

Minnesota, and provide a plan to coordinate and allocate public and private resources to the rural areas of the state. The board commissioner shall submit the guide to the appropriate committees of the legislature. The guide shall be prepared every fourth year.

Sec. 12. INSTRUCTION TO REVISOR.

The revisor shall:

(1) recodify Minnesota Statutes 1994, section 116J.655, as Minnesota Statutes, section 121.72;

(2) recodify Minnesota Statutes, sections 116N.01, subdivisions 1, 3, 4, 5, 6, 7, and 8; 116N.02, subdivision 6; 116N.03, subdivision 1; 116N.06; and 116N.08, in Minnesota Statutes, chapter 116J, making conforming changes as necessary, correct references to those sections in Minnesota Statutes and Minnesota Rules, and change "board" where it means the rural development board to "commissioner" in those sections;

(3) change "rural development board" and "board" where it means the rural development board to "commissioner" in Minnesota Rules, chapter 4370.

Sec. 13. REPEALER.

Minnesota Statutes 1994, sections 116J.981; 116N.01, subdivision 2; 116N.02, subdivisions 2, 3, 4, and 5; 116N.04; and 116N.07; Minnesota Statutes 1995 Supplement, section 116N.02, subdivision 1; and Minnesota Rules, part 4370.0010, subpart 3, are repealed.

Presented to the governor March 23, 1996

Signed by the governor March 26, 1996, 10:17 a.m.

CHAPTER 370—H.F.No. 2588

An act relating to insurance; providing a process for resolving state claims for certain landfill cleanup costs and associated damages with insurers; authorizing an action by the state for recovery from insurers after a reasonable opportunity for settlement; proposing coding for new law in Minnesota Statutes, chapter 115B; repealing Minnesota Statutes 1994, sections 115B.44, subdivision 1; and 115B.46; Minnesota Statutes 1995 Supplement, sections 115B.44, subdivision 2; and 115B.45.

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

Section 1. [115B.441] INSURANCE CLAIMS SETTLEMENT AND RECOVERY PROCESS; FINDINGS AND PURPOSE.

(a) The legislature finds that:

(1) insurers have issued certain insurance policies to their policyholders that may have provided coverage for environmental response costs related to qualified facilities for which their policyholders bear legal responsibility;

(2) because the commissioner is required by law to take over responsibility for environmental response actions relating to all qualified facilities, any rights to coverage

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based upon the insurers' contractual obligations to their policyholders to pay environmental response costs that are assumed by the state related to these facilities, to the extent the obligations may exist, are rights that should fairly accrue to the state; and

(3) the resolution of these potential insurance coverage rights should provide a fair share of the cost to the state of taking over these environmental responsibilities consistent with the insurers' potential coverage obligations to their policyholders.

(b) The purposes of sections 1 to 5 are:

(1) to provide the means for the state and insurers to resolve claims of the state for environmental response costs related to qualified facilities that may be covered by insurance policies of persons who bear legal responsibility for those costs; and

(2) to create a fair and efficient settlement process that provides insurers with an opportunity to settle claims based upon a reasonable approximation of the insurers' potential coverage exposure and a fair opportunity for the state to recover claims by legal action from nonsettling insurers.

Sec. 2. [115B.442] SETTLEMENT PROCESS; INFORMATION GATHERING.

Subdivision 1. **SELECTION OF QUALIFIED FACILITIES.** The commissioner and the attorney general shall select qualified facilities for which they intend to make offers of settlement to insurers under section 3. The first group of qualified facilities, consisting of not less than ten facilities, must be selected within 60 days after the effective date of this section. Upon selection of a qualified facility under this subdivision, the commissioner shall commence reasonable efforts to identify potential insurance policyholders and insurance coverage for the qualified facility in accordance with this section.

Subd. 2. **POTENTIAL INSURANCE POLICYHOLDER.** For the purpose of this section, "potential insurance policyholder" means a person who may bear legal responsibility for environmental response costs related to a qualified facility including the following:

(1) a person who has been the subject of a request for response action under section 115B.17, or an order under section 106 of the Federal Superfund Act with respect to a qualified facility;

(2) an owner or operator of a qualified facility;

(3) a person who engaged in commercial, industrial, or other activities generally known to produce waste containing a hazardous substance, or pollutant or contaminant, and whose waste was disposed of at a qualified facility; and

(4) a person who engaged in the business of hauling waste for disposal and who accepted waste from one or more persons of the type described in clause (3) for transport to a qualified facility.

Subd. 3. **IDENTIFICATION OF POTENTIAL INSURANCE POLICYHOLDERS.** The commissioner may request information from a person that the commissioner has reason to believe is a potential insurance policyholder or has information needed to identify potential insurance policyholders. The recipient of the request shall provide to the commissioner any information in the person's possession, or which the person can

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reasonably obtain, that the commissioner requires to identify potential insurance policyholders for a qualified facility and to explain to the commissioner the person's efforts to discover and provide the information. An owner or operator of a qualified facility shall retain and preserve all documents and other information relevant to the identification of potential insurance policyholders for the qualified facility.

Subd. 4. IDENTIFICATION OF POTENTIAL INSURANCE COVERAGE.

The commissioner may request a person that the commissioner has reason to believe is a potential insurance policyholder to provide, and the recipient of the request shall provide to the commissioner, any information in the person's possession, or which the person can reasonably obtain, regarding the person's potential liability insurance coverage for environmental response costs related to a qualified facility. A potential insurance policyholder for which evidence of potential coverage has been identified shall cooperate with reasonable requests of the commissioner or the attorney general for assistance in preparing for and negotiating a settlement under this section or in preparing or pursuing a claim under section 4 related to that policyholder's potential coverage. Nothing in this subdivision relieves a potential insurance policyholder of any duties imposed upon it pursuant to the terms, conditions, and provisions of its insurance policy, including any duty to cooperate with its insurer in the investigation, negotiation, and settlement of claims or demands, or the defense of suits. The commissioner may contract for the services of persons to assist in reconstructing insurance policies and potential coverage from incomplete insurance information. The commissioner may authorize the attorney general to carry out all or a portion of the authority provided in this section.

Subd. 5. IDENTIFICATION OF POTENTIAL COVERAGE BY INSURERS.

The commissioner may request an insurer to make reasonable efforts to identify or confirm potential insurance coverage of any potential insurance policyholder identified under subdivision 4, or may direct the potential insurance policyholder to make this request of an insurer. An insurer that is requested to identify or confirm potential coverage of a potential insurance policyholder under this subdivision has 90 days after receiving the request to confirm coverage or to provide all information in the possession of the insurer that may assist in identifying potential coverage, and to explain the insurer's efforts to discover and provide such information. An insurer requested to provide information under this subdivision shall preserve all information relevant to the request until any claim relating to the request is resolved.

Subd. 6. ENFORCEMENT. Subdivisions 3 to 5 are enforceable under sections 115.071 and 116.072.

Sec. 3. [115B.443] SETTLEMENT PROCESS.

Subdivision 1. DETERMINATION OF FACILITY COSTS. Beginning not later than one year after selection of a qualified facility under section 2, subdivision 1, the commissioner shall determine the current total estimated amount of environmental response costs incurred and to be incurred by the state for the qualified facility under sections 115B.39 to 115B.43, including reimbursement under section 115B.43.

Subd. 2. SETTLEMENT OFFERS. The attorney general and the commissioner shall select one or more insurers who have been identified by the commissioner as providing potential coverage to persons identified under section 2 as potential insurance policyholders for a qualified facility and shall make settlement offers with respect to one or

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more of the qualified facilities to the selected insurers. The attorney general and the commissioner shall base the settlement offer on their evaluation of the potential coverage available for environmental response costs under policies issued by the insurer to persons identified as potential insurance policyholders for that qualified facility and on the total estimated costs for the qualified facility, as determined under subdivision 1. The attorney general shall provide written notice of the settlement to the insurer together with a written explanation of how the offer was calculated. The attorney general may exclude from a settlement offer claims relating to policyholders who are known by the attorney general to have claims against the insurer for coverage for environmental liabilities at locations other than qualified facilities, or who are actively litigating or settling claims against their insurers relating to any qualified facility.

Subd. 3. SETTLEMENT NEGOTIATIONS; MEDIATION. An insurer shall have 60 days after receipt of a settlement offer and written explanation from the state to evaluate the offer, after which the insurer, the commissioner, and the attorney general shall commence negotiations to attempt to reach a settlement with respect to the potential insurance coverage and qualified facilities subject to the settlement offer. The insurer shall have 180 days to negotiate and commit to a settlement with the state before the attorney general may commence an action under section 4, unless the commissioner and the attorney general agree to extend the negotiation period upon request by the insurer made before expiration of the 180-day period. Any extension shall be limited to one additional 60-day period.

The attorney general, commissioner, and the insurer may agree to use any method of alternative dispute resolution for all or a portion of the issues in the negotiation, or may agree to negotiate all matters directly among themselves. If the parties do not agree in writing on the manner in which they will negotiate a settlement within 60 days after commencement of the negotiation period, the parties shall submit the negotiation of the settlement to mediation by an independent and neutral mediator selected by the Minnesota office of dispute resolution. The attorney general shall submit on behalf of all parties a request to the office of dispute resolution to appoint a mediator for the negotiations. The cost of mediation under this subdivision shall be divided equally between the state and the insurer.

Any settlement offer or any proposal, statement, or view expressed or document prepared in the course of negotiation under this section shall not be considered an admission by any party and shall not be admissible in evidence in any judicial proceeding affecting matters subject to settlement negotiation, provided that any matter otherwise admissible in a judicial proceeding is not made inadmissible by virtue of its use in negotiation under this section.

Subd. 4. PARTICIPATION BY AFFECTED POLICYHOLDERS. (a) Within 30 days of notifying an insurer of a settlement offer, the attorney general shall make reasonable efforts to notify policyholders who may be affected by settlement negotiations under subdivision 3. The notification shall inform the policyholder of the commencement of negotiations between the state and the insurer and the manner in which a policyholder, with agreement of the insurer, may participate in the negotiation process. If the insurer and the state reach a settlement of the state's claims, the attorney general shall provide notice of any proposed settlement to any affected policyholder who makes a written request for such notice.

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(b) Subject to the limitations of this paragraph, an insurer to whom a settlement offer is made under subdivision 3, and any policyholder who may be affected by the negotiation, may agree to negotiate a resolution of any other outstanding environmental claims, related to the qualified facility or facilities that are subject to the state's settlement offer, within the settlement negotiation process provided under this section. Environmental claims unrelated to the qualified facility or facilities that are subject to the state settlement offer may be included within the settlement negotiation process provided under this section at the discretion of the attorney general, provided that the state will not bear any costs of mediation or alternative dispute resolution arising from the unrelated claims. The agreement of the insurer and affected policyholders to negotiate must be reached by the time that the insurer and the state commence negotiations as provided under subdivision 3. The policyholder shall not participate in the selection of the method of negotiation by the state and the insurer under subdivision 3. If the attorney general in the attorney general's discretion determines, at any time after the first 60 days of the negotiation period, that continued participation of the policyholders in the negotiation process with the state and the insurer is detrimental to the effective negotiation of a settlement between the state and the insurer, the attorney general shall so notify the insurer and the policyholders. After such notification by the attorney general, the insurer and policyholders may continue to negotiate separately from the negotiation between the insurer and the state, and may use the same mediator or other person who is facilitating negotiation between the state and the insurer. Policyholders shall be responsible for an equitable share of any costs of mediation or other alternative dispute resolution process in which they participate. Notwithstanding a determination to discontinue negotiations involving policyholders, the attorney general may engage in an additional 30 days of negotiation with the insurer and policyholders if, within the time limit for committing to a settlement provided under subdivision 3, the attorney general finds, in the discretion of the attorney general, that participation by the policyholders in a settlement between the state and the insurer would be beneficial to that settlement.

Inability of the insurer or the state to reach a settlement with policyholders under this subdivision shall not preclude a settlement between the state and the insurer.

Subd. 5. ADJUSTMENT FOR RETROSPECTIVE PREMIUMS. A settlement that includes payment of any amount under a policy subject to a retrospective premium plan shall include terms which assure that the settlement does not result in the imposition of any retrospective premium on any policyholder. In negotiating with respect to any state offer of settlement which is based in whole or in part on coverage known to the insurer to be subject to a retrospective premium plan:

(1) the insurer shall calculate the amount of any retrospective premium that would result from payment of the state's settlement offer amount and shall disclose the calculation and the basis for it to the attorney general and the commissioner; and

(2) the attorney general and commissioner may reduce the settlement offer amount by the amount of the retrospective premium or agree to assume the obligation to pay the retrospective premium in order to assure that no retrospective premium is imposed on the policyholder.

Subd. 6. OPTION TO SETTLE NATURAL RESOURCE DAMAGES. An insurer who has received a settlement offer may request the attorney general and the com-

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missioner to address in any settlement under this section natural resource damages related to qualified facilities subject to the settlement offer. The attorney general and the commissioner, after receiving a request under this subdivision, shall determine an amount to be added to the state's settlement offer that would be sufficient to address and resolve in the settlement any state claims for natural resource damages related to the qualified facilities subject to the settlement.

Subd. 7. SETTLEMENT OPTION FOR ALL QUALIFIED FACILITIES. If an insurer has entered settlements with the state under this section with respect to qualified facilities for which the aggregate amount of total estimated environmental response costs equals at least 60 percent of the total estimated environmental response costs for all qualified facilities as determined by the commissioner, the attorney general and the commissioner, upon request of the insurer, may settle with the insurer with respect to the remaining qualified facilities for the amount determined in this subdivision. The amount of the settlement for the remaining qualified facilities must be the amount that bears the same proportion to the total estimated costs for the remaining facilities that the amount payable under all of the insurer's existing settlements under this section bears to the aggregate of the total estimated costs for the qualified facilities subject to those settlements.

Subd. 8. SCOPE OF RELEASE BY STATE; EFFECT OF SETTLEMENT. Except for any claims excluded from the settlement process under section 3, subdivision 2, a settlement under this section shall release a settling insurer, and its policyholders to the extent of their insurance coverage under policies of that insurer, from all liability for all environmental response costs incurred and to be incurred by the state related to the qualified facility or facilities that are the subject of the settlement, including natural resource damages if addressed in the settlement. Except for claims excluded under section 3, subdivision 2, the settlement shall release a settling insurer and its policyholders from liability as described in this subdivision under all insurance policies issued by the insurer, regardless of whether the policies or policyholders were identified by the commissioner or attorney general under section 2.

Subd. 9. OTHER SETTLEMENT TERMS. (a) An insurer who enters a settlement under this section is not liable for claims for contribution regarding matters addressed in the settlement. As a condition of settlement, an insurer shall waive its rights to seek contribution for any amounts paid in the settlement or to bring a subrogation action against any other person for any amounts paid in the settlement.

(b) Settlement under this section does not discharge the liability of an insurer that has not entered a settlement under this section nor of a person to whom a nonsettling insurer has issued insurance coverage to the extent of that coverage.

(c) No settlement offer, settlement, or negotiation under this section shall affect any joint and several liability for environmental response costs or damages related to the facility of any person whose liability has not been settled under this section.

(d) A settlement under this section or section 4, subdivision 2, paragraph (b), reduces the state's claims for environmental response costs, and natural resource damages if addressed in the settlement, related to qualified facilities subject to the settlement by the amounts paid to the state under the settlement for the facilities.

(e) A settlement agreement approved by the attorney general and the commissioner under this section shall be presumed to be a reasonable settlement of the state's claims.

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Subd. 10. REDUCTION OF OUTSTANDING COVERAGE. Any amounts paid by an insurer pursuant to a judgment under section 4 or settlement under this section reduce the outstanding coverage available under policies of the insurer to the extent permitted under applicable law and policy provisions.

Sec. 4. [115B.444] STATE ACTION AGAINST INSURERS.

Subdivision 1. STATE ACTION. The state, by the attorney general, may bring a state action against any insurer for recovery of all environmental response costs incurred and to be incurred by the state, which costs are related to qualified facilities for which the state has assumed response action obligations or responsibilities under sections 115B.39 to 115B.43, and for which costs policyholders of the insurer may be liable. No assignment of any rights of a policyholder to the state and no judgment against the policyholder is required as a condition for the state bringing an action under this subdivision. The state shall make reasonable efforts to notify affected policyholders of the state's commencement of an action under this section. An affected policyholder may intervene in an action under this section. For purposes of this section, an "affected policyholder" means a policyholder whose rights under an insurance policy relevant to an action under this section may be affected by the action. All defenses available to a policyholder to any claim of liability for environmental response costs asserted or which could be asserted against it shall be available to the insurer in an action brought by the state under this subdivision. In any action under this subdivision, the claim of the state shall be limited by the applicable terms, conditions, and provisions of the relevant insurance policy under which coverage may be provided, and the state shall have no greater rights than the rights of the policyholder under its insurance policy subject to the statutory and common law that applies to the determination of those rights. Nothing in sections 1 to 5 shall be construed to relieve any policyholder of liability for environmental response costs to the extent of any insurance coverage of the policyholder by reason of the assumption of obligations or responsibilities by the state for environmental response actions under sections 115B.39 to 115B.43. Before the attorney general may commence an action against an insurer under this subdivision, for any claims with respect to a qualified facility, the attorney general and the commissioner shall present to the insurer a written settlement offer, and shall provide the insurer with an opportunity to negotiate and enter a settlement with the state as provided in section 3. In any action under this subdivision, the state shall have the same rights as individual policyholders to recover its reasonable expenses and costs of litigation, including attorney fees.

Subd. 2. ACTIONS BY POLICYHOLDERS; STATE APPROVAL OF SETTLEMENTS. (a) Except as provided in paragraph (b), nothing in sections 1 to 4 affects the right of a policyholder to bring or pursue any action against, or enter any settlement with, an insurer for any claims for which the state has a right of action against the insurer under this section and that have not been resolved by a settlement or judgment under this section. The state may intervene in an action in which a policyholder seeks to recover a claim for which the state has a right of action under this section.

(b) A policyholder may not enter a settlement that releases an insurer from any claims for which the state has an action under subdivision 1, unless the attorney general has given prior written approval to the settlement and the policyholder agrees to assign to the state any amounts recovered under the settlement from the insurer that are attributable to the resolution of the claims.

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Sec. 5. [115B.445] DEPOSIT OF PROCEEDS.

All amounts paid to the state by an insurer pursuant to any settlement under section 3 or judgment under section 4 must be deposited in the state treasury and credited to the solid waste fund.

Sec. 6. REPORT TO THE LEGISLATURE.

The attorney general and the commissioner shall report to the finance division of the senate environment and natural resources committee and the house of representatives environment and natural resources finance committee by January 15, 1998, concerning the results achieved in carrying out the settlement and recovery process established under sections 1 to 5. The report must include any recommendations for further legislation that the attorney general and the commissioner believe will assist in the fair and efficient resolution of claims related to qualified facilities by the state and insurers.

Sec. 7. REPEALER.

Minnesota Statutes 1994, sections 115B.44, subdivision 1; and 115B.46; and Minnesota Statutes 1995 Supplement, sections 115B.44, subdivision 2; and 115B.45, are repealed.

Sec. 8. EFFECTIVE DATE.

Sections 1 to 7 are effective the day following final enactment.

Presented to the governor March 23, 1996

Signed by the governor March 26, 1996, 10:25 a.m.

CHAPTER 371—S.F.No. 2874

An act relating to settlements; authorizing settlement of a lawsuit for age discrimination; implementing a settlement with extended employment program services providers; transferring appropriations; appropriating money.

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

Section 1. AGE DISCRIMINATION SETTLEMENT.

\$250,000 of appropriations made to the corrections ombudsman is available to settle an age discrimination lawsuit against the ombudsman. To support this appropriation, the following appropriations are transferred and added to the appropriation to the corrections ombudsman in Laws 1995, chapter 226, article 1, section 12, for fiscal year 1996: \$15,000 is transferred from the ombudsman's appropriation in Laws 1995, chapter 226, article 1, section 12, for fiscal year 1997, and \$225,000 is transferred from the appropriation for tort claims in Laws 1995, chapter 254, article 1, section 28, the amount to be taken from each fiscal year to be determined by the commissioner of finance.

Sec. 2. EXTENDED EMPLOYMENT PROGRAM SERVICES SETTLEMENT.

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