to each of their policyholders requesting the services in writing. Insurers must annually notify their policyholders of their right under this section to safety and occupational health loss consultation services. The services must include the conduct of workplace surveys to identify health and safety problems, review of employer injury records with appropriate personnel, and development of plans to improve employer occupational health and safety loss records. Insurers shall notify each policyholder of the availability of those services and the telephone number and address where such services can be requested. The notification may be delivered with the policy of workers' compensation insurance.

Sec. 5. Minnesota Statutes 1994, section 79.211, subdivision 1, is amended to read:

Subdivision 1. **CERTAIN WAGES ~~EXCLUDED~~ INCLUDED FOR RATEMAKING.** The rating association or an insurer shall ~~not~~ include wages paid for a vacation, holiday, or sick leave in the determination of a workers' compensation insurance premium.

An insurer, including the assigned risk plan, shall not include wages paid for work performed in an adjacent state in the determination of a workers' compensation premium if the employer paid a workers' compensation insurance premium to the exclusive state fund of the adjacent state on the wages earned in the adjacent state.

Within 30 days of the effective date of this section, a licensed data service organization on behalf of its members shall file an amendment to its charged

class premium rates to reflect the inclusion of vacation, holiday, and sick leave wages in the determination of premium. Within 30 days of the filing of those pure premium rates each insurer shall amend its filed schedule of rates to reflect the inclusion of vacation, holiday, and sick leave wages in the determination of premium.

Sec. 6. Minnesota Statutes 1994, section 79.251, subdivision 2, is amended to read:

Subd. 2. ~~**APPROPRIATE** **MERIT RATING PLAN.** The commissioner shall develop an appropriate merit rating plan which shall be applicable to all insureds holding policies or contracts of coverage issued pursuant to subdivision 4 and to the insurers or self-insurance administrators issuing those policies or contracts. The plan shall provide a maximum merit adjustment equal to ten percent of earned premium. The actual adjustment may vary with insured's loss experience.~~ To assist small businesses with good safety records, the commissioner shall develop a merit rating plan applicable to all employers holding policies issued pursuant to subdivision 4. The plan shall provide that nonexperience rated employers, with no lost time claims for the last three policy years, shall receive 33 percent credit. The credit must be applied directly to the premium charged for the policy. Nonexperience rated employers with two or more lost time claims for the last three policy years may receive a debit. Experience rated employers shall receive a maximum credit or debit of ten percent of premium. The merit rating plan shall be subject to adjustment by the commissioner as necessary to fulfill the commissioner's assigned risk plan responsibilities.

Sec. 7. Minnesota Statutes 1994, section 79.251, is amended by adding a subdivision to read:

Subd. 8. **DISSOLUTION.** Upon the dissolution of the assigned risk plan, the commissioner shall proceed to wind up the affairs of the plan, settle its accounts, and dispose of its assets. The assets and property of the assigned risk plan must be applied and distributed in the following order of priority:

(1) to the establishment of reserves for claims under policies and contracts of coverage issued by the assigned risk plan before termination;

(2) to the payment of all debts and liabilities of the assigned risk plan, including the repayment of loans and assessments;

(3) to the establishment of reserves considered necessary by the commissioner for contingent liabilities or obligations of the assigned risk plan other than claims arising under policies and contracts of coverage; and

(4) to the state of Minnesota.

If the commissioner determines that the assets of the assigned risk plan are insufficient to meet its obligations under clauses (1) to (3), excluding the repayment of assessments, the commissioner shall assess all insurers licensed pursuant

to section 60A.06, subdivision 1, clause (5), paragraph (b), an amount sufficient to fully fund these obligations.

Sec. 8. Minnesota Statutes 1994, section 79.253, is amended by adding a subdivision to read:

Subd. 2a. **ELIGIBLE APPLICANTS.** An employer is eligible to apply for a grant or loan under this section if the employer meets the following requirements:

(1) the employer's workers' compensation insurance is provided by the assigned risk plan, is provided by an insurer subject to penalties under chapter 176, or the employer is self-insured;

(2) the employer has had an on-site safety survey conducted by a Minnesota occupational safety and health investigator, a Minnesota department of labor and industry workplace safety and health consultant, an in-house employee safety and health committee, a workers' compensation underwriter, a private safety consultant, or a person under contract with the assigned risk plan; and

(3) the on-site safety survey recommends specific safety practices or equipment designed to reduce the risk of illness or injury to employees.

Sec. 9. Minnesota Statutes 1994, section 79.34, subdivision 2, is amended to read:

Subd. 2. **LOSSES; RETENTION LIMITS.** 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 a low, a high, or a super retention limit, at the option of the member. In case of occupational disease causing disablement on and after October 1, 1979, each person suffering disablement due to occupational disease is considered to be involved in a separate loss occurrence. ~~The lower retention limit shall be increased to the nearest $10,000, on January 1, 1982 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, as determined in accordance with section 176.011, subdivision 20. On January 1, 1982 and on each January 1 thereafter, the higher retention limit shall be increased by the amount necessary to retain a $200,000 difference between the two retention limits.~~ On January 1, 1995, the lower retention limit is $250,000, which shall also be known as the 1995 base retention limit. On each January 1 thereafter, the cumulative annual percentage changes in the statewide average weekly wage after October 1, 1994, as determined in accordance with section 176.011, subdivision 20, shall first be multiplied by the 1995 base retention limit, the result of which shall then be added to the 1995 base retention limit. The resulting figure shall be rounded to the nearest $10,000, yielding the low retention limit for that year, provided that the low retention limit shall not be

reduced in any year. The high retention limit shall be two times the low retention limit and shall be adjusted when the low retention limit is adjusted. The super retention limit shall be four times the low retention limit and shall be adjusted when the low retention limit is adjusted. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid by the member for workers' compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. For losses incurred on or after January 1, 1979, any amounts paid by a member pursuant to sections 176.183, 176.221, 176.225, and 176.82 shall not be included in ultimate loss and shall not be indemnified by the reinsurance association. 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 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~~ highest retention limit selected by any of the members 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~~ high or super retention limit shall retain the liability for all losses below the ~~higher~~ chosen 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; (d) when the reinsurance or contract is limited to all the claims of a specific insured of a member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the insured of the member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the insured of a member is not inconsistent with the bases of exception provided under clauses

(a), (b) and (c); or (e) when the reinsurance or contract is limited to all claims of a specific self-insurer member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the self-insurer member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the self-insurer member are not inconsistent with the bases for exception provided under clauses (a), (b) and (c).

Whenever it appears to the commissioner of labor and industry that any member that chooses the ~~higher~~ high or super retention limit has participated in the transfer of liability to any other entity or reinsured or otherwise contracted for reimbursement or indemnification of losses below its retention limit in a manner inconsistent with the bases for exception provided under clauses (a), (b), (c), (d), and (e), the commissioner may, after giving notice and an opportunity to be heard, order the member to pay to the state of Minnesota an amount not to exceed twice the difference between the reinsurance premium for the ~~higher and lower~~ high or super retention limit, as appropriate, and the low retention limit applicable to the member for each year in which the prohibited reinsurance or contract was in effect. Any member subject to this penalty provision shall continue to be bound by its selection of the ~~higher~~ high or super retention limit for purposes of membership in the reinsurance association.

Sec. 10. Minnesota Statutes 1994, 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 the prefunded limit~~, together with incurred or estimated to be incurred operating and administrative expenses for the period to which this premium applies and actual claim payments to be made by mem-

bers, during the period to which this premium applies, for claims in excess of the prefunded limit in effect at the time the loss was incurred. Each member shall be charged a premium established by the board as sufficient to cover the reinsurance association's incurred liabilities and expenses between the member's selected retention limit and the prefunded limit. The prefunded limit shall be ~~$2,500,000 on and after October 1, 1979, provided that the prefunded limit shall be increased on January 1, 1983 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, to the nearest $100,000, as determined in accordance with section 176.011, subdivision~~ 20 times the lower retention limit established in section 79.34, subdivision 2. Each member shall be charged a proportion of the total premium calculated for its selected retention limit in an amount equal to its proportion of the exposure base of all members during the period to which the reinsurance association premium will apply. The exposure base shall be determined by the board and is subject to the approval of the commissioner of labor and industry. In determining the exposure base, the board shall consider, among other things, equity, administrative convenience, records maintained by members, amenability to audit, and degree of risk refinement. ~~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 shall also be charged a premium determined by the board to equitably distribute excess or deficient premiums from previous periods including any excess or deficient premiums resulting from a retroactive change in the prefunded limit. The premiums charged to members shall not be unfairly discriminatory as defined in section 79.074. All premiums shall be approved by the commissioner of labor and industry;

(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. The reinsurance association may charge the cost of the adjustment under this paragraph to the member, except that any penalties or interest incurred under sections 176.183, 176.221, 176.225, and 176.82 as a result of actions by the reinsurance association after it has undertaken adjustment of the claim shall not be charged to the member but shall be included in the ultimate loss and listed as a separate item; 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. 11. Minnesota Statutes 1994, section 79.52, is amended by adding a subdivision to read:

Subd. 17. **ASSOCIATION OR RATING ASSOCIATION.** "Association" or "rating association" means the Minnesota Workers' Compensation Insurers Association, Inc.

Sec. 12. Minnesota Statutes 1994, section 79.52, is amended by adding a subdivision to read:

Subd. 18. **RATE OVERSIGHT COMMISSION.** "Rate oversight commission" means the workers' compensation advisory council established in chapter 175.

Sec. 13. Minnesota Statutes 1994, section 79.55, is amended by adding a subdivision to read:

Subd. 8. **ANNUAL FILINGS.** Not later than October 1 of each year, the rating association shall file with the commissioner and the rate oversight commission the following information used and related to the calculation and cost of workers' compensation insurance premiums:

(1) all statistical plans, including classification definitions used to assign each compensation risk written by its members to its approved classification for reporting purposes;

(2) all development factors and alternative derivations;

(3) a description and summary of each data reporting and monitoring method used to collect and monitor the database for workers' compensation insurance;

(4) trend factors and alternative derivations and applications;

(5) pure premium relativities for the approved classification system for which data are reported;

(6) an evaluation of the effects of changes in law on loss data;

(7) an explicit discussion and explanation of all methodology, alternatives examined, assumptions adopted, and areas of judgment and reasoning supporting judgments entered into, and the effect of various combinations of these elements on indications for modification of an overall pure premium rate level change; and

(8) all merit rating plans and the calculation of any variable factors necessary for utilization of the plan.

Sec. 14. Minnesota Statutes 1994, section 79.55, is amended by adding a subdivision to read:

Subd. 9. **ANALYSIS BY RATE OVERSIGHT COMMISSION.** Not later than November 1 of each year, the rate oversight commission may submit to the commissioner a report concerning the completeness of the filing and compliance of the filing with the standards for excessiveness, inadequacy, and unfair discrimination set forth in this chapter.

Sec. 15. Minnesota Statutes 1994, section 79.55, is amended by adding a subdivision to read:

Subd. 10. **DUTIES OF COMMISSIONER.** The commissioner shall issue a report by January 1 of each year, comparing the average rates charged by workers' compensation insurers in the state to the pure premium base rates filed by the association, as reviewed by the rate oversight commission. The rate oversight commission shall review the commissioner's report and if the experience indicates that rates have not reasonably reflected changes in pure premiums, the rate oversight commission shall recommend to the legislature appropriate legislative changes to this chapter.

Sec. 16. Minnesota Statutes 1994, section 79.60, subdivision 1, is amended to read:

Subdivision 1. **REQUIRED ACTIVITY.** Each insurer shall perform the following activities:

(a) Maintain membership in and report loss experience data to a licensed data service organization in accordance with the statistical plan and rules of the organization as approved by the commissioner;

(b) Establish a plan for merit rating which shall be consistently applied to all insureds, provided that members of a data service organization may use merit rating plans developed by that data service organization;

(c) Provide an annual report to the commissioner containing the information and prepared in the form required by the commissioner; ~~and~~

(d) Keep a record of the premiums and losses paid under each workers' compensation policy written in Minnesota in the form required by the commissioner;

(e) Provide to the association, upon request, information about its insurance premiums, losses, and operations which the association shall request in order to prepare and file with the commissioner and the rate oversight commission the filings required by this chapter; and

(f) Pay to the association its equitable share of the costs of preparing the filing with the commissioner and the rate oversight commission required by this chapter.

Sec. 17. Minnesota Statutes 1994, section 79A.01, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** For the purposes of ~~sections 79A.01 to 79A.17~~ this chapter, the terms defined in this section have the meaning given them.

Sec. 18. Minnesota Statutes 1994, section 79A.01, subdivision 4, is amended to read:

Subd. 4. **INSOLVENT SELF-INSURER.** "Insolvent self-insurer" means ~~either:~~ (1) a member private self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction and whose security deposit has been called by the commissioner pursuant to chapter 176~~; or~~; (2) a member self-insurer who has failed to pay compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner pursuant to chapter 176; or (3) a member or former member private self-insurer who has failed to pay an assessment required by section 79A.12, subdivision 2, and who has been issued a certificate of default by the commissioner and whose security deposit has been calledby the commissioner.

Sec. 19. Minnesota Statutes 1994, section 79A.01, is amended by adding a subdivision to read:

Subd. 10. **COMMON CLAIMS FUND.** "Common claims fund" means the cash, cash equivalents, or investment accounts maintained by the mutual self-insurance group to pay its workers' compensation liabilities.

Sec. 20. Minnesota Statutes 1994, section 79A.02, subdivision 1, is amended to read:

Subdivision 1. **MEMBERSHIP.** For the purposes of assisting the commissioner, there is established a workers' compensation self-insurers' advisory committee of five members that are employers authorized to self-insure in Minnesota. Three of the members and three alternates shall be elected by the ~~members of~~ the self-insurers' security fund board of trustees and two alternates shall be appointed by the commissioner.

Sec. 21. Minnesota Statutes 1994, section 79A.02, subdivision 2, is amended to read:

Subd. 2. **ADVICE TO COMMISSIONER.** At the request of the commissioner, the committee shall meet and shall advise the commissioner with respect to whether or not an applicant to become a private self-insurer in the state of Minnesota has met the statutory requirements to self-insure. The department of commerce may furnish the committee with any financial data which it has, but a member of the advisory committee who may have a conflict of interest in reviewing the financial data shall not have access to the data nor participate in the discussions concerning the applicant. Financial data received from the com-

missioner is nonpublic data. The committee shall advise the commissioner if it has any information that any private self-insurer may become insolvent.

Sec. 22. Minnesota Statutes 1994, section 79A.02, subdivision 4, is amended to read:

Subd. 4. **RECOMMENDATIONS TO COMMISSIONER REGARDING REVOCATION.** After each fifth anniversary from the date each individual and group self-insurer becomes certified to self-insure, the committee shall review all relevant financial data filed with the department of commerce that is otherwise available to the public and make a recommendation to the commissioner about whether each self-insurer's certificate should be revoked. For group self-insurers who have been in existence for five years or more and have been granted renewal authority, a level of funding in the common claims fund must be maintained at not less than the greater of either: (1) one year's claim losses paid in the most recent year; or (2) one-third of the security deposit posted with the department of commerce according to section 79A.04, subdivision 2.

Sec. 23. Minnesota Statutes 1994, section 79A.03, is amended by adding a subdivision to read:

Subd. 4a. **EXCEPTIONS.** Notwithstanding the requirements of subdivisions 3 and 4, the commissioner, pursuant to a review of an existing self-insurer's financial data, may continue a self-insurer's authority to self-insure for one year if, in the commissioner's judgment based on all factors relevant to the self-insurer's financial status, the self-insurer will be able to meet its obligations under this chapter for the following year. The relevant factors to be considered must include, but must not be limited to, the liquidity ratios, leverage ratios, and profitability ratios of the self-insurer. Where a self-insurer's authority to self-insure is continued under this subdivision, the self-insurer may be required to post security in the amount equal to two times the amount of security required under section 79A.04, subdivision 2.

Sec. 24. Minnesota Statutes 1994, section 79A.04, subdivision 2, is amended to read:

Subd. 2. **MINIMUM DEPOSIT.** The minimum deposit is 110 percent of the private self-insurer's estimated future liability. Up to ten percent of that deposit may be used to secure payment of all administrative and legal costs, and unpaid assessments required by section 79A.12, subdivision 2, relating to or arising from the employer's self-insuring. As used in this section, "private self-insurer" includes both current and former members of the self-insurers' security fund; and "private self-insurers' estimated future liability" means the private self-insurers' total of estimated future liability as determined by an Associate or Fellow of the Casualty Actuarial Society every year for group member private self-insurers and, for a nongroup member private self-insurer's authority to self-insure, every year for the first five years. After the first five years, the nongroup member's total shall be as determined by an Associate or Fellow of the Casualty Actuarial Society at least every two years, and each such actuarial study shall

include a projection of future losses during the ~~two-year~~ period until the next scheduled actuarial study, less payments anticipated to be made during that time.

All data and information furnished by a private self-insurer to an Associate or Fellow of the Casualty Actuarial Society for purposes of determining private self-insurers' estimated future liability must be certified by an officer of the private self-insurer to be true and correct with respect to payroll and paid losses, and must be certified, upon information and belief, to be true and correct with respect to reserves. The certification must be made by sworn affidavit. In addition to any other remedies provided by law, the certification of false data or information pursuant to this subdivision may result in a fine imposed by the commissioner of commerce on the private self-insurer up to the amount of $5,000, and termination of the private self-insurers' authority to self-insure. The determination of private self-insurers' estimated future liability by an Associate or Fellow of the Casualty Actuarial Society shall be conducted in accordance with standards and principles for establishing loss and loss adjustment expense reserves by the Actuarial Standards Board, an affiliate of the American Academy of Actuaries. The commissioner may reject an actuarial report that does not meet the standards and principles of the Actuarial Standards Board, and may further disqualify the actuary who prepared the report from submitting any future actuarial reports pursuant to this chapter. Within 30 days after the actuary has been served by the commissioner with a notice of disqualification, an actuary who is aggrieved by the disqualification may request a hearing to be conducted in accordance with chapter 14. Based on a review of the actuarial report, the commissioner of commerce may require an increase in the minimum security deposit in an amount the commissioner considers sufficient.

Estimated future liability is determined by first taking the total amount of the self-insured's future liability of workers' compensation claims and then deducting the total amount which is estimated to be returned to the self-insurer from any specific excess insurance coverage, aggregate excess insurance coverage, and any supplementary benefits or second injury benefits which are estimated to be reimbursed by the special compensation fund. Supplementary benefits or second injury benefits will not be reimbursed by the special compensation fund unless the special compensation fund assessment pursuant to section 176.129 is paid and the reports required thereunder are filed with the special compensation fund. In the case of surety bonds, bonds shall secure administrative and legal costs in addition to the liability for payment of compensation reflected on the face of the bond. In no event shall the security be less than the last retention limit selected by the self-insurer with the workers' compensation reinsurance association. The posting or depositing of security pursuant to this section shall release all previously posted or deposited security from any obligations under the posting or depositing and any surety bond so released shall be returned to the surety. Any other security shall be returned to the depositor or the person posting the bond.

As a condition for the granting or renewing of a certificate to self-insure, the

commissioner may require a private self-insurer to furnish any additional security the commissioner considers sufficient to insure payment of all claims under chapter 176.

Sec. 25. Minnesota Statutes 1994, section 79A.04, subdivision 9, is amended to read:

Subd. 9. **INSOLVENCY, BANKRUPTCY, OR DEFAULT; UTILIZATION OF SECURITY DEPOSIT.** The commissioner of labor and industry shall notify the commissioner and the security fund if the commissioner of labor and industry has knowledge that any private self-insurer has failed to pay workers' compensation benefits as required by chapter 176. If the commissioner determines that a court of competent jurisdiction has declared the private self-insurer to be bankrupt or insolvent, and the private self-insurer has failed to pay workers' compensation as required by chapter 176 or, if the commissioner issues a certificate of default against a private self-insurer for failure to pay workers' compensation as required by chapter 176, or failure to pay an assessment to the self-insurers' security fund when due, then the security deposit shall be utilized to administer and pay the private self-insurers' workers' compensation or assessment obligations.

Sec. 26. Minnesota Statutes 1994, section 79A.09, subdivision 4, is amended to read:

Subd. 4. **CONFIDENTIAL INFORMATION.** The security fund may receive private data concerning the financial condition of private self-insurers whose liabilities to pay compensation have become its responsibility ~~and shall adopt bylaws to prevent dissemination of that information~~. The data shall become public data upon its receipt by the security fund.

Sec. 27. Minnesota Statutes 1994, section 79A.15, is amended to read:

79A.15 **SURETY BOND FORM.**

The form for the surety bond under this chapter shall be:

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SURETY BOND OF SELF-INSURER OF WORKERS' COMPENSATION

IN THE MATTER OF THE CERTIFICATE OF)
)
) SURETY BOND
) NO. .....
) PREMIUM: .....
)
Employer, Certificate No: .....)

KNOW ALL PERSONS BY THESE PRESENTS:

That .....
(Employer)

whose address is .....

as Principal, and .....
(Surety)

a corporation organized under the laws of ..... and authorized to transact a general surety business in the State of Minnesota, as Surety, are held and firmly bound to the State of Minnesota in the penal sum of .....dollars ($.....) for which payment we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS in accordance with Minnesota Statutes, chapter 176, the principal elected to self-insure, and made application for, or received from the commissioner of commerce of the state of Minnesota, a certificate to self-insure, upon furnishing of proof satisfactory to the commissioner of commerce of ability to self-insure and to compensate any or all employees of said principal for injury or disability, and their dependents for death incurred or sustained by said employees pursuant to the terms, provisions, and limitations of said statute;

NOW THEREFORE, the conditions of this bond or obligation are such that if principal shall pay and furnish compensation, pursuant to the terms, provisions, and limitations of said statute to its employees for injury or disability, and to the dependents of its employees, then this bond or obligation shall be null and void; otherwise to remain in full force and effect.

FURTHERMORE, it is understood and agreed that:

1. This bond may be amended, by agreement between the parties hereto and the commissioner of commerce as to the identity of the principal herein named; and, by agreement of the parties hereto, as to the premium or rate of premium. Such amendment must be by endorsement upon, or rider to, this bond, executed by the surety and delivered to or filed with the commissioner.

2. The surety does, by these presents, undertake and agree that the obligation of this bond shall cover and extend to all past, present, existing, and potential liability of said principal, as a self-insurer, to the extent of the penal sum herein named without regard to specific injuries, date or dates of injuries, happenings or events.

3. The penal sum of this bond may be increased or decreased, by agreement between the parties hereto and the commissioner of commerce, without impairing the obligation incurred under this bond for the overall coverage of the said principal, for all past, present, existing, and potential liability, as a self-insurer, without regard to specific injuries, date or dates of injuries, happenings or events, to the extent, in the aggregate, of the penal sum as increased or decreased. Such amendment must be by endorsement.

4. The aggregate liability of the surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.

5. This bond shall be continuous in form and shall remain in full force and effect unless terminated as follows:

(a) The obligation of this bond shall terminate upon written notice of cancellation from the surety, given by registered or certified mail to the commissioner of commerce, state of Minnesota, save and except as to all past, present, existing, and potential liability of the principal incurred, including obligations resulting from claims which are incurred but not yet reported, as a self-insurer prior to effective date of termination. This termination is effective 60 days after receipt of notice of cancellation by the commissioner of commerce, state of Minnesota.

(b) This bond shall also terminate upon the revocation of the certificate to self-insure, save and except as to all past, present, existing, and potential liability of the principal incurred, including obligations resulting from claims which are incurred but not yet reported, as a self-insurer prior to effective date of termination. The principal and the surety, herein named, shall be immediately notified in writing by said commissioner, in the event of such revocation.

6. Where the principal posts with the commissioner of commerce, state of Minnesota, or the state treasurer, state of Minnesota, a replacement security deposit, in the form of a surety bond, irrevocable letter of credit, cash, securities, or any combination thereof, in the full amount as may be required by the commissioner of commerce, state of Minnesota, to secure all incurred liabilities for the payment of compensation of said principal under Minnesota Statutes, chapter 176, the surety is released from obligations under the surety bond upon the date of acceptance by the commissioner of commerce, state of Minnesota, of said replacement security deposit.

7. If the said principal shall suspend payment of workers' compensation benefits or shall become insolvent or a receiver shall be appointed for its business, or the commissioner of commerce, state of Minnesota, issues a certificate of default, the undersigned surety will become liable for the workers' compensation obligations of the principal on the date benefits are suspended. The surety shall begin payments within 14 days under paragraph 8, or 30 days under paragraph 10, after receipt of written notification by certified mail from the commissioner of commerce, state of Minnesota, to begin payments under the terms of this bond.

8. If the surety exercises its option to administer claims, it shall pay benefits due to the principal's injured workers within 14 days of the receipt of the notification by the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, without a formal award of a compensation judge, the commissioner of labor and industry, any intermediate appellate court, or the Minnesota supreme court and such payment will be a charge against the penal sum of the bond. Administrative and legal costs and payment of assessments incurred by the

surety in discharging its obligations and payment of the principal's obligations for administration and legal expenses and payment of assessments under Minnesota Statutes, ~~chapter~~ chapters 79A and 176, ~~and sections 79A.01 to 79A.17 and Laws 1988, chapter 674, section 23,~~ shall also be a charge against the penal sum of the bond; however, the total amount of this surety bond set aside for the payment of said administrative and legal expenses and payment of assessments shall be limited to a maximum ten percent of the total penal sum of the bond unless otherwise authorized by the security fund.

9. If any part or provision of this bond shall be declared unenforceable or held to be invalid by a court of proper jurisdiction, such determination shall not affect the validity or enforceability of the other provisions or parts of this bond.

10. If the surety does not give notice to the (self-insurer's security fund) (commercial self-insurance group security fund) and the commissioner of commerce, state of Minnesota, within two business days of receipt of written notification from the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, to exercise its option to administer claims pursuant to paragraph 8, then the (self-insurer's security fund) (commercial self-insurance security fund) will assume the payments of the workers' compensation obligations of the principal pursuant to Minnesota Statutes, chapter 176. The surety shall pay, within 30 days of the receipt of the notification by the commissioner of commerce, state of Minnesota, pursuant to paragraph 7, to the self-insurer's security fund) (commercial self-insurance group (security fund) as an initial deposit an amount equal to ten percent of the penal sum of the bond, and shall thereafter, upon notification from the (self-insurer's security fund) (commercial self-insurance group security fund) that the balance of the initial deposit had fallen to one percent of the penal sum of the bond, remit to the (self-insurer's security fund) (commercial self-insurance group security fund) an amount equal to the payments made by the (self-insurer's security fund) (commercial self-insurance group security fund) in the three calendar months immediately preceding said notification. All such payments will be a charge against the penal sum of the bond.

11. Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the principal's security deposit or any liability arising out of the posting or failure to post security, or the adequacy of the security or the reasonableness of administrative costs, including legal costs, arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, the principal, or the ~~self-insurers'~~ (self-insurer's security fund) (commercial self-insurance group security fund) shall be resolved by the commissioner of commerce pursuant to Minnesota Statutes, ~~chapter~~ chapters 79A and 176 ~~and sections 79A.01 to 79A.17 and Laws 1988, chapter 674, section 23~~.

12. Written notification to the surety required by this bond shall be sent to:

.....
Name of Surety
.....
To the attention of Person or Position
.....
Address
.....
City, State, Zip

Written notification to the principal required by this bond shall be sent to:

.....
Name of Principal
.....
To the attention of Person or Position
.....
Address
.....
City, State, Zip

13. This bond is executed by the surety to comply with Minnesota Statutes, chapter 176, and said bond shall be subject to all terms and provisions thereof.

.....
Name of Surety
.....
Address
.....
City, State, Zip

THIS bond is executed under an unrevoked appointment or power of attorney.

I certify (or declare) under penalty of perjury under the laws of the state of Minnesota that the foregoing is true and correct.

....
Date Signature of Attorney-In-Fact

.....
Printed or Typed Name of Attorney-In-Fact

A copy of the transcript or record of the unrevoked appointment, power of attorney, bylaws, or other instrument, duly certified by the proper authority and

attested by the seal of the insurer entitling or authorizing the person who executed the bond to do so for and in behalf of the insurer, must be filed in the office of the commissioner of commerce or must be included with this bond for such filing.

Sec. 28. **[79A.19] COMMERCIAL SELF-INSURANCE GROUPS; DEFINITIONS.**

Subdivision 1. **SCOPE.** For the purposes of sections 79A.19 to 79A.32, the terms defined in this section have the meanings given them. If there is any inconsistency between this section and section 79A.01, the provisions of this section shall govern.

Subd. 2. **ACCOUNTANT.** "Accountant" means a certified public accountant who is not an employee of any member of the commercial self-insurance group and is not affiliated with any individual or organization providing services other than accounting services to the group.

Subd. 3. **ACTUARY.** "Actuary" means an individual who has attained the status of associate or fellow of the casualty actuarial society who is not an employee of any member of the commercial self-insurance group and is not affiliated with any individual or organization providing services other than actuarial services to the group.

Subd. 4. **COMMON CLAIMS FUND.** "Common claims fund" means the cash, cash equivalents, or investment accounts maintained by the commercial self-insurance group to pay its workers' compensation liabilities.

Subd. 5. **MEMBER.** "Member" means an employer that participates in a commercial self-insurance group.

Subd. 6. **COMMERCIAL SELF-INSURANCE GROUP.** "Commercial self-insurance group" means a group of employers that are self-insured for workers' compensation under chapter 176 and elects to operate under sections 79A.19 to 79A.32 rather than sections 79A.01 to 79A.18.

Subd. 7. **COMMERCIAL SELF-INSURANCE GROUP SECURITY FUND.** "Commercial self-insurance group security fund" means the commercial self-insurance group security fund established pursuant to this chapter.

Subd. 8. **TRUSTEES.** "Trustees" means the board of trustees of the commercial self-insurance group security fund.

Sec. 29. **[79A.20] ELIGIBILITY REQUIREMENTS FOR COMMERCIAL SELF-INSURANCE GROUPS.**

Subdivision 1. **GROUP ELIGIBILITY.** A commercial self-insurance group consists of two or more employers in similar industries. The commercial self-insurance group shall not incorporate or form a business trust pursuant to chapter 318.

Subd. 2. **MEMBERSHIP ELIGIBILITY.** A commercial self-insurance group may only admit employers who meet the eligibility requirements established by the group including financial criteria, underwriting guidelines, risk profile, and any other requirements stated in the commercial self-insurance group's bylaws or plan of operation.

Sec. 30. **[79A.21] COMMERCIAL SELF-INSURANCE GROUP APPLICATION.**

Subdivision 1. **PROCEDURE.** (a) Groups proposing to become licensed as commercial self-insurance groups must complete and submit an application on a form or forms prescribed by the commissioner.

(b) The commissioner shall grant or deny the group's application to self-insure within 60 days after a complete application has been filed, provided that the time may be extended for an additional 30 days upon 15 days' prior notice to the applicant.

Subd. 2. **REQUIRED DOCUMENTS.** All applications must be accompanied by the following:

(a) A detailed business plan including the risk profile of the proposed membership, underwriting guidelines, marketing plan, minimum financial criteria for each member, and financial projections for the first year of operation.

(b) A plan describing the method in which premiums are to be charged to the employer members. The plan shall be accompanied by copies of the member's workers' compensation insurance policies in force at the time of application. In developing the premium for the group, the commercial self-insurance group shall base its premium on the Minnesota workers' compensation insurers association's manual of rules, loss costs, and classifications approved for use in Minnesota by the commissioner. Each member applicant shall, on a form approved by the commissioner, complete estimated payrolls for the first 12-month period that the applicant will be self-insured. Premium volume discounts per the plan will be permitted if they can be shown to be consistent with actuarial standards.

(c) A schedule indicating actual or anticipated operational expenses of the commercial self-insurance group. No authority to self-insure will be granted unless, over the term of the policy year, at least 65 percent of total revenues from all sources for the year are available for the payment of its claim and assessment obligations. For purposes of this calculation, claim and assessment obligations include the cost of allocated loss expenses as well as special compensation fund and commercial self-insurance group security fund assessments but exclude the cost of unallocated loss expenses.

(d) An indemnity agreement from each member who will participate in the commercial self-insurance group, signed by an officer of each member, providing for joint and several liability for all claims and expenses of all of the members of

the commercial self-insurance group arising in any fund year in which the member was a participant on a form approved by the commissioner. The indemnity agreement shall provide for assessments according to the group's bylaws on an individual and proportionate basis.

(e) A copy of the commercial self-insurance group bylaws.

(f) Evidence of the security deposit required under section 79A.24, accompanied by the actuarial certification study for the minimum security deposit as required under section 79A.24.

(g) Each initial member of the commercial self-insurance group shall submit to the commercial self-insurance group accountant its most recent annual financial statement. Financial statements for a period ending more than six months prior to the date of the application must be accompanied by an affidavit, signed by a company officer under oath, stating that there has been no material lessening of the net worth nor other adverse changes in its financial condition since the end of the period. Individual group members constituting at least 75 percent of the group's annual premium shall submit reviewed or audited financial statements. The remaining members may submit compilation level statements. Statements for a period ending more than 12 months prior to the date of application cannot be accepted.

(h) A compiled combined financial statement of all group members prepared by the commercial self-insurance group's accountant and a list of members included in such statements.

(i) A copy of each member's accountant's report letter from the reports used in compiling the combined financial statements.

(j) A list of all members and the percentage of premium each represents to the total group's annual premium for the policy year.

Subd. 3. **APPROVAL.** The commissioner shall approve an application for self-insurance upon a determination that all of the following conditions are met:

(1) a completed application and all required documents have been submitted to the commissioner;

(2) the financial ability of the commercial self-insurance group is sufficient to fulfill all obligations that may arise under this chapter or chapter 176;

(3) the annual premium of the commercial self-insurance group to be charged to initial members is at least $500,000;

(4) the commercial self-insurance group has contracted with a service company to administer its program; and

(5) the required securities or surety bond shall be on deposit prior to the effective date of coverage for the commercial self-insurance group.

Sec. 31. **[79A.22] COMMERCIAL SELF-INSURANCE GROUP OPERATING REQUIREMENTS.**

Subdivision 1. **BOARD OF DIRECTORS.** (a) A commercial self-insurance group shall elect a board of directors who shall have complete authority over and control of the assets of the commercial self-insurance group. The board of directors will also be responsible for all of the operations of the commercial self-insurance group.

(b) The majority of the board of directors shall be owners, officers, directors, partners, or employees of members of the commercial self-insurance group. No third-party administrator or vendor of risk management services shall serve as a director of the commercial self-insurance group.

(c) The directors shall approve applications for membership in the commercial self-insurance group.

Subd. 2. **FINANCIAL STANDARDS.** Commercial self-insurance groups shall have and maintain:

(1) combined net worth of all of the members in an amount at least equal to 15 times the group's selected retention level of the workers' compensation reinsurance association;

(2) sufficient assets and liquidity in the group's common claims fund to promptly and completely meet all obligations of its members under this chapter and chapter 176.

Subd. 3. **NEW MEMBERSHIP.** The commercial self-insurance group shall file with the commissioner the name of any new employer that has been accepted in the group prior to the initiation date of membership along with the member's signed indemnity agreement and evidence the member has deposited sufficient premiums with the group as required by the commercial self-insurance group's bylaws or plan of operation. The security deposit of the group will be increased to an amount equal to 50 percent of the new member's premium. The department of commerce may, at its option, review the financial statement of any applicant whose premium equals 25 percent or more of the group's total premium.

Subd. 4. **COMMERCIAL SELF-INSURANCE GROUP COMMON CLAIMS FUND.** (a) Each commercial self-insurance group shall establish a common claims fund.

(b) Each commercial self-insurance group shall, not less than ten days prior to the proposed effective date of the group, collect cash premiums from each member equal to not less than 20 percent of the member's annual workers' compensation premium to be paid into a common claims fund, maintained by the group in a designated depository. The remaining balance of the member's premium shall be paid to the group in a reasonable manner over the remainder of

the year. Payments in subsequent years shall be made according to the business plan.

(c) Each commercial self-insurance group shall initiate proceedings against a member when that member becomes more than 15 days delinquent in any payment of premium to the fund.

(d) There shall be no commingling of any assets of the common claims fund with the assets of any individual member or with any other account of the service company or fiscal agent unrelated to the payment of workers' compensation liabilities incurred by the group.

Subd. 5. **JOINT AND SEVERAL LIABILITY.** Each member of a commercial self-insurance group shall be jointly and severally liable for the obligations incurred by any member of the same group under chapter 176 for any fund year in which the member was a participant of the commercial self-insurance group.

Subd. 6. **ANNUAL AUDIT.** The accounts and records of the common claims fund shall be audited in the manner required under section 79A.03, subdivision 10.

Subd. 7. **INVESTMENTS.** (a) Any securities purchased by the common claims fund shall be in such denominations and with dates of maturity to ensure securities may be redeemable at sufficient time and in sufficient amounts to meet the fund's current and long-term liabilities.

(b) Cash assets of the common claims fund may be invested in the following securities:

(1) direct obligations of the United States government, except mortgage-backed securities of the Government National Mortgage Association;

(2) bonds, notes, debentures, and other instruments which are obligations of agencies and instrumentalities of the United States including, but not limited to, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the federal Home Loan Bank, the Student Loan Marketing Association, and the Farm Credit System, and their successors, but not including collateralized mortgage obligations or mortgage pass-through instruments;

(3) bonds or securities that are issued by the state of Minnesota and that are secured by the full faith and credit of the state;

(4) certificates of deposit which are insured by the federal Deposit Insurance Corporation and are issued by a Minnesota depository institution;

(5) obligations of, or instruments unconditionally guaranteed by, Minnesota depository institutions whose long-term debt rating is at least AA-, or Aa3, or their equivalent by at least two nationally recognized rating agencies.

Subd. 8. **ADMINISTRATION.** (a) The commercial self-insurance group shall be required to secure administrative services through a service company which maintains an office in the state of Minnesota. Services provided by the

service company or its subcontractor should at a minimum include claim handling, safety and loss control, and submission of all required regulatory reports.

(b) The service company must demonstrate it has the capability to provide, through its employees or by contract, services which are necessary to administer the self-insurance group and it must employ or have under contract a claims adjuster with at least three years of Minnesota specific workers' compensation claim handling experience.

(c) The service company retained by a commercial self-insurance group to administer workers' compensation claims shall estimate the total accrued liability of the group for the payment of compensation for the commercial self-insurance group's annual report to the commissioner and shall make the estimate both in good faith and with the exercise of a reasonable degree of care.

Subd. 9. **MARKETING AND COMMUNICATIONS.** A commercial self-insurance group's applications, coverage documents, quotations, and all marketing materials must prominently display information indicating that the commercial self-insurance group is a self-insured program, that members are jointly and severally liable for the obligations of the commercial self-insurance group, and that members will be assessed on an individual and proportionate basis for any deficits created by the commercial self-insurance group.

Subd. 10. **REINSURANCE.** (a) A commercial self-insurance group shall be required to purchase specific excess coverage with the workers' compensation reinsurance association at the lower retention level for its first three years of operation. After that time it may select the higher or super retention level with prior notice given to and approval of the commissioner.

(b) The commissioner may require a commercial self-insurance group to purchase aggregate excess coverage. Any reinsurance or excess coverage purchased other than that of the workers' compensation reinsurance association must be secured with an insurance company or reinsurer licensed to underwrite such coverage in Minnesota and maintains at least an "A" rating with the A.M. Best rating organization.

Subd. 11. **DISBURSEMENT OF FUND SURPLUS.** (a) One hundred percent of any surplus money for a fund year in excess of 125 percent of the amount necessary to fulfill all obligations under the workers' compensation act, chapter 176, for that fund year may be declared refundable to a member at any time. The date shall be no earlier than 18 months following the end of such fund year. The first disbursement of fund surplus may not be made prior to the completion of an operational audit by the commissioner. There can be no more than one refund made in any 12-month period. When all the claims of any one fund year have been fully paid, as certified by an actuary, all surplus money from that fund year may be declared refundable.

(b) The commercial self-insurance group shall give notice to the commissioner of any refund. Said notice shall be accompanied by a statement from the commercial self-insurer group's certified public accountant certifying that the proposed refund is in compliance with paragraph (a).

Subd. 12. **SATISFACTION OF FUND DEFICIT.** In the event of a deficit in any fund year, such deficit shall be paid up immediately, either from surplus from a fund year other than the current fund year, or by assessment of the membership. The commissioner shall be notified within ten days of any transfer of surplus funds. The commissioner, upon finding that a deficit in a fund year has not been satisfied by a transfer of surplus from another fund year, shall order an assessment to be levied on a proportionate basis against the members of the commercial self-insurance group during that fund year sufficient to make up any deficit.

Sec. 32. **[79A.23] COMMERCIAL SELF-INSURANCE GROUP REPORTING REQUIREMENTS.**

Subdivision 1. **REQUIRED REPORTS TO COMMISSIONER.** Each commercial self-insurance group shall submit the following documents to the commissioner.

(a) An annual report shall be submitted by April 1 showing the incurred losses, paid and unpaid, specifying indemnity and medical losses by classification, payroll by classification, and current estimated outstanding liability for workers' compensation on a calendar year basis, in a manner and on forms available from the commissioner. In addition each group will submit a quarterly interim loss report showing incurred losses for all its membership.

(b) Each commercial self-insurance group shall submit within 45 days of the end of each quarter:

(1) a schedule showing all the members who participate in the group, their date of inception, and date of withdrawal, if applicable;

(2) a separate section identifying which members were added or withdrawn during that quarter; and

(3) an internal financial statement and copies of the fiscal agent's statements supporting the balances in the common claims fund.

(c) The commercial self-insurance group shall submit an annual certified financial audit report of the commercial self-insurance group fund by April 1 of the following year. The report must be accompanied by an expense schedule showing the commercial self-insurance group's operational costs for the same year including service company charges, accounting and actuarial fees, fund administration charges, reinsurance premiums, commissions, and any other costs associated with the administration of the group program.

(d) An officer of the commercial self-insurance group shall, under oath, attest to the accuracy of each report submitted under paragraphs (a), (b), and (c). Upon sufficient cause, the commissioner shall require the commercial self-insurance group to submit a certified audit of payroll and claim records conducted by an independent auditor approved by the commissioner, based on gen-

erally accepted accounting principles and generally accepted auditing standards, and supported by an actuarial review and opinion of the future contingent liabilities. The basis for sufficient cause shall include the following factors:

(1) where the losses reported appear significantly different from similar types of groups;

(2) where major changes in the reports exist from year to year, which are not solely attributable to economic factors; or

(3) where the commissioner has reason to believe that the losses and payroll in the report do not accurately reflect the losses and payroll of the commercial self-insurance group.

If any discrepancy is found, the commissioner shall require changes in the commercial self-insurance group's business plan or service company recordkeeping practices.

(e) Each commercial self-insurance group shall submit by August 15 a copy of the group's annual federal and state income tax returns or provide proof that it has received an exemption from these filings.

(f) With the annual loss report each commercial self-insurance group shall report to the commissioner any worker's compensation claim where the full, undiscounted value is estimated to exceed $50,000, in a manner and on forms prescribed by the commissioner.

(g) Each commercial self-insurance group shall submit by May 1 a list of all members and the percentage of premium each represents to the total group's premium for the previous calendar year.

(h) Each commercial self-insurance group shall submit by May 1 the following documents prepared by the group's certified public accountant:

(1) a compiled combined financial statement of group members and a list of members included in this statement; and

(2) a report that the statements which were combined have met the requirements of subdivision 2.

(i) If any group member comprises over 25 percent of total group premium, that member's statement must be reviewed or audited and must be submitted to the commissioner by May 1 of the following year.

(j) Each commercial self-insurance group shall submit a copy of each member's accountant's report letter from the reports used in compiling the combined financial statements.

Subd. 2. **REQUIRED REPORTS FROM MEMBERS TO GROUP.** Each member of the commercial self-insurance group shall, by April 1, submit to the group its most recent annual financial statement, together with other financial information the group may require. These financial statements submitted must not have a fiscal year end date older than January 15 of the group's calendar year end. Individual group members constituting at least 75 percent of the

group's annual premium shall submit to the group reviewed or audited financial statements. The remaining members may submit compilation level statements.

Subd. 3. **OPERATIONAL AUDIT.** (a) The commissioner, prior to authorizing surplus distribution of a commercial self-insurance group's first fund year or no later than after the third anniversary of the group's authority to self-insure, shall conduct an operational audit of the commercial self-insurance group's claim handling and reserve practices as well as its underwriting procedures to determine if they adhere to the group's business plan. The commissioner may select outside consultants to assist in conducting the audit. After completion of the audit, the commissioner shall either renew or revoke the commercial self-insurance group's authority to self-insure. The commissioner may also order any changes deemed necessary in the claims handling, reserving practices, or underwriting procedures of the group.

(b) The cost of the operational audit shall be borne by the commercial self-insurance group.

Subd. 4. **UNIT STATISTICAL REPORT.** Each commercial self-insurance group will annually file a unit statistical report to the Minnesota workers' compensation insurers association.

Sec. 33. **[79A.24] COMMERCIAL SELF-INSURANCE GROUP SECURITY DEPOSIT.**

Subdivision 1. **ANNUAL SECURING OF LIABILITY.** Each year every commercial self-insurance group shall secure future incurred liabilities for the payment of compensation and the performance of the obligations of its membership imposed under chapter 176. A new deposit must be posted within 30 days of the filing of the commercial self-insurance group's annual actuarial report with the commissioner.

Subd. 2. **MINIMUM DEPOSIT.** The minimum deposit is 150 percent of the commercial self-insurance group's future incurred liabilities for the payment of compensation as determined by an actuary. If all the members of the commercial self-insurance group have submitted reviewed or audited financial statements to the group's accountant, this minimum deposit shall be 110 percent of the commercial self-insurance group's future incurred liabilities for the payment of workers' compensation as determined by an actuary. The group must file a letter with the commissioner from the group's accountant which confirms that the compiled combined financial statements were prepared from members reviewed or audited financial statements only before the lower security deposit is allowed. Each actuarial study shall include a projection of future losses during a one-year period until the next scheduled actuarial study, less payments anticipated to be made during that time. Deduction should be made for the total amount which is estimated to be returned to the commercial self-insurance group from any specific excess insurance coverage, aggregate excess insurance coverage, and any supplementary benefits which are estimated to be reimbursed by the special compensation fund. Supplementary benefits will not be reimbursed by the special compensation fund unless the special compensation fund

assessment pursuant to section 176.129 is paid and the required reports are filed with the special compensation fund. In the case of surety bonds, bonds shall secure administrative and legal costs in addition to the liability for payment of compensation reflected on the face of the bond. In no event shall the security be less than the group's selected retention limit of the workers' compensation reinsurance association. The posting or depositing of security under this section shall release all previously posted or deposited security from any obligations under the posting or depositing and any surety bond so released shall be returned to the surety. Any other security shall be returned to the depositor or the person posting the bond.

Subd. 3. **TYPE OF ACCEPTABLE SECURITY.** The commissioner may only accept as security, and the commercial self-insurance group shall deposit as security, cash, approved government securities as set forth in section 176.181, subdivision 2b, surety bonds or irrevocable letters of credit in any combination in accordance with the requirements under section 79A.04, subdivision 3.

Subd. 4. **CUSTODIAL ACCOUNTS.** (a) All surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited in accordance with the provisions of section 79A.071.

(b) Upon the commissioner sending a request to renew, request to post, or request to increase a security deposit, a perfected security interest is created in the commercial self-insurance group's and member's assets in favor of the commissioner to the extent of any then unsecured portion of the commercial self-insurance group's incurred liabilities. The perfected security interest is transferred to any cash or securities thereafter posted by the commercial self-insurance group with the state treasurer and is released only upon either of the following:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation; or

(2) the return of cash or securities by the commissioner. The commercial self-insurance group loses all right, title, and interest in and any right to control all assets or obligations posted or left on deposit as security. In the event of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, or in the event of the issuance of a certificate of default by the commissioner, the commissioner shall liquidate the deposit as provided in this chapter, and transfer it to the commercial self-insurance group security fund for application to the commercial self-insurance group's incurred liability.

(c) No securities in physical form on deposit with the state treasurer or the commissioner or custodial accounts assigned to the state shall be released or exchanged without an order from the commissioner. No security can be exchanged more than once every 90 days.

(d) Any securities deposited with the state treasurer or with a custodial

account assigned to the state treasurer or letters of credit or surety bonds held by the commissioner may be exchanged or replaced by the depositor with any other acceptable securities or letters of credit or surety bond of like amount so long as the market value of the securities or amount of the surety bonds or letter of credit equals or exceeds the amount of the deposit required. If securities are replaced by surety bond, the commercial self-insurance group must maintain securities on deposit in an amount sufficient to meet all outstanding workers' compensation liability arising during the period covered by the deposit of the replaced securities.

(e) The commissioner shall return on an annual basis to the commercial self-insurance group all amounts of security determined by the commissioner to be in excess of the statutory requirements for the group to self-insure, including that necessary for administrative costs, legal fees, and the payment of any future workers' compensation claims.

Sec. 34. **[79A.25] DEFAULT OF A COMMERCIAL SELF-INSURANCE GROUP.**

Subdivision 1. **NOTICE OF INSOLVENCY, BANKRUPTCY, OR DEFAULT.** The commissioner of labor and industry shall notify the commissioner and the commercial self-insurance group security fund if the commissioner of labor and industry has knowledge that any commercial self-insurance group has failed to pay workers' compensation benefits as required by chapter 176. If the commissioner determines that a court of competent jurisdiction has declared the commercial self-insurance group to be bankrupt or insolvent and the commercial self-insurance group has failed to pay workers' compensation as required by chapter 176 or if the commissioner issues a certificate of default against a commercial self-insurance group for failure to pay workers' compensation as required by chapter 176, then the security deposit posted by the commercial self-insurance group shall be utilized to administer and pay the commercial self-insurance group's workers' compensation obligation.

Subd. 2. **REVOCATION OF CERTIFICATE TO SELF-INSURE.** (a) The commissioner shall revoke the commercial self-insurance group's certificate to self-insure once notified of the commercial self-insurance group's bankruptcy, insolvency, or upon issuance of a certificate of default. The revocation shall be completed as soon as practicable, but no later than 30 days after the commercial self-insurance group's security has been called.

(b) The commissioner shall also revoke a commercial self-insurance group's authority to self-insure on the following grounds:

(1) failure to comply with any lawful order of the commissioner;

(2) failure to comply with any provision of chapter 176;

(3) a deterioration of the commercial self-insurance group's financial condition affecting its ability to pay obligations in chapter 176;

(4) committing an unfair or deceptive act or practice as defined in section 72A.20; or

(5) failure to abide by the plan of operation of the workers' compensation reinsurance association.

Subd. 3. **NOTICE BY THE COMMISSIONER.** In the event of bankruptcy, insolvency, or certificate of default, the commissioner shall immediately notify by certified mail the state treasurer, the surety, the issuer of an irrevocable letter of credit, and any custodian of the security. At the time of notification, the commissioner shall also call the security and transfer and assign it to the commercial self-insurance group security fund. The commissioner shall also notify by certified mail the commercial self-insurance group's security fund and order the commercial security fund to assume the insolvent commercial self-insurance group's obligations for which it is liable under chapter 176.

Sec. 35. **[79A.26] COMMERCIAL SELF-INSURANCE GROUP SECURITY FUND.**

Subdivision 1. **CREATION.** The commercial self-insurance group security fund is established as a nonprofit corporation pursuant to the Minnesota nonprofit corporation act, sections 317A.001 to 317A.909. If any provision of the Minnesota nonprofit corporation act conflicts with any provision of this chapter, the provisions of this chapter apply. Each commercial self-insurance group that elects to be subject to the terms of sections 79A.19 to 79A.32 rather than sections 79A.01 to 79A.18 shall participate in the commercial self-insurance group security fund. This participation shall be a condition of maintaining its certificate to self-insure.

Subd. 2. **BOARD OF TRUSTEES.** The commercial security fund shall be governed by a board consisting of a minimum of three and maximum of five trustees. The trustees shall be representatives of commercial self-insurance groups who shall be elected by the participants of the commercial security fund, each group having one vote. The trustees initially elected by the participants shall serve staggered terms of either two or three years. Thereafter, trustees shall be elected to three-year terms and shall serve until their successors are elected and assume office pursuant to the bylaws of the commercial security fund. Two additional trustees shall be appointed by the commissioner. These trustees shall serve four-year terms. One of these trustees shall serve a two-year term. Thereafter, the trustees shall be appointed to four-year terms, and shall serve until their successors are appointed and assume office according to the bylaws of the commercial security fund. In addition to the trustees elected by the participants or appointed by the commissioner, the commissioner of labor and industry or the commissioner's designee shall be an ex officio, nonvoting member of the board of trustees. A member of the board of trustees may designate another person to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

Subd. 3. **BYLAWS.** The commercial security fund shall establish bylaws

and a plan of operation, subject to the prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of the commercial security fund. The commercial security fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds it deems necessary for the protection of the commercial self-insurance group participants and their employees.

Subd. 4. **CONFIDENTIAL INFORMATION.** The commercial security fund may receive private data concerning the financial condition of commercial self-insurance groups whose liabilities to pay compensation have become its responsibility and shall adopt bylaws to prevent dissemination of that information.

Subd. 5. **EMPLOYEES.** Commercial security fund employees are not state employees and are not subject to any state civil service regulations.

Subd. 6. **ASSUMPTION OF OBLIGATIONS.** Upon order of the commissioner under section 79A.25, subdivision 3, the commercial security fund shall assume the workers' compensation obligations of an insolvent commercial self-insurance group. The commissioner shall further order the commercial self-insurance group security fund to commence payment of these obligations within 14 days of the receipt of this notification and order.

Subd. 7. **ACT OR OMISSIONS; PENALTIES.** Notwithstanding subdivision 6, the commercial security fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the commercial security fund or its appointed administrator, including, but not limited to, the penalties provided in chapter 176 unless the commercial security fund or its appointed administrator would be subject to penalties under chapter 176 as the result of the actions of the commercial security fund or its administrator.

Subd. 8. **PARTY IN INTEREST.** The commercial security fund shall be a party in interest in all proceedings involving compensation claims against an insolvent commercial self-insurance group whose compensation obligations have been paid or assumed by the commercial security fund. The commercial security fund shall have the same rights and defenses as the insolvent commercial self-insurance group, including, but not limited to, all of the following:

(1) to appear, defend, and appeal claims;

(2) to receive notice of, investigate, adjust, compromise, settle, and pay claims; and

(3) to investigate, handle, and deny claims.

Subd. 9. **PAYMENTS TO COMMERCIAL SECURITY FUND.** Notwithstanding sections 79A.19 to 79A.32 or chapter 176 to the contrary, in the event that the commercial self-insurance group security fund assumes the obligations of any bankrupt or insolvent commercial self-insurance group pursuant to this

section, then the proceeds of any surety bond, workers' compensation reinsurance association, specific excess insurance or aggregate excess insurance policy, and any special compensation fund payment or supplementary benefit reimbursements shall be paid to the commercial self-insurance group security fund instead of the bankrupt or insolvent commercial self-insurance group or its successor in interest. No special compensation fund reimbursements shall be made to the commercial security fund unless the special compensation fund assessments under section 176.129 are paid and the required reports are made to the special compensation fund.

Subd. 10. **INSOLVENT COMMERCIAL SELF-INSURANCE GROUP.** The commercial security fund shall have the right and obligation to obtain reimbursement from an insolvent commercial self-insurance group up to the amount of the commercial self-insurance group's workers' compensation obligations paid and assumed by the commercial security fund, including reasonable administrative and legal costs. This right includes, but is not limited to, a right to claim for wages and other necessities of life advanced to claimants as subrogee of the claimants in any action to collect against the commercial self-insurance group as debtor.

Subd. 11. **SECURITY DEPOSITS.** The commercial security fund shall have the right and obligation to obtain from the security deposit of an insolvent commercial self-insurance group the amount of the commercial self-insurance group's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the commercial security fund. Reimbursement of administrative costs, including legal costs, shall be subject to approval by a majority of the commercial security fund's voting trustees. The commercial security fund shall be a party in interest in any action to obtain the security deposit for the payment of compensation obligations of an insolvent commercial self-insurance group.

Subd. 12. **LEGAL ACTIONS.** The commercial security fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the commercial security fund, including, but not limited to, any excess insurance carrier of the insolvent commercial self-insurance group and any person or entity whose negligence or breach of an obligation contributed to any underestimation of the commercial self-insurance group's accrued liability as reported to the commissioner.

Subd. 13. **PARTY IN INTEREST.** The commercial security fund may be a party in interest in any action brought by any other person seeking damages resulting from the failure of an insolvent commercial self-insurance group to pay workers' compensation required under this subdivision.

Subd. 14. **ASSETS MAINTAINED.** The commercial security fund shall maintain cash, readily marketable securities, or other assets, or a line of credit, approved by the commissioner, sufficient to immediately continue the payment of the compensation obligations of an insolvent commercial self-insurance group

pending receipt of the security deposit, surety bond proceeds, irrevocable letter of credit, or, if necessary, assessment of the participants. The commissioner may establish the minimum amount to be maintained by, or immediately available to, the commercial security fund for this purpose.

Subd. 15. **ASSESSMENT.** The commercial security fund may assess each of its participants a pro rata share of the funding necessary to carry out its obligation and the purposes of sections 79A.19 to 79A.32. Total annual assessments in any calendar year shall be a percentage of the workers' compensation benefits paid under sections 176.101 and 176.111 during the previous calendar year. The annual assessment calculation shall not include supplementary benefits paid which will be reimbursed by the special compensation fund. Funds obtained by assessments under this subdivision may only be used for the purposes of sections 79A.19 to 79A.32. The trustees shall certify to the commissioner the collection and receipt of all money from assessments, noting any delinquencies. The trustees shall take any action deemed appropriate to collect any delinquent assessments.

Subd. 16. **AUDIT OF FUND.** The trustees shall annually contract for an independent certified audit of the financial activities of the fund. An annual report on the financial status of the commercial self-insurance group security fund shall be submitted to the commissioner and to each commercial group participant.

Sec. 36. **[79A.27] INDEMNITY AGREEMENT FORM.**

INDIVIDUAL AND PROPORTIONATE INDEMNITY AGREEMENT

WHEREAS, (name of company) has agreed to be and has been accepted as a member of (name of commercial self-insurance group).

WHEREAS, (name of company) has agreed to be bound by all of the provisions of the Minnesota workers' compensation act and all rules promulgated thereunder.

WHEREAS, that (name of company) has agreed to be bound by bylaws or plan of operation and all amendments thereto of (name of commercial self-insurance group);

NOW THEREFORE, IT IS AGREED that:

1. (Name of company) shall be jointly and severally liable for all claims and expenses of all the members of (name of commercial self-insurance group) arising in any fund year in which (name of company) is a member of the commercial self-insurance group.

2. (Name of commercial self-insurance group) shall assess (name of company) on an individual and proportionate basis for its share of the total liability of the commercial self-insurance group.

3. In the event that (name of company) is not a member for the full year, it shall be only liable for a pro rata share of that liability.

IN WITNESS WHEREOF, the (name of company) and (name of commercial self-insurance group) have caused this indemnity agreement to be executed by its authorized officers:

Commercial Self-Insurance Group Name Company Name

By: ..... By: .....
date: ..... date: .....

Sec. 37. **[79A.28] OPEN MEETING; ADMINISTRATIVE PROCEDURE ACT.**

The commercial self-insurance group security fund and its board of trustees shall not be subject to:

(1) the open meeting law;

(2) the open appointments law;

(3) the data privacy law; and

(4) except where specifically set forth, the administrative procedure act.

Sec. 38. **[79A.29] RULES.**

The commissioner may adopt, amend, and repeal rules reasonably necessary to carry out the purposes of this chapter. Minnesota Rules, chapter 2780, shall apply to commercial self-insurance groups unless otherwise specified by rule.

Sec. 39. **[79A.30] GOVERNING LAW.**

If there is any inconsistency between sections 79A.19 to 79A.32 and any other statute or rule, the provisions of sections 79A.19 to 79A.32 shall govern with respect to commercial self-insurance groups.

Sec. 40. **[79A.31] COMMERCIAL SELF-INSURANCE GROUP SECURITY FUND MEMBERSHIP; WITHDRAWAL FROM SELF-INSURERS' SECURITY FUND.**

Subdivision 1. **WITHDRAWAL.** Any group self-insurer that is a member as of August 1, 1995, of the self-insurers' security fund established under section 79A.09, may until January 1, 1996, elect to withdraw from that fund and become a member of the commercial self-insurance group security fund established under section 79A.26. The transferring group shall be subject to the provisions and requirements of sections 79A.19 to 79A.34 as of the date of transfer. Additional security may be required pursuant to section 79A.24. Group self-insurers electing to transfer to the commercial self-insurance group fund shall not be subject to the provisions of section 79A.06, subdivision 5, including, but not limited to, assessments by the self-insurers' security fund.

Subd. 2. **TRANSFER; NOTICE TO COMMISSIONER.** A group self-insurer shall provide to the commissioner written notice of its intent to transfer membership to the commercial self-insurance group security fund. The notice shall be sent at least 30 days prior to the date the group self-insurer requests membership in the commercial self-insurance group security fund.

Subd. 3. **TRANSFER OF POTENTIAL AND CONTINGENT LIABILITIES.** Upon transfer pursuant to subdivision 1, the commercial self-insurance group security fund shall assume all of the past, present, and future potential and contingent workers' compensation liabilities of the transferring group in the event of any bankruptcy or insolvency of that group or its failure to meet its obligations under this chapter and chapter 176.

Subd. 4. **ELECTION.** A group self-insurer established after August 1, 1995, may elect to become a member of either the self-insurers' security fund or the commercial self-insurance group security fund. However, once the election is made, a group may not transfer to the other security fund.

Sec. 41. **[79A.32] REPORTING TO MINNESOTA WORKERS' COMPENSATION INSURERS' ASSOCIATION.**

Subdivision 1. **REQUIRED ACTIVITY.** Each self-insurer shall perform the following activities:

(1) maintain membership in and report loss experience data to the Minnesota workers' compensation insurers association, or a licensed data service organization, in accordance with the statistical plan and rules of the organization as approved by the commissioner;

(2) establish a plan for merit rating which shall be consistently applied to all insureds, provided that members of a data service organization may use merit rating plans developed by that data service organization;

(3) provide an annual report to the commissioner containing the information and prepared in the form required by the commissioner; and

(4) keep a record of the losses paid by the self-insurers and premiums for the group self-insurers.

Subd. 2. **PERMITTED ACTIVITY.** In addition to any other activities not prohibited by this chapter, self-insurers may:

(1) through licensed data service organizations, individually, or with self-insurers commonly owned, managed, or controlled, conduct research and collect statistics to investigate, identify, and classify information relating to causes or prevention of losses;

(2) develop and use classification plans and rates based upon any reasonable factors; and

(3) develop rules for the assignment of risks to classifications.

Subd. 3. **DELAYED REPORTING.** Private self-insurers established under sections 79A.01 to 79A.18 prior to August 1, 1995, need not begin filing the reports required under subdivision 1 until January 1, 1998.

Sec. 42. Minnesota Statutes 1994, section 168.012, subdivision 1, is amended to read:

Subdivision 1. (a) The following vehicles are exempt from the provisions of this chapter requiring payment of tax and registration fees, except as provided in subdivision 1c:

(1) vehicles owned and used solely in the transaction of official business by representatives of foreign powers, by the federal government, the state, or any political subdivision;

(2) vehicles owned and used exclusively by educational institutions and used solely in the transportation of pupils to and from such institutions;

(3) vehicles used solely in driver education programs at nonpublic high schools;

(4) vehicles owned by nonprofit charities and used exclusively to transport disabled persons for educational purposes;

(5) vehicles owned and used by honorary consul or consul general of foreign governments; and

(6) ambulances owned by ambulance services licensed under section 144.802, the general appearance of which is unmistakable.

(b) Vehicles owned by the federal government, municipal fire apparatus, police patrols and ambulances, the general appearance of which is unmistakable, shall not be required to register or display number plates.

(c) Unmarked vehicles used in general police work, liquor investigations, arson investigations, and passenger automobiles, pickup trucks, and buses owned or operated by the department of corrections shall be registered and shall display appropriate license number plates which shall be furnished by the registrar at cost. Original and renewal applications for these license plates authorized for use in general police work and for use by the department of corrections must be accompanied by a certification signed by the appropriate chief of police if issued to a police vehicle, the appropriate sheriff if issued to a sheriff's vehicle, the commissioner of corrections if issued to a department of corrections vehicle, or the appropriate officer in charge if issued to a vehicle of any other law enforcement agency. The certification must be on a form prescribed by the commissioner and state that the vehicle will be used exclusively for a purpose authorized by this section.

(d) Unmarked vehicles used by the ~~department~~ departments of revenue and labor and industry, fraud unit, in conducting seizures or criminal investigations must be registered and must display passenger vehicle classification license number plates which shall be furnished at cost by the registrar. Original and renewal applications for these passenger vehicle license plates must be accompanied by a certification signed by the commissioner of revenue or the commissioner of labor and industry. The certification must be on a form prescribed by the commissioner and state that the vehicles will be used exclusively for the purposes authorized by this section.

(e) All other motor vehicles shall be registered and display tax-exempt number plates which shall be furnished by the registrar at cost, except as provided in subdivision 1c. All vehicles required to display tax-exempt number plates shall have the name of the state department or political subdivision, or the nonpublic high school operating a driver education program, on the vehicle plainly displayed on both sides thereof in letters not less than 2-1/2 inches high and one-half inch wide; except that each state hospital and institution for the mentally ill and mentally retarded may have one vehicle without the required identification on the sides of the vehicle, and county social service agencies may have vehicles used for child and vulnerable adult protective services without the required identification on the sides of the vehicle. Such identification shall be in a color giving contrast with that of the part of the vehicle on which it is placed and shall endure throughout the term of the registration. The identification must not be on a removable plate or placard and shall be kept clean and visible at all times; except that a removable plate or placard may be utilized on vehicles leased or loaned to a political subdivision or to a nonpublic high school driver education program.

Sec. 43. Minnesota Statutes 1994, section 175.16, is amended to read:

175.16 **DIVISIONS.**

The department of labor and industry shall consist of the following divisions: division of workers' compensation, division of boiler inspection, division of occupational safety and health, division of statistics, division of steamfitting standards, division of voluntary apprenticeship, division of labor standards, and such other divisions as the commissioner of the department of labor and industry may deem necessary and establish. Each division of the department and persons in charge thereof shall be subject to the supervision of the commissioner of the department of labor and industry and, in addition to such duties as are or may be imposed on them by statute, shall perform such other duties as may be assigned to them by said commissioner. Notwithstanding any other law to the contrary, the commissioner is the administrator and supervisor of all of the department's dispute resolution functions and personnel and may delegate authority to settlement judges and others to make determinations under sections 176.106, 176.238, and 176.239 and to approve settlement of claims under section 176.521.

Sec. 44. Minnesota Statutes 1994, section 176.011, subdivision 16, is amended to read:

Subd. 16. **PERSONAL INJURY.** "Personal injury" means injury arising out of and in the course of employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where the employee's services require the employee's presence as a part of ~~such~~ that service at the time of the injury and during the hours of ~~such~~ that service. Where the employer regularly furnished transportation to employees to and from the place of employment ~~such~~, those employees are subject to this chapter while being so transported~~, but shall~~. Personal injury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of personal reasons, and not directed against the employee as an employee, or because of the employment.

Sec. 45. Minnesota Statutes 1994, section 176.081, subdivision 1, is amended to read:

Subdivision 1. ~~**APPROVAL**~~ **LIMITATION OF FEES.** (a) A fee for legal services of 25 percent of the first $4,000 of compensation awarded to the employee and 20 percent of the next $60,000 of compensation awarded to the employee is the maximum permissible fee and does not require approval by the commissioner, compensation judge, or any other party ~~except as provided in paragraph (d)~~. All fees, including fees for obtaining medical or rehabilitation benefits, must be calculated according to the formula under this subdivision, ~~or earned in hourly fees for representation at discontinuance conferences under section 176.239, or earned in hourly fees for representation on rehabilitation or medical issues under section 176.102, 176.135, or 176.136. Attorney fees for recovery of medical or rehabilitation benefits or services shall be assessed against the employer or insurer if these fees exceed the contingent fee under this section in connection with benefits currently in dispute. The amount of the fee that the employer or insurer is liable for is the amount determined under subdivision 5, minus the contingent fee~~ except as otherwise provided in clause (1) or (2).

(1) the contingent attorney fee for recovery of monetary benefits according to the formula in this section is presumed to be adequate to cover recovery of medical and rehabilitation benefit or services concurrently in dispute. Attorney fees for recovery of medical or rehabilitation benefits or services shall be assessed against the employer or insurer only if the attorney establishes that the contingent fee is inadequate to reasonably compensate the attorney for representing the employee in the medical or rehabilitation dispute. In cases where the contingent fee is inadequate the employer or insurer is liable for attorney fees based on the formula in this subdivision or in clause (2).

For the purposes of applying the formula where the employer or insurer is liable for attorney fees, the amount of compensation awarded for obtaining disputed medical and rehabilitation benefits under sections 176.102, 176.135, and 176.136 shall be the dollar value of the medical or rehabilitation benefit awarded, where ascertainable.

(2) The maximum attorney fee for obtaining a change of doctor or qualified rehabilitation consultant, or any other disputed medical or rehabilitation benefit for which a dollar value is not reasonably ascertainable, is the amount charged in hourly fees for the representation or $500, whichever is less, to be paid by the employer or insurer.

(3) The fees for obtaining disputed medical or rehabilitation benefits are included in the $13,000 limit in paragraph (b). An attorney must concurrently file all outstanding disputed issues. An attorney is not entitled to attorney fees for representation in any issue which could reasonably have been addressed during the pendency of other issues for the same injury.

(b) All fees for legal services related to the same injury are cumulative and may not exceed $13,000~~, except as provided by subdivision 2~~. If multiple injuries are the subject of a dispute, the commissioner, compensation judge, or court of appeals shall specify the attorney fee attributable to each injury.

(c) If the employer or the insurer or the defendant is given written notice of claims for legal services or disbursements, the claim shall be a lien against the amount paid or payable as compensation. Subject to the foregoing maximum amount for attorney fees, up to 25 percent of the first $4,000 of periodic compensation awarded to the employee and 20 percent of the next $60,000 of periodic compensation awarded to the employee may be withheld from the periodic payments for attorney fees or disbursements if the payor of the funds clearly indicates on the check or draft issued to the employee for payment the purpose of the withholding, the name of the attorney, the amount withheld, and the gross amount of the compensation payment before withholding. In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed claims or portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan. ~~Fees for administrative conferences under section 176.239 shall be determined on an hourly basis, according to the criteria in subdivision 5.~~ The existence of a dispute is dependent upon a disagreement after the employer or insurer has had adequate time and information to take a position on liability. Neither the holding of a hearing nor the filing of an application for a hearing alone may determine the existence of a dispute. Except where the employee is represented by an attorney in other litigation pending at the department or at the office of administrative hearings, a fee may not be charged after June 1, 1996, for services with respect to a medical or rehabilitation issue arising under section 176.102, 176.135, or 176.136 performed before the employee has consulted with the department and the department certifies that there is a dispute and that it has tried to resolve the dispute.

(d) An attorney who is claiming legal fees for representing an employee in a workers' compensation matter shall file a statement of attorney fees with the commissioner, compensation judge before whom the matter was heard, or workers' compensation court of appeals on cases before the court. A copy of the

signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner~~,~~ and shall report the number of hours spent on the case~~, and shall clearly and conspicuously state that the employee or insurer has ten calendar days to object to the attorney fees requested. If no objection is timely made by the employee or insurer, the amount requested shall be conclusively presumed reasonable providing the amount does not exceed the limitation in subdivision 1. The commissioner, compensation judge, or court of appeals shall issue an order granting the fees and the amount requested shall be awarded to the party requesting the fee~~.

~~If a timely objection is filed, or the fee is determined on an hourly basis, the commissioner, compensation judge, or court of appeals shall review the matter and make a determination based on the criteria in subdivision 5.~~

~~If no timely objection is made by an employer or insurer, reimbursement under subdivision 7 shall be made if the statement of fees requested this reimbursement.~~

(e) Employers and insurers may not pay attorney fees or wages for legal services of more than $13,000 per case unless the additional fees or wages are approved under subdivision 2.

(f) Each insurer and self-insured employer shall file annual statements with the commissioner detailing the total amount of legal fees and other legal costs incurred by the insurer or employer during the year. The statement shall include the amount paid for outside and in-house counsel, deposition and other witness fees, and all other costs relating to litigation.

Sec. 46. Minnesota Statutes 1994, section 176.081, subdivision 7, is amended to read:

Subd. 7. **AWARD; ADDITIONAL AMOUNT.** If the employer or insurer files a denial of liability, notice of discontinuance, or fails to make payment of compensation or medical expenses within the statutory period after notice of injury or occupational disease, or otherwise unsuccessfully resists the payment of compensation or medical expenses, or unsuccessfully disputes the payment of rehabilitation benefits or other aspects of a rehabilitation plan, and the injured person has employed an attorney at law, who successfully procures payment on behalf of the employee or who enables the resolution of a dispute with respect to a rehabilitation plan, the compensation judge, commissioner, or the workers' compensation court of appeals upon appeal, upon application, shall award to the employee against the insurer or self-insured employer or uninsured employer, in addition to the compensation benefits paid or awarded to the employee, an amount equal to ~~25~~ 30 percent of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of $250.

Sec. 47. Minnesota Statutes 1994, section 176.081, subdivision 7a, is amended to read:

Subd. 7a. **SETTLEMENT OFFER.** At any time prior to one day before a matter is to be heard, a party litigating a claim made pursuant to this chapter may serve upon the adverse party a reasonable offer of settlement of the claim, with provision for costs and disbursements then accrued. If before the hearing the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with the proof of service thereof, and thereupon judgment shall be entered.

If an offer by an employer or insurer is not accepted by the employee, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. ~~Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is less favorable than the offer, the employer shall not be liable for any part of the attorney's fees awarded pursuant to this section.~~

If an offer by an employee is not accepted by the employer or insurer, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees. ~~Notwithstanding the provisions of subdivision 7, if the judgment finally obtained by the employee is at least as favorable as the offer, the employer shall pay an additional 25 percent, over the amount provided in subdivision 7, of that portion of the attorney's fee which has been awarded pursuant to this section that is in excess of $250.~~

The fact that an offer is made but not accepted does not preclude a subsequent offer.

Sec. 48. Minnesota Statutes 1994, section 176.081, subdivision 9, is amended to read:

Subd. 9. **RETAINER AGREEMENT.** An attorney who is hired by an employee to provide legal services with respect to a claim for compensation made pursuant to this chapter shall prepare a retainer agreement in which the provisions of this section are specifically set out and provide a copy of this agreement to the employee. The retainer agreement shall provide a space for the signature of the employee. A signed agreement shall raise a conclusive presumption that the employee has read and understands the statutory fee provisions. No fee shall be awarded pursuant to this section in the absence of a signed retainer agreement.

The retainer agreement shall contain a notice to the employee regarding the maximum fee allowed under this section in ten-point type, which shall read:

Notice of Maximum Fee

The maximum fee allowed by law for legal services is 25 percent of the first $4,000 of compensation awarded to the employee and 20 percent of the next $60,000 of compensation awarded to the employee subject to a cumulative maximum fee of $13,000 for fees related to the same injury.

The employee shall take notice that the employee is under no legal or moral obligation to pay any fee for legal services in excess of the foregoing maximum fee.

Sec. 49. Minnesota Statutes 1994, section 176.081, is amended by adding a subdivision to read:

Subd. 12. **SANCTIONS; FAILURE TO PREPARE, APPEAR, OR PARTICIPATE.** If a party or party's attorney fails to appear at any conference or hearing scheduled under this chapter, is substantially unprepared to participate in the conference or hearing, or fails to participate in good faith, the commissioner or compensation judge, upon motion or upon its own initiative, shall require the party or the party's attorney or both to pay the reasonable expenses including attorney fees, incurred by the other party due to the failure to appear, prepare, or participate. Attorney fees or other expenses may not be awarded if the commissioner or compensation judge finds that the noncompliance was substantially justified or that other circumstances would make the sanction unjust. The department of labor and industry, and the office of administrative hearings may by rule establish additional sanctions for failure of a party or the party's attorney to appear, prepare for, or participate in a conference or hearing.

Sec. 50. Minnesota Statutes 1994, section 176.102, subdivision 3a, is amended to read:

Subd. 3a. **DISCIPLINARY ACTIONS.** The panel has authority to discipline qualified rehabilitation consultants and vendors and may impose a penalty of up to ~~$1,000~~ $3,000 per violation, payable to the special compensation fund, and may suspend or revoke certification. Complaints against registered qualified rehabilitation consultants and vendors shall be made to the commissioner who shall investigate all complaints. If the investigation indicates a violation of this chapter or rules adopted under this chapter, the commissioner may initiate a contested case proceeding under the provisions of chapter 14. In these cases, the rehabilitation review panel shall make the final decision following receipt of the report of an administrative law judge. The decision of the panel is appealable to the workers' compensation court of appeals in the manner provided by section 176.421. The panel shall continuously study rehabilitation services and delivery, develop and recommend rehabilitation rules to the commissioner, and assist the commissioner in accomplishing public education.

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.

Sec. 51. Minnesota Statutes 1994, section 176.102, subdivision 11, is amended to read:

Subd. 11. **RETRAINING; COMPENSATION.** (a) Retraining is limited to 156 weeks. An employee who has been approved for retraining may petition the

commissioner or compensation judge for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner or compensation judge determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount not to exceed the employee's request. This additional compensation shall cease at any time the commissioner or compensation judge determines the special circumstances are no longer present.

(b) If the employee is not employed during a retraining plan that has been specifically approved under this section, temporary total compensation is payable for up to 90 days after the end of the retraining plan; except that, payment during the 90-day period is subject to cessation in accordance with section 176.101. If the employee is employed during the retraining plan but earning less than at the time of injury, temporary partial compensation is payable at the rate of 66-2/3 percent of the difference between the employee's weekly wage at the time of injury and the weekly wage the employee is able to earn in the employee's partially disabled condition, subject to the maximum rate for temporary total compensation. Temporary partial compensation is not subject to the 225-week or 450-week limitations provided by section 176.101, subdivision 2, during the retraining plan, but is subject to those limitations before and after the plan.

(c) Any request for retraining shall be filed with the commissioner before 104 weeks of any combination of temporary total or temporary partial compensation have been paid. Retraining shall not be available after 104 weeks of any combination of temporary total or temporary partial compensation benefits have been paid unless the request for the retraining has been filed with the commissioner prior to the time the 104 weeks of compensation have been paid.

(d) The employer or insurer must notify the employee in writing of the 104 week limitation for filing a request for retraining with the commissioner. This notice must be given before 80 weeks of temporary total disability or temporary partial disability compensation have been paid, regardless of the number of weeks that have elapsed since the date of injury. If the notice is not given before the 80 weeks, the period of time within which to file a request for retraining is extended by the number of days the notice is late, but in no event may a request be filed later than 225 weeks after any combination of temporary total disability or temporary partial disability compensation have been paid. The commissioner may assess a penalty of $25 per day that the notice is late, up to a maximum penalty of $2,000, against an employer or insurer for failure to provide the notice. The penalty is payable to the assigned risk safety account.

Sec. 52. Minnesota Statutes 1994, section 176.103, subdivision 2, is amended to read:

Subd. 2. **SCOPE.** The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care

providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. Insurers and self-insurers must assist the commissioner in this monitoring by reporting to the commissioner cases of suspected excessive, inappropriate, or unnecessary treatment. ~~The commissioner shall report specific cases of suspected inappropriate, unnecessary, and excessive treatment to the medical services review board. The medical services review board shall review those cases and make a determination of whether there is inappropriate, unnecessary, or excessive treatment based on rules adopted by the commissioner in consultation with the medical services review board. The determination of the board is not subject to the contested case provisions of the administrative procedure act in chapter 14. An affected provider shall be given notice and an opportunity to be heard before the board prior to the board reporting its findings and conclusions. The board shall report its findings and conclusions to the commissioner. The findings and conclusions of the board are binding on the commissioner. The commissioner shall order a sanction if the board has concluded there was inappropriate, unnecessary, or excessive treatment.~~ The commissioner in consultation with the medical services review board shall adopt rules defining standards of treatment including inappropriate, unnecessary, or excessive treatment and the sanctions to be imposed for inappropriate, unnecessary, or excessive treatment. The sanctions imposed may include, without limitation, a warning, a restriction on providing treatment, requiring preauthorization by the board for a plan of treatment, and suspension from receiving compensation for the provision of treatment under chapter 176. The commissioner's authority under this section also includes the authority to make determinations regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section, but does not include the authority to make the initial determination of primary liability, except as provided by section 176.305.

Sec. 53. Minnesota Statutes 1994, 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, one physical therapist, 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 may appoint from its members whatever subcommittees it deems appropriate.

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 physical therapist, one hospital administrator, three physicians, one employee representative, one employer or insurer representative, and one representative of the general public.

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

The board shall review and recommend to the commissioner rates for individual clinical procedures and aggregate costs. The board shall assist the commissioner in accomplishing public education.

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.

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 medical services review board may upon petition from the commissioner and after hearing, issue a warning, a penalty of $200 per violation, a restriction on providing treatment that requires preauthorization by the board, commissioner, or compensation judge for a plan of treatment, disqualify, or suspend a provider from receiving payment for services rendered under this chapter if a provider has violated any part of this chapter or rule adopted under this chapter, or where there has been a pattern of, or an egregious case of, inappropriate, unnecessary, or excessive treatment by a provider. The hearings are initiated by the commissioner under the contested case procedures of chapter 14. The board shall make the final decision following receipt of the recommendation of the administrative law judge. The board's decision is appealable to the workers' compensation court of appeals in the manner provided by section 176.421.

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

Sec. 54. Minnesota Statutes 1994, section 176.104, subdivision 1, is amended to read:

Subdivision 1. **DISPUTE.** If there exists a dispute regarding medical causation or whether an injury arose out of and in the course and scope of employment and an employee ~~has been disabled for the requisite time under section 176.102, subdivision 4,~~ is otherwise eligible for rehabilitation services under section 176.102 prior to determination of liability, the employee shall be referred

by the commissioner to the department's vocational rehabilitation unit which shall provide rehabilitation consultation if appropriate. The services provided by the department's vocational rehabilitation unit and the scope and term of the rehabilitation are governed by section 176.102 and rules adopted pursuant to that section. Rehabilitation costs and services under this subdivision shall be monitored by the commissioner.

Sec. 55. Minnesota Statutes 1994, section 176.106, is amended to read:

176.106 **ADMINISTRATIVE CONFERENCE.**

Subdivision 1. **SCOPE.** All determinations by the commissioner or the commissioner's designee pursuant to section 176.102, 176.103, 176.135, or 176.136 shall be in accordance with the procedures contained in this section.

Subd. 2. **REQUEST FOR CONFERENCE.** Any party may request an administrative conference by filing a request on a form prescribed by the commissioner.

Subd. 3. **CONFERENCE.** The matter shall be scheduled for an administrative conference within 60 days after receipt of the request for a conference. Notice of the conference shall be served on all parties no later than 14 days prior to the conference, unless the commissioner determines that a conference shall not be held. The commissioner may order an administrative conference before the commissioner's designee whether or not a request for conference is filed.

The commissioner may refuse to hold an administrative conference and refer the matter for a settlement or pretrial conference or may certify the matter to the office of administrative hearings for a full hearing before a compensation judge.

Subd. 4. **APPEARANCES.** All parties shall appear either personally, by telephone, by representative, or by written submission. The ~~commissioner~~ commissioner's designee shall determine the issues in dispute based upon the information available at the conference.

Subd. 5. **DECISION.** A written decision shall be issued by the ~~commissioner or an authorized representative~~ commissioner's designee determining all issues considered at the conference or if a conference was not held, based on the written submissions. Disputed issues of fact shall be determined by a preponderance of the evidence. The decision must be issued within 30 days after the close of the conference or if no conference was held, within 60 days after receipt of the request for conference. The decision must include a statement indicating the right to request a de novo hearing before a compensation judge and how to initiate the request.

Subd. 6. **PENALTY.** At a conference, if the insurer does not provide a specific reason for nonpayment of the items in dispute, the ~~commissioner~~ commissioner's designee may assess a penalty of $300 payable to the assigned risk safety

account, unless it is determined that the reason for the lack of specificity was the failure of the insurer, upon timely request, to receive information necessary to remedy the lack of specificity. This penalty is in addition to any penalty that may be applicable for nonpayment.

Subd. 7. **REQUEST FOR HEARING.** Any party aggrieved by the decision of the ~~commissioner~~ commissioner's designee may request a formal hearing by filing the request with the commissioner and serving the request on all parties no later than 30 days after the decision; provided, however, that the commissioner shall review a decision of the commissioner's designee regarding a claim for a medical benefit of $1500 or less and the commissioner's decision shall be final. ~~The request~~ Requests on other issues shall be referred to the office of administrative hearings for a de novo hearing before a compensation judge. Except where the only issues to be determined pursuant to this section involve liability for past treatment or services that will not affect entitlement to ongoing or future proposed treatment or services under section 176.102 or 176.135, the commissioner shall refer a timely request to the office of administrative hearings within five working days after filing of the request and the hearing at the office of administrative hearings must be held on the first date that all parties are available but not later than 60 days after the office of administrative hearings receives the matter. Following the hearing, the compensation judge must issue the decision within 30 days. The decision of the compensation judge is appealable pursuant to section 176.421.

Subd. 8. **DENIAL OF PRIMARY LIABILITY.** The commissioner does not have authority to make determinations relating to medical or rehabilitation benefits when there is a genuine dispute over whether the injury initially arose out of and in the course of employment, except as provided by section 176.305.

Subd. 9. **SUBSEQUENT CAUSATION ISSUES.** If initial liability for an injury has been admitted or established and an issue subsequently arises regarding causation between the employee's condition and the work injury, the commissioner may make the subsequent causation determination subject to de novo hearing by a compensation judge with a right to review by the court of appeals, as provided in this chapter.

Sec. 56. **[176.107] TELECONFERENCES.**

The division, department, office, or the court of appeals may, at its discretion, conduct mediation sessions, administrative conferences, settlement conferences, or hearings as provided in this chapter in person, by telephone, or by visual or audio teleconferencing methods.

Sec. 57. **[176.108] LIGHT-DUTY WORK POOLS.**

Employers may form light-duty work pools for the purpose of encouraging the return to work of injured employees. The commissioner may adopt emergency and permanent rules necessary to implement this section.

Sec. 58. Minnesota Statutes 1994, section 176.129, subdivision 9, is amended to read:

Subd. 9. **POWERS OF FUND.** In addition to powers granted to the special compensation fund by this chapter the fund may do the following:

(a) sue and be sued in its own name;

(b) intervene in or commence an action under this chapter or any other law, including, but not limited to, intervention or action as a subrogee to the division's right in a third-party action, any proceeding under this chapter in which liability of the special compensation fund is an issue, or any proceeding which may result in other liability of the fund or to protect the legal right of the fund;

(c) enter into settlements including but not limited to structured, annuity purchase agreements with appropriate parties under this chapter; Notwithstanding any other provision of this chapter, any settlement may provide that the fund partially or totally denies liability for payment of benefits, and no determination of employer insurance status and liability under section 176.183, subdivision 2, shall be required for approval of the stipulation for a settlement;

(d) contract with another party to administer the special compensation fund;

(e) take any other action which an insurer is permitted by law to take in operating within this chapter; and

(f) conduct a financial audit of indemnity claim payments and assessments reported to the fund. This may be contracted by the fund to a private auditing firm.

Sec. 59. Minnesota Statutes 1994, section 176.129, subdivision 10, is amended to read:

Subd. 10. **PENALTY.** Sums paid to the commissioner pursuant to this section shall be in the manner prescribed by the commissioner. The commissioner may impose a penalty payable to the assigned risk safety account of up to 15 percent of the amount due under this section but not less than ~~$500~~ $1,000 in the event payment is not made in the manner prescribed.

Sec. 60. Minnesota Statutes 1994, section 176.130, subdivision 9, is amended to read:

Subd. 9. **FALSE REPORTS.** Any person or entity that, for the purpose of evading payment of the assessment or avoiding the reimbursement, or any part of it, makes a false report under this section shall pay to the assigned risk safety account, in addition to the assessment, a penalty of ~~50~~ 75 percent of the amount of the assessment. A person who knowingly makes or signs a false report, or who knowingly submits other false information, is guilty of a misdemeanor.

Sec. 61. Minnesota Statutes 1994, section 176.135, subdivision 1, is amended to read:

Subdivision 1. **MEDICAL, PSYCHOLOGICAL, CHIROPRACTIC, PODIATRIC, SURGICAL, HOSPITAL.** (a) The employer shall furnish any medical, psychological, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. This treatment shall include treatments necessary to physical rehabilitation.

(b) The employer shall pay for the reasonable value of nursing services provided by a member of the employee's family in cases of permanent total disability.

(c) Exposure to rabies is an injury and an employer shall furnish preventative treatment to employees exposed to rabies.

(d) The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches, or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. For the purpose of this paragraph, "injury" includes damage wholly or in part to an artificial member. In case of the employer's inability or refusal seasonably to provide the items required to be provided under this paragraph, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same, including costs of copies of any medical records or medical reports that are in existence, obtained from health care providers, and that directly relate to the items for which payment is sought under this chapter, limited to the charges allowed by subdivision 7, and attorney fees incurred by the employee. ~~Attorney's fees shall be determined on an hourly basis according to the criteria in section 176.081, subdivision 5.~~

(e) Both the commissioner and the compensation judges have authority to make determinations under this section in accordance with sections 176.106 and 176.305.

(f) An employer may require that the treatment and supplies required to be provided by an employer by this section be received in whole or in part from a managed care plan certified under section 176.1351 except as otherwise provided by that section.

Sec. 62. Minnesota Statutes 1994, section 176.1351, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** Any person or entity, other than a work-

ers' compensation insurer or an employer for its own employees, may make written application to the commissioner to have a plan certified that provides management of quality treatment to injured workers for injuries and diseases compensable under this chapter. Specifically, and without limitation, an entity licensed under chapter 62C or 62D or a preferred provider organization that is subject to chapter 72A is eligible for certification under this section. Each application for certification shall be accompanied by a reasonable fee prescribed by the commissioner which shall be deposited in the special compensation fund. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the commissioner prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the commissioner may prescribe. The information shall include, but not be limited to:

(1) a list of the names of all health care providers who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

(2) a description of the places and manner of providing services under the plan.

Sec. 63. Minnesota Statutes 1994, section 176.1351, subdivision 5, is amended to read:

Subd. 5. **REVOCATION, SUSPENSION, AND REFUSAL TO CERTIFY; PENALTIES AND ENFORCEMENT.** (a) The commissioner shall refuse to certify or shall revoke or suspend the certification of a managed care plan if the commissioner finds that the plan for providing medical or health care services fails to meet the requirements of this section, or service under the plan is not being provided in accordance with the terms of a certified plan.

(b) In lieu of or in addition to suspension or revocation under paragraph (a), the commissioner may, for any noncompliance with the managed care plan as certified or any violation of a statute or rule applicable to a managed care plan, assess an administrative penalty payable to the special compensation fund in an amount up to $25,000 for each violation or incidence of noncompliance. The commissioner may adopt emergency or permanent rules necessary to implement this subdivision. In determining the level of an administrative penalty, the commissioner shall consider the following factors:

(1) the number of workers affected or potentially affected by the violation or noncompliance;

(2) the effect or potential effect of the violation or noncompliance on workers' health, access to health services, or workers' compensation benefits;

(3) the effect or potential effect of the violation or noncompliance on work-

ers' understanding of their rights and obligations under the workers' compensation law and rules;

(4) whether the violation or noncompliance is an isolated incident or part of a pattern of violations; and

(5) the potential or actual economic benefits derived by the managed care plan or a participating provider by virtue of the violation or noncompliance.

The commissioner shall give written notice to the managed care plan of the penalty assessment and the reasons for the penalty. The managed care plan has 30 days from the date the penalty notice is issued within which to file a written request for an administrative hearing and review of the commissioner's determination pursuant to section 176.85, subdivision 1.

(c) If the commissioner, for any reason, has cause to believe that a managed care plan has or may violate a statute or rule or a provision of the managed care plan as certified, the commissioner may, before commencing action under paragraph (a) or (b), call a conference with the managed care plan and other persons who may be involved in the suspected violation or noncompliance for the purpose of ascertaining the facts relating to the suspected violation or noncompliance and arriving at an adequate and effective means of correcting or preventing the violation or noncompliance. The commissioner may enter into stipulated consent agreements with the managed care plan for corrective or preventive action or the amount of the penalty to be paid. Proceedings under this paragraph shall not be governed by any formal procedural requirements, and may be conducted in a manner the commissioner deems appropriate under the circumstances.

(d) The commissioner may issue an order directing a managed care plan or a representative of a managed care plan to cease and desist from engaging in any act or practice that is not in compliance with the managed care plan as certified, or that it is in violation of an applicable statute or rule. Within 30 days of service of the order, the managed care plan may request review of the cease and desist order by an administrative law judge pursuant to chapter 14. The decision of the administrative law judge shall include findings of fact, conclusions of law and appropriate orders, which shall be the final decision of the commissioner. In the event of noncompliance with a cease and desist order, the commissioner may institute a proceeding in district court to obtain injunctive or other appropriate relief.

(e) A managed care plan, participating health care provider, or an employer or insurer that receives services from the managed care plan, shall cooperate fully with an investigation by the commissioner. For purposes of this section, cooperation includes, but is not limited to, attending a conference calledby the commissioner under paragraph (c), responding fully and promptly to any questions relating to the subject of the investigation, and providing copies of records, reports, logs, data, and other information requested by the commissioner to assist in the investigation.

(f) Any person acting on behalf of a managed care plan who knowingly submits false information in any report required to be filed by a managed care plan is guilty of a misdemeanor.

Sec. 64. Minnesota Statutes 1994, section 176.136, subdivision 1a, is amended to read:

Subd. 1a. **RELATIVE VALUE FEE SCHEDULE.** The liability of an employer for services included in the medical fee schedule is limited to the maximum fee allowed by the schedule in effect on the date of the medical service, or the provider's actual fee, whichever is lower. The medical fee schedule effective on October 1, 1991, shall remain in effect until the commissioner adopts a new schedule by permanent rule. The commissioner shall adopt permanent rules regulating fees allowable for medical, chiropractic, podiatric, surgical, and other health care provider treatment or service, including those provided to hospital outpatients, by implementing a relative value fee schedule to be effective on October 1, 1993. The commissioner may adopt by reference the relative value fee schedule adopted for the federal Medicare program or a relative value fee schedule adopted by other federal or state agencies. The relative value fee schedule shall contain reasonable classifications including, but not limited to, classifications that differentiate among health care provider disciplines. The conversion factors for the original relative value fee schedule must reasonably reflect a 15 percent overall reduction from the medical fee schedule most recently in effect. The reduction need not be applied equally to all treatment or services, but must represent a gross 15 percent reduction.

After permanent rules have been adopted to implement this section, the conversion factors must be adjusted annually on October 1 by no more than the percentage change computed under section 176.645, but without the annual cap provided by that section. The commissioner shall annually give notice in the State Register of the adjusted conversion factors and may also give annual notice of any additions, deletions, or changes to the relative value units or service codes adopted by the federal Medicare program. The relative value units may be statistically adjusted in the same manner as for the original workers' compensation relative value fee schedule. ~~This notice~~ The notices of the adjusted conversion factors and additions, deletions, or changes to the relative value units and service codes shall be in lieu of the requirements of chapter 14.

Sec. 65. Minnesota Statutes 1994, section 176.136, subdivision 1b, is amended to read:

Subd. 1b. **LIMITATION OF LIABILITY.** (a) The liability of the employer for treatment, articles, and supplies provided to an employee while an inpatient or outpatient at a small hospital shall be the hospital's usual and customary charge, unless the charge is determined by the commissioner or a compensation judge to be unreasonably excessive. A "small hospital," for purposes of this paragraph, is a hospital which has 100 or fewer licensed beds.

(b) The liability of the employer for the treatment, articles, and supplies that

are not limited by subdivision 1a or 1c or paragraph (a) shall be limited to 85 percent of the provider's usual and customary charge, or 85 percent of the prevailing charges for similar treatment, articles, and supplies furnished to an injured person when paid for by the injured person, whichever is lower. On this basis, the commissioner or compensation judge may determine the reasonable value of all treatment, services, and supplies, and the liability of the employer is limited to that amount. The commissioner may by rule establish the reasonable value of a service, article, or supply in lieu of the 85 percent limitation in this paragraph.

(c) The limitation of liability for charges provided by paragraph (b) does not apply to a nursing home that participates in the medical assistance program and whose rates are established by the commissioner of human services.

Sec. 66. Minnesota Statutes 1994, section 176.136, subdivision 2, is amended to read:

Subd. 2. **EXCESSIVE FEES.** If the employer or insurer determines that the charge for a health service or medical service is excessive, no payment in excess of the reasonable charge for that service shall be made under this chapter nor may the provider collect or attempt to collect from the injured employee or any other insurer or government amounts in excess of the amount payable under this chapter unless the commissioner, compensation judge, or court of appeals determines otherwise. In such a case, the health care provider may initiate an action under this chapter for recovery of the amounts deemed excessive by the employer or insurer~~, but the employer or insurer shall have the burden of proving excessiveness~~.

A charge for a health service or medical service is excessive if it:

(1) exceeds the maximum permissible charge pursuant to subdivision 1, 1a, 1b, or 1c;

(2) is for a service provided at a level, duration, or frequency that is excessive, based upon accepted medical standards for quality health care and accepted rehabilitation standards;

(3) is for a service that is outside the scope of practice of the particular provider or is not generally recognized within the particular profession of the provider as of therapeutic value for the specific injury or condition treated; or

(4) is otherwise deemed excessive or inappropriate pursuant to rules adopted pursuant to this chapter.

Sec. 67. Minnesota Statutes 1994, section 176.138, is amended to read:

176.138 **MEDICAL DATA; ACCESS.**

(a) Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release in writing, by tele-

phone discussion, or otherwise 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, and the date of discussions with medical providers about medical data shall be confirmed, in writing to the person or organization that collected or currently possesses the data. Written medical data that exists at the time the request is made shall be provided by the collector or possessor within seven working days of receiving the request. Nonwritten medical data may be provided, but is not required to be provided, by the collector or possessor. In all cases of a request for the data or discussion with a medical provider about 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 or a written confirmation of the discussion. This data shall be treated as private data by the party who requests or receives the data and the party receiving the data shall provide the employee or the employee's attorney with a copy of all data requested by the requester.

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

(c) The commissioner may impose a penalty of up to ~~$200~~ $600 payable to the assigned risk safety account against a party who does not timely release data as required in this section. A party who does not treat this data as private pursuant to this section is guilty of a misdemeanor. This paragraph applies only to written medical data which exists at the time the request is made.

(d) Workers' compensation insurers and self-insured employers may, for the sole purpose of identifying duplicate billings submitted to more than one insurer, disclose to health insurers, including all insurers writing insurance described in section 60A.06, subdivision 1, clause (5)(a), nonprofit health service plan corporations subject to chapter 62C, health maintenance organizations subject to chapter 62D, and joint self-insurance employee health plans subject to chapter 62H, computerized information about dates, coded items, and charges for medical treatment of employees and other medical billing information submitted to them by an employee, employer, health care provider, or other insurer in connection with a current claim for compensation under this chapter, without prior approval of any party to the claim. The data may not be used by the health insurer for any other purpose whatsoever and must be destroyed after verification that there has been no duplicative billing. Any person who is the subject of the data which is used in a manner not allowed by this ~~section~~ paragraph has a cause of action for actual damages and punitive damages for a minimum of $5,000.

Sec. 68. Minnesota Statutes 1994, section 176.139, subdivision 2, is amended to read:

Subd. 2. **FAILURE TO POST; PENALTY.** The commissioner may assess a penalty of ~~$300~~ $500 against the employer payable to the assigned risk safety account if, after notice from the commissioner, the employer violates the posting requirement of this section.

Sec. 69. Minnesota Statutes 1994, section 176.181, subdivision 7, is amended to read:

Subd. 7. **PENALTY.** Any entity that is self-insured pursuant to subdivision 2, and that knowingly violates any provision of subdivision 2 or any rule adopted pursuant thereto is subject to a civil penalty of not more than ~~$5,000~~ $10,000 for each offense.

Sec. 70. Minnesota Statutes 1994, section 176.181, subdivision 8, is amended to read:

Subd. 8. **DATA SHARING.** (a) The departments of labor and industry, economic security, human services, agriculture, transportation, and revenue are authorized to share information regarding the employment status of individuals, including but not limited to payroll and withholding and income tax information, and may use that information for purposes consistent with this section and regarding the employment or employer status of individuals, partnerships, limited liability companies, corporations, or employers, including, but not limited to, general contractors, intermediate contractors, and subcontractors. The commissioner shall request data in writing and the responding department shall respond to the request by producing the requested data within 30 days.

(b) The commissioner is authorized to inspect and to order the production of all payroll and other business records and documents of any alleged employer in order to determine the employment status of persons and compliance with this section. If any person or employer refuses to comply with such an order, the commissioner may apply to the district court of the county where the person or employer is located for an order compelling production of the documents.

Sec. 71. **[176.1812] COLLECTIVE BARGAINING AGREEMENTS.**

Subdivision 1. **REQUIREMENTS.** Upon appropriate filing, the commissioner, compensation judge, workers' compensation court of appeals, and courts shall recognize as valid and binding a provision in a collective bargaining agreement between a qualified employer or qualified groups of employers engaged in construction, construction maintenance, and related activities and the certified and exclusive representative of its employees to establish certain obligations and procedures relating to workers' compensation. For purposes of this section, "qualified employer" means any self-insured employer, any employer, through itself or any affiliate as defined in section 60D.15, subdivision 2, who is responsible for the first $100,000 or more of any claim, or a private employer developing or projecting an annual workers' compensation premium, in Minnesota, of $250,000 or more. For purposes of this section, a "qualified group of employers" means a group of private employers engaged in workers' compensation group

self-insurance complying with section 79A.03, subdivision 6, which develops or projects annual workers' compensation insurance premiums of $2,000,000 or more. This agreement must be limited to, but need not include, all of the following:

(a) an alternative dispute resolution system to supplement, modify, or replace the procedural or dispute resolution provisions of this chapter. The system may include mediation, arbitration, or other dispute resolution proceedings, the results of which may be final and binding upon the parties. A system of arbitration shall provide that the decision of the arbiter is subject to review either by the workers' compensation court of appeals in the same manner as an award or order of a compensation judge or, in lieu of review by the workers' compensation court of appeals, by the office of administrative hearings, by the district court, by the Minnesota court of appeals, or by the supreme court in the same manner as the workers' compensation court of appeals and may provide that any arbiter's award disapproved by a court be referred back to the arbiter for reconsideration and possible modification;

(b) an agreed list of providers of medical treatment that may be the exclusive source of all medical and related treatment provided under this chapter which need not be certified under section 176.1351;

(c) the use of a limited list of impartial physicians to conduct independent medical examinations;

(d) the creation of a light duty, modified job, or return to work program;

(e) the use of a limited list of individuals and companies for the establishment of vocational rehabilitation or retraining programs which list is not subject to the requirements of section 176.102;

(f) the establishment of safety committees and safety procedures; or

(g) the adoption of a 24-hour health care coverage plan if a 24-hour plan pilot project is authorized by law, according to the terms and conditions authorized by that law.

Subd. 2. **FILING AND REVIEW.** A copy of the agreement and the approximate number of employees who will be covered under it must be filed with the commissioner. Within 21 days of receipt of an agreement, the commissioner shall review the agreement for compliance with this section and the benefit provisions of this chapter and notify the parties of any additional information required or any recommended modification that would bring the agreement into compliance. Upon receipt of any requested information or modification, the commissioner must notify the parties within 21 days whether the agreement is in compliance with this section and the benefit provisions of this chapter.

In order for any agreement to remain in effect, it must provide for a timely and accurate method of reporting to the commissioner necessary information regarding service cost and utilization to enable the commissioner to annually report to the legislature. The information provided to the commissioner must include aggregate data on the:

(i) person hours and payroll covered by agreements filed;

(ii) number of claims filed;

(iii) average cost per claim;

(iv) number of litigated claims, including the number of claims submitted to arbitration, the workers' compensation court of appeals, the office of administrative hearings, the district court, the Minnesota court of appeals or the supreme court;

(v) number of contested claims resolved prior to arbitration;

(vi) projected incurred costs and actual costs of claims;

(vii) employer's safety history;

(viii) number of workers participating in vocational rehabilitation; and

(ix) number of workers participating in light-duty programs.

Subd. 3. **REFUSAL TO RECOGNIZE.** A person aggrieved by the commissioner's decision concerning an agreement may request in writing, within 30 days of the date the notice is issued, the initiation of a contested case proceeding under chapter 14. The request to initiate a contested case must be received by the department by the 30th day after the commissioner's decision. An appeal from the commissioner's final decision and order may be taken to the workers' compensation court of appeals pursuant to sections 176.421 and 176.442.

Subd. 4. **VOID AGREEMENTS.** Nothing in this section shall allow any agreement that diminishes an employee's entitlement to benefits as otherwise set forth in this chapter. For the purposes of this section, the procedural rights and dispute resolution agreements under subdivision 1, clauses (a) to (g), are not agreements which diminish an employee's entitlement to benefits. Any agreement that diminishes an employee's entitlement to benefits as set forth in this chapter is null and void.

Subd. 5. **NOTICE TO INSURANCE CARRIER.** If the employer is insured under this chapter, the collective bargaining agreement provision shall not be recognized by the commissioner, compensation judge, workers' compensation court of appeals, and other courts unless the employer has given notice to the employer's insurance carrier, in the manner provided in the insurance contract, of intent to enter into an agreement with its employees as provided in this section.

Subd. 6. **PILOT PROGRAM.** The commissioner shall establish a pilot program ending December 31, 2001, in which up to ten private and up to ten public employers shall be authorized to enter into valid agreements under this section with their employees. The agreements shall be recognized and enforced as provided by this section. Employers shall participate in the pilot program

through collectively bargained agreements with the certified and exclusive representatives of their employees and without regard to the dollar insurance premium limitations in subdivision 1.

Subd. 7. **RULES.** The commissioner may adopt emergency or permanent rules necessary to implement this section.

Sec. 72. Minnesota Statutes 1994, section 176.182, is amended to read:

176.182 BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.

Every state or local licensing agency shall withhold the issuance or renewal of a license or permit to operate a business in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2, by providing the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure. The commissioner shall assess a penalty to the employer of ~~$1,000~~ $2,000 payable to the assigned risk safety account, if the information is not reported or is falsely reported.

Neither the state nor any governmental subdivision of the state shall enter into any contract for the doing of any public work before receiving from all other contracting parties acceptable evidence of compliance with the workers' compensation insurance coverage requirement of section 176.181, subdivision 2.

This section shall not be construed to create any liability on the part of the state or any governmental subdivision to pay workers' compensation benefits or to indemnify the special compensation fund, an employer, or insurer who pays workers' compensation benefits.

Sec. 73. Minnesota Statutes 1994, section 176.183, subdivision 1, is amended to read:

Subdivision 1. When any employee sustains an injury arising out of and in the course of employment while in the employ of an employer, other than the state or its political subdivisions, not insured or self-insured as provided for in this chapter, the employee or the employee's dependents shall nevertheless receive benefits as provided for in this chapter from the special compensation fund. As used in subdivision 1 or 2, "employer" includes any owners or officers of a corporation who direct and control the activities of employees. In any petition for benefits under this chapter, the naming of an employer corporation not insured or self-insured as provided for in this chapter, as a defendant, shall constitute without more the naming of the owners or officers as defendants, and service of notice of proceeding under this chapter on the corporation shall constitute service upon the owners or officers. An action to recover benefits paid shall be instituted unless the commissioner determines that no recovery is possible. There shall be no payment from the special compensation fund if there is liability for the injury under the provisions of section 176.215, by an insurer or self-insurer.

Sec. 74. Minnesota Statutes 1994, section 176.183, subdivision 2, is amended to read:

Subd. 2. After a hearing on a petition for benefits and prior to issuing an order against the special compensation fund to pay compensation benefits to an employee, a compensation judge shall first make findings regarding the insurance status of the employer and its liability. The special compensation fund shall not be found liable in the absence of a finding of liability against the employer. Where the liable employer is found after the hearing to be not insured or self-insured as provided for in this chapter, the compensation judge shall assess and order the employer to pay all compensation benefits to which the employee is entitled, the amount for actual and necessary disbursements expended by the special compensation fund, and a penalty in the amount of ~~60~~ 65 percent of all compensation benefits ordered to be paid. ~~An~~ The award issued against an employer after the hearing shall constitute a lien for government services pursuant to section 514.67 on all property of the employer and shall be subject to the provisions of the revenue recapture act in chapter 270A. The special compensation fund may enforce the terms of that award in the same manner as a district court judgment. The commissioner of labor and industry, in accordance with the terms of the order awarding compensation, shall pay compensation to the employee or the employee's dependent from the special compensation fund. The commissioner of labor and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivision 1. The commissioner of finance shall upon proper certification reimburse the special compensation fund from the general fund appropriation provided for this purpose. The amount reimbursed shall be limited to the certified amount paid under this section or the appropriation made for this purpose, whichever is the lesser amount. Compensation paid under this section which is not reimbursed by the general fund shall remain a liability of the special compensation fund and shall be financed by the percentage assessed under section 176.129.

Sec. 75. Minnesota Statutes 1994, section 176.185, subdivision 5a, is amended to read:

Subd. 5a. **PENALTY FOR IMPROPER WITHHOLDING.** An employer who violates subdivision 5 after notice from the commissioner is subject to a penalty of ~~200~~ 400 percent of the amount withheld from or charged the employee. The penalty shall be imposed by the commissioner. ~~Fifty~~ Forty percent of this penalty is payable to the assigned risk safety account and ~~50~~ 60 percent is payable to the employee.

Sec. 76. Minnesota Statutes 1994, section 176.191, subdivision 1, is amended to read:

Subdivision 1. **ORDER; EMPLOYER, INSURER, OR SPECIAL COMPENSATION FUND PAYMENT.** Where compensation benefits are payable under this chapter, and a dispute exists between two or more employers or two

or more insurers or the special compensation fund as to which is liable for payment, the commissioner, compensation judge, or court of appeals upon appeal shall direct~~, unless action is taken under subdivision 2,~~ that one or more of the employers or insurers or the special compensation fund make payment of the benefits pending a determination of which has liability. The special compensation fund may be ordered to make payment only if it has been made a party to the claim because the petitioner has alleged that one or more of the employers is uninsured for workers' compensation under section 176.183. A temporary order may be issued under this subdivision whether or not the employers ~~or~~, insurers, or special compensation fund agree to pay under the order.

When liability has been determined, the party held liable for the benefits shall be ordered to reimburse any other party for payments which the latter has made, including interest at the rate of 12 percent a year. The claimant shall also be awarded a reasonable attorney fee, to be paid by the party held liable for the benefits.

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

Sec. 77. Minnesota Statutes 1994, section 176.191, is amended by adding a subdivision to read:

Subd. 1a. **EQUITABLE APPORTIONMENT.** Equitable apportionment of liability for an injury under this chapter is not allowed except that apportionment among employers and insurers is allowed in a settlement agreement filed pursuant to section 176.521, and an employer or insurer may request equitable apportionment of liability for workers' compensation benefits among employer and insurers by arbitration pursuant to subdivision 5. For purposes of this subdivision, the term "equitable apportionment of liability" shall include all attempts to obtain contribution and/or reimbursement from other employers or insurers. To the same extent limited by this subdivision, contribution and reimbursement actions based on equitable apportionment are not allowed under this chapter. If the insurers choose to arbitrate apportionment, contribution, or reimbursement issues pursuant to subdivision 5, the arbitration proceeding is for the limited purpose of apportioning liability for workers' compensation benefits payable among employers and insurers. This subdivision applies without regard to whether one or more of the injuries results from cumulative trauma or a specific injury, but does not apply to an occupational disease. In the case of an occupational disease, section 176.66 applies. In the arbitration of equitable apportionment under subdivision 5, the parties and the arbitrator must be guided by general rules of arbitrator selection and presumptive apportionment among employers and insurers that are developed and approved by the commissioner of the department of labor and industry. Apportionment against preexisting disability is allowed only for permanent partial disability as provided in section 176.101, subdivision 4a. Nothing in this subdivision shall be interpreted to repeal or in any way affect the law with respect to special compensation fund statutory liability or benefits.

Sec. 78. Minnesota Statutes 1994, section 176.191, subdivision 5, is amended to read:

Subd. 5. **ARBITRATION.** Where a dispute exists between an employer, insurer, the special compensation fund, ~~the reopened case fund,~~ or the workers' compensation reinsurance association, regarding apportionment of liability for benefits payable under this chapter, ~~the dispute~~ and the requesting party has expended over $10,000 in medical or 52 weeks worth of indemnity benefits and made the request within one year thereafter, a party may ~~be submitted with consent of all interested parties~~ require submission of the dispute as to apportionment of liability among employers and insurers to binding arbitration. The decision of the arbitrator shall be conclusive ~~with respect to all issues presented except as provided in subdivisions 6 and 7~~ on the issue of apportionment among employers and insurers. 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. Arbitration costs shall be paid by the parties, except the employee, on a pro rata basis.

Sec. 79. Minnesota Statutes 1994, section 176.191, subdivision 8, is amended to read:

Subd. 8. **ATTORNEY FEES.** No attorney's fees shall be awarded under either section 176.081~~,~~ ~~subdivision 8,~~ or 176.191 against any employer or insurer in connection with any arbitration proceeding unless the employee chooses to retain an attorney to represent the employee's interests during arbitration.

Sec. 80. Minnesota Statutes 1994, section 176.194, subdivision 4, is amended to read:

Subd. 4. **PENALTIES.** The penalties for violations of subdivision 3, clauses (1) through (6), are as follows:

1st through 5th violation of each paragraph	written warning
6th through 10th violation of each paragraph	~~$2,500~~ $3,000 per violation in excess of five
~~11th through 30th violation~~	~~$5,000 per violation~~
11 or more violations of each paragraph	$6,000 per violation in excess of ten

For violations of subdivision 3, clauses (7) and (8), the penalties are:

1st through 5th violation of each paragraph	~~$2,500~~ $3,000 per violation
~~6th through 30th violation~~	~~$5,000 per violation~~
6 or more violations of each paragraph	$6,000 per violation in excess of five

The penalties under this section may be imposed in addition to other penalties under this chapter that might apply for the same violation. The penalties under this section are assessed by the commissioner and are payable to the assigned risk safety account. A party may object to the penalty and request a formal hearing under section 176.85. If an entity has more than 30 violations within any 12-month period, in addition to the monetary penalties provided, the commissioner may refer the matter to the commissioner of commerce with recommendation for suspension or revocation of the entity's (a) license to write workers' compensation insurance; (b) license to administer claims on behalf of a self-insured, the assigned risk plan, or the Minnesota insurance guaranty association; (c) authority to self-insure; or (d) license to adjust claims. The commissioner of commerce shall follow the procedures specified in section 176.195.

Sec. 81. Minnesota Statutes 1994, section 176.215, is amended by adding a subdivision to read:

Subd. 1a. **ENFORCEMENT OF ORDER.** If the compensation judge orders the general contractor, intermediate contractor, or subcontractor to pay compensation benefits, the award issued against the general contractor, intermediate contractor, or subcontractor constitutes a lien for government services under section 514.67 on all property of the general contractor, intermediate contractor, or subcontractor and is subject to the provisions of the revenue recapture act under chapter 270A. The special compensation fund may enforce the terms of the award in the same manner as a district court judgment.

Sec. 82. Minnesota Statutes 1994, section 176.221, subdivision 1, is amended to read:

Subdivision 1. **COMMENCEMENT OF PAYMENT.** Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the payment of temporary total compensation shall commence. Within

14 days of notice to or knowledge by an employer of a new period of temporary total disability which is caused by an old injury compensable under this chapter, the payment of temporary total compensation shall commence; provided that the employer or insurer may file for an extension with the commissioner within this 14-day period, in which case the compensation need not commence within the 14-day period but shall commence no later than 30 days from the date of the notice to or knowledge by the employer of the new period of disability. Commencement of payment by an employer or insurer does not waive any rights to any defense the employer has on any claim or incident either with respect to the compensability of the claim under this chapter or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with the second or subsequent employer. Liability for compensation under this chapter may be denied by the employer or insurer by giving the employee written notice of the denial of liability. If liability is denied for an injury which is required to be reported to the commissioner under section 176.231, subdivision 1, the denial of liability must be filed with the commissioner within 14 days after notice to or knowledge by the employer of an injury which is alleged to be compensable under this chapter. If the employer or insurer has commenced payment of compensation under this subdivision but determines within ~~30~~ 60 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be terminated upon the filing of a notice of denial of liability within ~~30~~ 60 days of notice or knowledge. After the ~~30-day~~ 60-day period, payment may be terminated only by the filing of a notice as provided under section 176.239. Upon the termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail the facts forming the basis for the denial and specific reasons explaining why the claimed injury or occupational disease was determined not to be within the scope and course of employment and shall include the name and telephone number of the person making this determination.

Sec. 83. Minnesota Statutes 1994, section 176.221, subdivision 3, is amended to read:

Subd. 3. **PENALTY.** If the employer or insurer does not begin payment of compensation within the time limit prescribed under subdivision 1 or 8, the commissioner may assess a penalty, payable to the assigned risk safety account, which shall be a percentage of the amount of compensation to which the employee is entitled to receive up to the date compensation payment is made.

The amount of penalty shall be determined as follows:

Numbers of days late	Penalty
1 - 15	~~25~~ 30 percent of compensation due, not to exceed ~~$375~~ $500,

New language is indicated by underline, deletions by ~~strikeout~~.

16 - 30	~~50~~ 55 percent of compensation due, not to exceed ~~$1,140~~ $1,500,
31 - 60	~~75~~ 80 percent of compensation due, not to exceed ~~$2,878~~ $3,500,
61 or more	~~100~~ 105 percent of compensation due, not to exceed ~~$3,838~~ $5,000.

The penalty under this section is in addition to any penalty otherwise provided by statute.

Sec. 84. Minnesota Statutes 1994, section 176.221, subdivision 3a, is amended to read:

Subd. 3a. **PENALTY.** In lieu of any other penalty under this section, the commissioner may assess a penalty of up to ~~$1,000~~ $2,000 payable to the assigned risk safety account for each instance in which an employer or insurer does not pay benefits or file a notice of denial of liability within the time limits prescribed under this section.

Sec. 85. Minnesota Statutes 1994, section 176.221, subdivision 7, is amended to read:

Subd. 7. **INTEREST.** Any payment of compensation, charges for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivision 9, or penalties assessed under this chapter not made when due shall bear interest ~~at the rate of eight percent a year~~ from the due date to the date the payment is made ~~or~~ at the rate set by section 549.09, subdivision 1~~, whichever is greater~~.

For the purposes of this subdivision, permanent partial disability payment is due 14 days after receipt of the first medical report which contains a disability rating if such payment is otherwise due under this chapter, and charges for treatment under section 176.135 are due 30 calendar days after receiving the bill and necessary medical data.

If the claim of the employee or dependent for compensation is contested in a proceeding before a compensation judge or the commissioner, the decision of the judge or commissioner shall provide for the payment of unpaid interest on all compensation awarded, including interest accruing both before and after the filing of the decision.

Sec. 86. **[176.223] PROMPT PAYMENT REPORT.**

The department shall publish an annual report providing data on the promptness of all insurers and self-insurers in making first payments on a claim for injury. The report shall identify all insurers and self-insurers and state the percentage of first payments made within 14 days from the last date worked for each of the insurers and self-insurers. The report shall also list the total number of claims and the number of claims paid within the 14-day standard. Each report shall contain the required information for each of the last four years the report has been compiled so that a total of five years is included. The department shall make the report available to employers and shall provide a copy to each insurer and self-insurer listed in the report for the current year.

Sec. 87. Minnesota Statutes 1994, section 176.225, subdivision 1, is amended to read:

Subdivision 1. **GROUNDS.** Upon reasonable notice and hearing or opportunity to be heard, the commissioner, a compensation judge, or upon appeal, the court of appeals or the supreme court ~~may~~ shall award compensation, in addition to the total amount of compensation award, of up to ~~25~~ 30 percent of that total amount where an employer or insurer has:

(a) instituted a proceeding or interposed a defense which does not present a real controversy but which is frivolous or for the purpose of delay; or,

(b) unreasonably or vexatiously delayed payment; or,

(c) neglected or refused to pay compensation; or,

(d) intentionally underpaid compensation; or

(e) frivolously denied a claim; or

(f) unreasonably or vexatiously discontinued compensation in violation of sections 176.238 and 176.239.

For the purpose of this section, "frivolously" means without a good faith investigation of the facts or on a basis that is clearly contrary to fact or law.

Sec. 88. Minnesota Statutes 1994, section 176.225, subdivision 5, is amended to read:

Subd. 5. **PENALTY.** Where the employer is guilty of inexcusable delay in making payments, the payments which are found to be delayed shall be increased by ~~ten~~ 25 percent. Withholding amounts unquestionably due because the injured employee refuses to execute a release of the employee's right to claim further benefits will be regarded as inexcusable delay in the making of compensation payments. If any sum ordered by the department to be paid is not paid when due, and no appeal of the order is made, the sum shall bear interest at the rate of 12 percent per annum. Any penalties paid pursuant to this section shall not be considered as a loss or expense item for purposes of a petition for a rate increase made pursuant to chapter 79.

Sec. 89. Minnesota Statutes 1994, section 176.231, subdivision 10, is amended to read:

Subd. 10. **FAILURE TO FILE REQUIRED REPORT, PENALTY.** If an employer, insurer, physician, chiropractor, or other health provider fails to file with the commissioner any report required by this section in the manner and within the time limitations prescribed, or otherwise fails to provide a report required by this section in the manner provided by this section, the commissioner may impose a penalty of up to ~~$200~~ $500 for each failure.

The imposition of a penalty may be appealed to a compensation judge within 30 days of notice of the penalty.

Penalties collected by the state under this subdivision shall be paid into the assigned risk safety account.

Sec. 90. Minnesota Statutes 1994, section 176.238, subdivision 6, is amended to read:

Subd. 6. **EXPEDITED HEARING BEFORE A COMPENSATION JUDGE.** A hearing before a compensation judge shall be held within ~~30~~ 60 calendar days after the office receives the file from the commissioner if:

(a) an objection to discontinuance has been filed under subdivision 4 within 60 calendar days after the notice of discontinuance was filed and where no administrative conference has been held;

(b) an objection to discontinuance has been filed under subdivision 4 within 60 calendar days after the commissioner's decision under this section has been issued;

(c) a petition to discontinue has been filed by the insurer in lieu of filing a notice of discontinuance; or

(d) a petition to discontinue has been filed within 60 calendar days after the commissioner's decision under this section has been issued.

If the petition or objection is filed later than the deadlines listed above, the expedited procedures in this section apply only where the employee is unemployed at the time of filing the objection and shows, to the satisfaction of the chief administrative judge, by sworn affidavit, that the failure to file the objection within the deadlines was due to some infirmity or incapacity of the employee or to circumstances beyond the employee's control. The hearing shall be limited to the issues raised by the notice or petition unless all parties agree to expanding the issues. If the issues are expanded, the time limits for hearing and issuance of a decision by the compensation judge under this subdivision shall not apply.

Once a hearing date has been set, a continuance of the hearing date will be granted only under the following circumstances:

(a) the employer has agreed, in writing, to a continuation of the payment of benefits pending the outcome of the hearing; or

(b) the employee has agreed, in a document signed by the employee, that benefits may be discontinued pending the outcome of the hearing.

Absent a clear showing of surprise at the hearing or the unexpected unavailability of a crucial witness, all evidence must be introduced at the hearing. If it is necessary to accept additional evidence or testimony after the scheduled hearing date, it must be submitted no later than 14 days following the hearing, unless the compensation judge, for good cause, determines otherwise.

The compensation judge shall issue a decision pursuant to this subdivision within 30 days following the close of the hearing record.

Sec. 91. Minnesota Statutes 1994, section 176.238, subdivision 10, is amended to read:

Subd. 10. **FINES; VIOLATION.** An employer who violates requirements set forth in this section or section 176.239 is subject to a fine of up to ~~$500~~ $1,000 for each violation payable to the special compensation fund.

Sec. 92. Minnesota Statutes 1994, section 176.261, is amended to read:

176.261 **EMPLOYEE OF COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY MAY ACT FOR AND ADVISE A PARTY TO A PROCEEDING.**

When requested by an employer or an employee or an employee's dependent, the commissioner of the department of labor and industry may designate one or more of the division employees to advise that party of rights under this chapter, and as far as possible to assist in adjusting differences between the parties. The person so designated may appear in person in any proceedings under this chapter as the representative or adviser of the party. In such case, the party need not be represented by an attorney at law.

Prior to advising an employee or employer to seek assistance outside of the department, the department must refer employers and employees seeking advice or requesting assistance in resolving a dispute to an attorney or rehabilitation and medical specialist employed by the department, whichever is appropriate.

The department must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers, and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively. The obligation to make efforts to settle problems exists whether or not a formal claim has been filed with the department.

Sec. 93. Minnesota Statutes 1994, section 176.2615, subdivision 7, is amended to read:

Subd. 7. **DETERMINATION.** If the parties do not agree to a settlement, the settlement judge shall summarily hear and determine the issues and issue an order in accordance with section 176.305, subdivision 1a~~.~~, except that there is no appeal or request for a formal de novo hearing from the order. Any determination by a settlement judge ~~may not be considered as evidence in any other proceeding and the issues decided are not res judicata in any other proceeding~~ shall be res judicata in subsequent proceeding concerning issues determined under this section.

Sec. 94. Minnesota Statutes 1994, section 176.275, subdivision 1, is amended to read:

Subdivision 1. **FILING.** If a document is required to be filed by this chapter or any rules adopted pursuant to authority granted by this chapter, the filing shall be completed by the receipt of the document at the division, department, office, or the court of appeals. The division, department, office, and the court of appeals shall accept any document which has been delivered to it for legal filing immediately upon its receipt, but may refuse to accept any form or document that lacks the name of the injured employee, employer, or insurer, the date of injury, or the injured employee's social security number. If the injured employee has fewer than three days of lost time from work, the party submitting the required document must attach to it, at the time of filing, a copy of the first report of injury.

A notice or other document required to be served or filed at either the department, the office, or the court of appeals which is inadvertently served or filed at the wrong one of these agencies shall be deemed to have been served or filed with the proper agency. The receiving agency shall note the date of receipt of a document and shall forward the documents to the proper agency no later than two working days following receipt.

Sec. 95. Minnesota Statutes 1994, section 176.281, is amended to read:

176.281 **ORDERS, DECISIONS, AND AWARDS; FILING; SERVICE.**

When the commissioner or compensation judge or office of administrative hearings or the workers' compensation court of appeals has rendered a final order, decision, or award, or amendment to an order, decision, or award, it shall be filed immediately with the commissioner. If the commissioner, compensation judge, office of administrative hearings, or workers' compensation court of appeals has rendered a final order, decision, or award, or amendment thereto, the commissioner or the office of administrative hearings or the workers' compensation court of appeals shall immediately serve a copy upon every party in interest, together with a notification of the date the order was filed.

On all orders, decisions, awards, and other documents, the commissioner or compensation judge or office of administrative hearings or the workers' compensation court of appeals may digitize the signatures of all officials, including judges, for the use of electronic data interchange and clerical automation. These

signatures shall have the same legal authority of an original signature, provided that proper security is used to safeguard the use of the digitized signatures and each digitized signature has been certified by the division, department, office, or court of appeals before its use, in accordance with rules adopted by that agency or court.

Sec. 96. Minnesota Statutes 1994, section 176.285, is amended to read:

176.285 **SERVICE OF PAPERS AND NOTICES.**

Service of papers and notices shall be by mail or otherwise as the commissioner or the chief administrative law judge may by rule direct. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that that party did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of nonreceipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

Where service to the division, department, office, or court of appeals is by electronic filing, digitized signatures may be used provided that the signature has been certified by the department no later than five business days after filing. The department or court may adopt rules for the certification of signatures.

When the electronic filing of a legal document with the department marks the beginning of a prescribed time for another party to assert a right, the prescribed time for another party to assert a right shall be lengthened by two calendar days when it can be shown that service to the other party was by mail.

The commissioner and the chief administrative law judge shall ensure that proof of service of all papers and notices served by their respective agencies is placed in the official file of the case.

Sec. 97. Minnesota Statutes 1994, section 176.291, is amended to read:

176.291 **DISPUTES; PETITIONS; PROCEDURE.**

Where there is a dispute as to a question of law or fact in connection with a claim for compensation, a party may serve on all other parties and file a ~~notarized~~ petition with the commissioner stating the matter in dispute. The petition shall be on a form prescribed by the commissioner and shall be signed by the petitioner.

The petition shall also state and include, where applicable:

(1) names and residence or business address of parties;

(2) facts relating to the employment at the time of injury, including amount of wages received;

(3) extent and character of injury;

(4) notice to or knowledge by employer of injury;

(5) copies of written medical reports or other information in support of the claim;

(6) names and addresses of all known witnesses intended to be called in support of the claim;

(7) the desired location of any hearing and estimated time needed to present evidence at the hearing;

(8) any requests for a prehearing or settlement conference;

(9) a list of all known third parties, including the departments of human services and economic security, who may have paid any medical bills or other benefits to the employee for the injuries or disease alleged in the petition or for the time the employee was unable to work due to the injuries or disease, together with a listing of the amounts paid by each;

(10) the nature and extent of the claim; and

(11) a request for an expedited hearing which must include an attached affidavit of significant financial hardship which complies with the requirements of section 176.341, subdivision 6.

Incomplete petitions may be stricken from the calendar as provided by section 176.305, subdivision 4. Within 30 days of a request by a party, an employee who has filed a claim petition pursuant to section 176.271 or this section shall furnish a list of physicians and health care providers from whom the employee has received treatment for the same or a similar condition as well as authorizations to release relevant information, data, and records to the requester. The petition may be stricken from the calendar upon motion of a party for failure to timely provide the required list of health care providers or authorizations.

Sec. 98. Minnesota Statutes 1994, section 176.305, subdivision 1a, is amended to read:

Subd. 1a. **SETTLEMENT AND PRETRIAL CONFERENCES; SUMMARY DECISION.** The commissioner shall schedule a settlement conference, if appropriate, within 60 days after receiving the petition. All parties must appear at the conference, either personally or by representative, must be prepared to discuss settlement of all issues, and must be prepared to discuss or present the information required by the joint rules of the division and the office. If a representative appears on behalf of a party, the representative must have authority to fully settle the matter.

If settlement is not reached, the presiding officer may require the parties to present copies of all documentary evidence not previously filed and a summary

of the evidence they will present at a formal hearing. If appropriate, a written summary decision shall be issued within ten days after the conference stating the issues and a determination of each issue. If a party fails to appear at the conference, all issues may be determined contrary to the absent party's interest, provided the party in attendance presents a prima facie case.

The summary decision is final unless a written request for a formal hearing is served on all parties and filed with the commissioner within 30 days after the date of service and filing of the summary decision. Within ten days after receipt of the request, the commissioner shall certify the matter to the office for a de novo hearing. In proceedings under section 176.2615, the summary decision is final and not subject to appeal or de novo proceedings.

Sec. 99. Minnesota Statutes 1994, section 176.83, subdivision 5, is amended to read:

Subd. 5. **TREATMENT STANDARDS FOR MEDICAL SERVICES.** In consultation with the medical services review board or the rehabilitation review panel, the commissioner shall adopt emergency and permanent rules establishing standards and procedures for health care provider treatment. The rules shall apply uniformly to all providers including those providing managed care under section 176.1351. The rules shall be used to determine whether a provider of health care services and rehabilitation services, including a provider of medical, chiropractic, podiatric, surgical, hospital, or other services, is performing procedures or providing services at a level or with a frequency that is excessive, unnecessary, or inappropriate under section 176.135, subdivision 1, based upon accepted medical standards for quality health care and accepted rehabilitation standards.

The rules shall include, but are not limited to, the following:

(1) criteria for diagnosis and treatment of the most common work-related injuries including, but not limited to, low back injuries and upper extremity repetitive trauma injuries;

(2) criteria for surgical procedures including, but not limited to, diagnosis, prior conservative treatment, supporting diagnostic imaging and testing, and anticipated outcome criteria;

(3) criteria for use of appliances, ~~adoptive~~ adaptive equipment, and use of health clubs or other exercise facilities;

(4) criteria for diagnostic imaging procedures;

(5) criteria for inpatient hospitalization; and

(6) criteria for treatment of chronic pain.

If it is determined by the payer that the level, frequency or cost of a procedure or service of a provider is excessive, unnecessary, or inappropriate accord-

ing to the standards established by the rules, the provider shall not be paid for the procedure, service, or cost by an insurer, self-insurer, or group self-insurer, and the provider shall not be reimbursed or attempt to collect reimbursement for the procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program unless the commissioner or compensation judge determines at a hearing or administrative conference that the level, frequency, or cost was not excessive under the rules in which case the insurer, self-insurer, or group self-insurer shall make the payment deemed reasonable.

A rehabilitation provider who is determined by the rehabilitation review panel board, after hearing, to be consistently performing procedures or providing services at an excessive level or cost may be prohibited from receiving any further reimbursement for procedures or services provided under this chapter. A prohibition imposed on a provider under this subdivision may be grounds for revocation or suspension of the provider's license or certificate of registration to provide health care or rehabilitation service in Minnesota by the appropriate licensing or certifying body. The commissioner and medical services review board shall review excessive, inappropriate, or unnecessary health care provider treatment under section 176.103~~, subdivision 2~~.

Sec. 100. Minnesota Statutes 1994, section 176.84, subdivision 2, is amended to read:

Subd. 2. **PENALTY.** The commissioner or compensation judge may impose a penalty of ~~$300~~ $500 for each violation of subdivision 1.

Sec. 101. **[182.676] SAFETY COMMITTEES.**

Every public or private employer of more than 25 employees shall establish and administer a joint labor-management safety committee.

Every public or private employer of 25 or fewer employees shall establish and administer a safety committee if:

(1) the employer has a lost workday cases incidence rate in the top ten percent of all rates for employers in the same industry; or

(2) the workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a pure premium rate as reported by the workers' compensation rating association in the top 25 percent of premium rates for all classes.

A safety committee must hold regularly scheduled meetings unless otherwise provided in a collective bargaining agreement.

Employee safety committee members must be selected by employees. An employer that fails to establish or administer a safety committee as required by this section may be cited by the commissioner. A citation is punishable as a serious violation under section 182.666.

The commissioner may adopt emergency or permanent rules necessary to implement this section.

Sec. 102. Laws 1994, chapter 625, article 5, section 7, is amended to read:

Sec. 7. **24-HOUR COVERAGE.**

~~As part of the implementation report submitted on January 1, 1996, as required under Minnesota Statutes, section 62Q.41,~~ The commissioners of commerce, health, and labor and industry shall develop a 24-hour coverage plan ~~incorporating and~~ on a pilot project basis, coordinating the ~~health component~~ medical benefits of workers' compensation with health care ~~coverage~~ benefits to be offered by an integrated service network, health maintenance organization, or an insurer or self-insured employer under Minnesota Statutes, chapters 62A, 62C, 62D, 62H, 62N, 79, and 79A, and Minnesota Statutes, section 176.181. The commissioners shall ~~also make~~ provide the plan and recommendations of any legislative changes that may be needed to implement this plan, to the legislature by January 1, 1996.

Sec. 103. **SMALL BUSINESS WORKERS' COMPENSATION SAFETY PILOT PROJECT.**

The commissioner of commerce shall by January 1, 1996, contract with the division of environmental and occupational health of the school of public health of the University of Minnesota for a pilot injury prevention project. The contract shall require the department of environmental and occupational health to consult and provide assistance about ergonomic problems to small employers insured by the state assigned risk plan. The consultative and assistance services shall focus on employers having employees that can most benefit from the consultation and assistance. The contract shall be for the period January 1, 1996 to December 31, 1997. For the purpose of this section, small employer means an employer with less than 500 employees.

Sec. 104. **SMALL BUSINESS INJURY AND ILLNESS PREVENTION SURVEY.**

The division of environmental and occupational health of the school of public health of the University of Minnesota shall evaluate injury and illness prevention activities of small business by surveying small businesses to assess the following:

(1) current use of occupational safety and health services by small businesses;

(2) specific areas in which small business needs assistance;

(3) in what form is desired assistance most helpful;

(4) what services are sponsored by public and public sector programs;

(5) what measures exist to assess the effectiveness of these programs; and

(6) how can these programs be best adapted by Minnesota.

The division shall provide technical assistance and advice to small businesses as part of the survey process.

For the purpose of this section, small employer means a employer with less than 500 employees.

The survey shall be completed by January 1, 1996. The division shall report the survey results and any recommendations to the legislature and the commissioner of labor and industry by February 1, 1996.

Sec. 105. **LEGISLATIVE AUDITOR; ASSIGNED RISK EVALUATION.**

The legislative audit commission is requested to direct the legislative auditor to conduct an evaluation of the assigned risk plan created by Minnesota Statutes, sections 79.251 to 79.252. The evaluation shall include:

(1) whether the assigned risk plan should be organized and operated in a different manner;

(2) the development of strategies that permits small safe employers to receive the benefit of their safe workplace through reduced premiums;

(3) safety practices of unsafe employers placed in the assigned risk plan due to their own poor safety record or the poor safety record of their industry;

(4) an analysis of the claims adjusting and reserving practices of the plan; and

(5) a plan for the state fund mutual insurance company to be the sole service company or insurer servicing policies or contracts of coverage under the assigned risk plan.

The evaluation shall specifically focus on developing alternative insurance techniques for small employers in the assigned risk plan such as grouping or self-insurance that can be utilized to reduce insurance premiums.

The legislative auditor shall report findings of the evaluation to the legislature by January 15, 1996.

Sec. 106. **APPROPRIATION; SURVEY.**

$150,000 is appropriated from the assigned risk safety account in the special compensation fund to the commissioner of commerce for the biennium ending June 30, 1997, for the purpose of the small business injury and illness prevention survey.

Sec. 107. **APPROPRIATION; SURVEY.**

$200,000 is appropriated for the biennium ending June 30, 1997, from the assigned risk safety account in the special compensation fund to the board of regents of the University of Minnesota for the purpose of the small business workers' compensation safety pilot project.

Sec. 108. **APPROPRIATION.**

$960,000 is appropriated from the special compensation fund to the department of labor and industry for the biennium ending June 30, 1997, for the purposes of this act.

Sec. 109. **INCONSISTENT LAWS SUPERSEDED.**

Notwithstanding the order of final enactment, the amendments to Minnesota Statutes, section 175.16, by this act, supersede any conflicting provision of law enacted by the 1995 regular legislative session.

Sec. 110. **REPEALER.**

Minnesota Statutes 1994, sections 79.53, subdivision 2; 79.54; 79.56, subdivision 2; 79.57; 79.58; 176.011, subdivision 26; 176.081, subdivisions 2, 5, and 8; 176.103, subdivision 2a; 176.132; 176.133; 176.191, subdivision 2; and 176.232, are repealed.

Sec. 111. **EFFECTIVE DATE; TRANSITION.**

Sections 11 to 16 (79.52 to 79.60) are effective on January 1, 1996. Rates and rating plans in use as of January 1, 1996, may continue to be used until such time as an amendment thereto or a new rate or rating plan is filed, at which time such submission shall be subject to this article.

Sec. 112. **EFFECTIVE DATE.**

Sections 43 (175.16), 58 (176.129, subd. 9), 63 (176.1351, subd. 5), and 109 are effective the day following final enactment. Sections 4 (79.085), 5 (79.211, subd. 1), 44 to 47 (176.011, subd. 16 to 176.081, subd. 7a), 57 (176.108), 79 (176.191, subd. 8), 82 to 92 (176.221, subd. 1 to 176.261), and 94 (176.275, subd. 1) are effective October 1, 1995. Sections 9 and 10 (79.34 and 79.35) are effective January 1, 1996. Section 51 (176.102, subd. 11) applies to a personal injury, as defined under Minnesota Statutes, section 176.011, subdivision 16, occurring on or after October 1, 1995. Sections 28 to 41 (79A.19 to 79A.32) are effective August 1, 1995. Sections 78 (176.191, subd. 1a) and 79 (176.191, subd. 5) are effective for apportionment proceedings instituted after July 1, 1995.

Presented to the governor May 23, 1995

Signed by the governor May 25, 1995, 3:42 p.m.