

Sec. 4. REPEALER.

Minnesota Statutes 1998, section 414.10, is repealed.

Sec. 5. EFFECTIVE DATES.

Subdivision 1. PROCEEDINGS. Section 1, subdivisions 1, 2, and 4, are effective retroactive to June 1, 1999, and apply to all matters pending on or commenced on or after that date. Sections 2 and 3 are effective the day following final enactment.

Subd. 2. COSTS. Section 1, subdivision 3, is effective retroactive to June 1, 1999, and applies only to boundary adjustment matters commenced on or after June 1, 1999. In any proceeding in which a decision by the Minnesota municipal board prior to June 1, 1999, was enjoined by court order, the disputing parties are liable for any costs as provided in section 1, subdivision 3, incurred on or after June 1, 1999. For all boundary adjustment matters commenced before June 1, 1999, all costs must be allocated as provided in law and rule prior to the abolition of the Minnesota municipal board, and the maximum total amount the parties may be charged by the office of strategic and long-range planning, the office of administrative hearings, or as part of an arbitration is no more than the Minnesota municipal board could have charged if the matter had been heard and decided by the board. Costs that exceed what the municipal board could have charged must be paid by the office of strategic and long-range planning.

Presented to the governor April 25, 2000

Signed by the governor April 26, 2000, 2:37 p.m.

CHAPTER 447—S.F.No. 3644

An act relating to workers' compensation; increasing benefits; clarifying language; providing for a transfer of funds; modifying various workers' compensation provisions; amending Minnesota Statutes 1998, sections 176.011, subdivisions 3 and 20; 176.061, subdivisions 3, 5, 7, 10, and by adding a subdivision; 176.081, subdivision 1; 176.101, subdivisions 1, 2a, and 8; 176.102, subdivisions 3 and 11; 176.106, subdivision 7; 176.111, subdivisions 5, 18, and by adding a subdivision; 176.129, subdivisions 3 and 4; 176.231, subdivision 2; and 176.611, subdivision 2a; Minnesota Statutes 1999 Supplement, section 176.011, subdivision 9; repealing Minnesota Statutes 1998, section 176.129, subdivision 2.

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

Section 1. Minnesota Statutes 1998, section 176.011, subdivision 3, is amended to read:

Subd. 3. **DAILY WAGE.** "Daily wage" means the daily wage of the employee in the employment engaged in at the time of injury but does not include tips and gratuities paid directly to an employee by a customer of the employer and not accounted for by the employee to the employer. If the amount of the daily wage received or to be received by the employee in the employment engaged in at the time of injury was irregular or difficult to determine, or if the employment was part time, the daily wage

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shall be computed by dividing the total amount of wages, vacation pay, and holiday pay the employee actually earned in such employment in the last 26 weeks, by the total number of days in which ~~the employee actually performed any of the duties of such employment such~~ wages, vacation pay, and holiday pay was earned, provided further, that in the case of the construction industry, mining industry, or other industry where the hours of work are affected by seasonal conditions, the weekly wage shall not be less than five times the daily wage. If the employee worked or earned less than a full day's worth of wages, vacation pay, or holiday pay, the total amount earned shall be divided by the corresponding proportion of that day. Where board or allowances other than tips and gratuities are made to an employee in addition to wages as a part of the wage contract they are deemed a part of earnings and computed at their value to the employee. In the case of persons performing services for municipal corporations in the case of emergency, then the normal working day shall be considered and computed as eight hours, and in cases where such services are performed gratis or without fixed compensation the daily wage of the person injured shall, for the purpose of calculating compensation payable under this chapter, be taken to be the usual going wage paid for similar services in municipalities where such services are performed by paid employees. If, at the time of injury, the employee was regularly employed by two or more employers, the employee's earnings in all such employments shall be included in the computation of daily wage.

Sec. 2. Minnesota Statutes 1999 Supplement, section 176.011, subdivision 9, is amended to read:

Subd. 9. **EMPLOYEE.** "Employee" means any person who performs services for another for hire including the following:

- (1) an alien;
- (2) a minor;
- (3) a sheriff, deputy sheriff, constable, marshal, police officer, firefighter, county highway engineer, and peace officer while engaged in the enforcement of peace or in the pursuit or capture of a person charged with or suspected of crime;
- (4) a person requested or commanded to aid an officer in arresting or retaking a person who has escaped from lawful custody, or in executing legal process, in which cases, for purposes of calculating compensation under this chapter, the daily wage of the person shall be the prevailing wage for similar services performed by paid employees;
- (5) a county assessor;
- (6) an elected or appointed official of the state, or of a county, city, town, school district, or governmental subdivision in the state. An officer of a political subdivision elected or appointed for a regular term of office, or to complete the unexpired portion of a regular term, shall be included only after the governing body of the political subdivision has adopted an ordinance or resolution to that effect;

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(7) an executive officer of a corporation, except those executive officers excluded by section 176.041;

(8) a voluntary uncompensated worker, other than an inmate, rendering services in state institutions under the commissioners of human services and corrections similar to those of officers and employees of the institutions, and whose services have been accepted or contracted for by the commissioner of human services or corrections as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services in institutions where the services are performed by paid employees;

(9) a voluntary uncompensated worker engaged in peace time in the civil defense program when ordered to training or other duty by the state or any political subdivision of it. The daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed by paid employees;

(10) a voluntary uncompensated worker participating in a program established by a local social services agency. For purposes of this clause, "local social services agency" means any agency established under section 393.01. In the event of injury or death of the worker, the wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid in the county at the time of the injury or death for similar services performed by paid employees working a normal day and week;

(11) a voluntary uncompensated worker accepted by the commissioner of natural resources who is rendering services as a volunteer pursuant to section 84.089. The daily wage of the worker for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(12) a voluntary uncompensated worker in the building and construction industry who renders services for joint labor-management nonprofit community service projects. The daily wage of the worker for the purpose of calculating compensation under this chapter shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(13) a member of the military forces, as defined in section 190.05, while in state active service, as defined in section 190.05, subdivision 5a. The daily wage of the member for the purpose of calculating compensation under this chapter shall be based on the member's usual earnings in civil life. If there is no evidence of previous occupation or earning, the trier of fact shall consider the member's earnings as a member of the military forces;

(14) a voluntary uncompensated worker, accepted by the director of the Minnesota historical society, rendering services as a volunteer, pursuant to chapter 138. The daily wage of the worker, for the purposes of calculating compensation under this

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chapter, shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

(15) a voluntary uncompensated worker, other than a student, who renders services at the Minnesota state academy for the deaf or the Minnesota state academy for the blind, and whose services have been accepted or contracted for by the commissioner of children, families, and learning, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(16) a voluntary uncompensated worker, other than a resident of the veterans home, who renders services at a Minnesota veterans home, and whose services have been accepted or contracted for by the commissioner of veterans affairs, as authorized by law. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(17) a worker who renders in-home attendant care services to a physically handicapped person, and who is paid directly by the commissioner of human services for these services, shall be an employee of the state within the meaning of this subdivision, but for no other purpose;

(18) students enrolled in and regularly attending the medical school of the University of Minnesota in the graduate school program or the postgraduate program. The students shall not be considered employees for any other purpose. In the event of the student's injury or death, the weekly wage of the student for the purpose of calculating compensation under this chapter, shall be the annualized educational stipend awarded to the student, divided by 52 weeks. The institution in which the student is enrolled shall be considered the "employer" for the limited purpose of determining responsibility for paying benefits under this chapter;

(19) a faculty member of the University of Minnesota employed for an academic year is also an employee for the period between that academic year and the succeeding academic year if:

(a) the member has a contract or reasonable assurance of a contract from the University of Minnesota for the succeeding academic year; and

(b) the personal injury for which compensation is sought arises out of and in the course of activities related to the faculty member's employment by the University of Minnesota;

(20) a worker who performs volunteer ambulance driver or attendant services is an employee of the political subdivision, nonprofit hospital, nonprofit corporation, or other entity for which the worker performs the services. The daily wage of the worker for the purpose of calculating compensation under this chapter shall be the usual wage paid at the time of injury or death for similar services performed by paid employees;

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(21) a voluntary uncompensated worker, accepted by the commissioner of administration, rendering services as a volunteer at the department of administration. In the event of injury or death of the worker, the daily wage of the worker, for the purpose of calculating compensation under this chapter, shall be the usual wage paid at the time of the injury or death for similar services performed in institutions by paid employees;

(22) a voluntary uncompensated worker rendering service directly to the pollution control agency. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees;

(23) a voluntary uncompensated worker while volunteering services as a first responder or as a member of a law enforcement assistance organization while acting under the supervision and authority of a political subdivision. The daily wage of the worker for the purpose of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees; and

(24) a voluntary uncompensated member of the civil air patrol rendering service on the request and under the authority of the state or any of its political subdivisions. The daily wage of the member for the purposes of calculating compensation payable under this chapter is the usual going wage paid at the time of injury or death for similar services if the services are performed by paid employees.

If it is difficult to determine the daily wage as provided in this subdivision, the trier of fact may determine the wage upon which the compensation is payable.

Sec. 3. Minnesota Statutes 1998, section 176.011, subdivision 20, is amended to read:

Subd. 20. **AVERAGE WEEKLY WAGE.** The statewide average weekly wage for any year means that wage determined by the commissioner in the following manner: On or before July 1 preceding the year in which the wage is to be applicable, the total wages reported on ~~contribution tax~~ reports to the department of economic security for the preceding 12 months ending on December 31 of that year shall be divided by the average monthly number of ~~insured~~ covered workers (determined by dividing the total ~~insured~~ covered workers reported for the year ending December 31 by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the next highest dollar.

Sec. 4. Minnesota Statutes 1998, section 176.061, subdivision 3, is amended to read:

Subd. 3. **ELECTION TO RECEIVE BENEFITS FROM EMPLOYER; SUBROGATION.** If the employee or the employee's dependents elect to receive benefits from the employer, or the special compensation fund, the employer or the special compensation fund has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the other party. The employer, or the attorney general on behalf of the special compensation fund, may

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bring legal proceedings against the party and recover the aggregate amount of benefits payable to or on behalf of the employee or the employee's dependents, regardless of whether such benefits are recoverable by the employee or the employee's dependents at common law or by statute together with costs, disbursements, and reasonable attorney's fees of the action.

If an action as provided in this chapter is prosecuted by the employee, the employer, or the attorney general on behalf of the special compensation fund, against the third person, and results in judgment against the third person, or settlement by the third person, the employer has no liability to reimburse or hold the third person harmless on the judgment or settlement in absence of a written agreement to do so executed prior to the injury.

Sec. 5. Minnesota Statutes 1998, section 176.061, subdivision 5, is amended to read:

Subd. 5. **CUMULATIVE REMEDIES.** If an injury or death for which benefits are payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, that party being then insured or self-insured in accordance with this chapter, and the provisions of subdivisions 1, 2, 3, and 4 do not apply, or the party other than the employer is not then insured or self-insured as provided by this chapter, legal proceedings may be taken by the employee or the employee's dependents in accordance with clause (a), or by the employer, or by the attorney general on behalf of the special compensation fund, in accordance with clause (b), against the other party to recover damages, notwithstanding the payment of benefits by the employer or the special compensation fund or their liability to pay benefits.

(a) If an action against the other party is brought by the injured employee or the employee's dependents and a judgment is obtained and paid or settlement is made with the other party, the employer or the special compensation fund may deduct from the benefits payable the amount actually received by the employee or dependents or paid on their behalf in accordance with subdivision 6. If the action is not diligently prosecuted or if the court deems it advisable in order to protect the interests of the employer or the special compensation fund, upon application the court may grant the employer or the special compensation fund the right to intervene in the action for the prosecution of the action. If the injured employee or the employee's dependents or any party on their behalf receives benefits from the employer or the special compensation fund or institutes proceedings to recover benefits or accepts from the employer or the special compensation fund any payment on account of the benefits, the employer or the special compensation fund is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity against a third party regardless of whether such benefits are recoverable by the employee or the employee's dependents at common law or by statute. The employer or the attorney general on behalf of the special compensation fund may maintain a separate action or continue an action already instituted. This action may be maintained in the name of the employee or the names of the employee's dependents, or in the name of the employer, or in the name

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of the attorney general on behalf of the special compensation fund, against the other party for the recovery of damages. If the action is not diligently prosecuted by the employer or the attorney general on behalf of the special compensation fund, or if the court deems it advisable in order to protect the interest of the employee, the court, upon application, may grant to the employee or the employee's dependents the right to intervene in the action for the prosecution of the action. The proceeds of the action or settlement of the action shall be paid in accordance with subdivision 6.

(b) If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premiums, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of an employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer, notwithstanding other remedies provided, may maintain an action against the other party for recovery of the premiums. This cause of action may be brought either by joining in an action described in clause (a) or by a separate action. Damages recovered under this clause are for the benefit of the employer and the provisions of subdivision 6 are not applicable to the damages.

(c) The third party is not liable to any person other than the employee or the employee's dependents, or the employer, or the special compensation fund, for any damages resulting from the injury or death.

A coemployee working for the same employer is not liable for a personal injury incurred by another employee unless the injury resulted from the gross negligence of the coemployee or was intentionally inflicted by the coemployee.

Sec. 6. Minnesota Statutes 1998, section 176.061, subdivision 7, is amended to read:

Subd. 7. **MEDICAL TREATMENT.** The liability of an employer or the special compensation fund for medical treatment or payment of any other compensation under this chapter is not affected by the fact that the employee was injured through the fault or negligence of a third party, against whom the employee may have a cause of action which may be sued under this chapter, but the employer, or the attorney general on behalf of the special compensation fund, has a separate additional cause of action against the third party to recover any amounts paid for medical treatment or for other compensation payable under this section resulting from the negligence of the third party regardless of whether such other compensation is recoverable by the employee or the employee's dependents at common law or by statute. This separate cause of action of the employer or the attorney general on behalf of the special compensation fund may be asserted in a separate action brought by the employer or the attorney general on behalf of the special compensation fund against the third party, or in the action commenced by the employee or the employer or the attorney general on behalf of the special compensation fund under this chapter, but in the latter case the cause of action shall be separately stated, the amount awarded in the action shall be separately set out in the verdict, and the amount recovered by suit or otherwise as reimbursement for medical expenses or other compensation shall be for the benefit of the employer or

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the special compensation fund to the extent that the employer or the special compensation fund has paid or will be required to pay compensation or pay for medical treatment of the injured employee and does not affect the amount of periodic compensation to be paid.

Sec. 7. Minnesota Statutes 1998, 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, regardless of whether such compensation is recoverable by the employee or the employee's dependents at common law or by statute, including temporary total compensation, temporary partial compensation, permanent partial compensation, medical compensation, rehabilitation, death, and permanent total compensation.

Sec. 8. Minnesota Statutes 1998, section 176.061, is amended by adding a subdivision to read:

Subd. 11. **RIGHT OF CONTRIBUTION.** To the extent the employer has fault, separate from the fault of the injured employee to whom workers' compensation benefits are payable, any nonemployer third party who is liable has a right of contribution against the employer in an amount proportional to the employer's percentage of fault but not to exceed the net amount the employer recovered pursuant to subdivision 6, paragraphs (c) and (d). The employer may avoid contribution exposure by affirmatively waiving, before selection of the jury, the right to recover workers' compensation benefits paid and payable, thus removing compensation benefits from the damages payable by any third party.

Procedurally, if the employer waives or settles the right to recover workers' compensation benefits paid and payable, the employee or the employee's dependents have the option to present all common law or wrongful death damages whether they are recoverable under the Workers' Compensation Act or not. Following the verdict, the trial court will deduct any awarded damages that are duplicative of workers' compensation benefits paid or payable.

Sec. 9. Minnesota Statutes 1998, section 176.081, subdivision 1, is amended to read:

Subdivision 1. **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. All fees, including fees for obtaining medical or rehabilitation benefits, must be calculated according to the formula under this subdivision, 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

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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. 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. 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

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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.

(e) Employers and insurers may not pay attorney fees or wages for legal services of more than \$13,000 per case.

(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.

(g) An attorney must file a statement of attorney fees within 12 months of the date the attorney has submitted the written notice specified in paragraph (c). If the attorney has not filed a statement of attorney fees within the 12 months, the attorney must send a renewed notice of lien to the insurer. If 12 months have elapsed since the last notice of lien has been received by the insurer and no statement of attorney fees has been filed, the insurer must release the withheld money to the employee, except that before releasing the money to the employee, the insurer must give the attorney 30 days' written notice of the pending release. The insurer must not release the money if the attorney files a statement of attorney fees within the 30 days.

Sec. 10. Minnesota Statutes 1998, 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) (1) Commencing on October 1, ~~1995~~ 2000, the maximum weekly compensation payable is ~~\$615~~ \$750 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 ~~\$104~~ \$130 per week or the injured employee's actual weekly wage, whichever is less.

(d) Temporary total compensation shall be paid during the period of disability subject to the cessation and recommencement conditions in paragraphs (e) to (l).

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(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

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ity 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 this chapter.

(m) Once an employee has been paid 52 weeks of temporary total compensation, the employer or insurer must notify the employee in writing of the 104 week limitation on payment of temporary total compensation. A copy of this notice must also be filed with the department.

Sec. 11. Minnesota Statutes 1998, section 176.101, subdivision 2a, is amended 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

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table:

Impairment rating (percent)	Amount
0-25	\$ 75,000
0-5	\$ 75,000
6-10	80,000
11-15	85,000
16-20	90,000
21-25	95,000
26-30	80,000 100,000
31-35	85,000 110,000
36-40	90,000 120,000
41-45	95,000 130,000
46-50	100,000 140,000
51-55	120,000 165,000
56-60	140,000 190,000
61-65	160,000 215,000
66-70	180,000 240,000
71-75	200,000 265,000
76-80	240,000 315,000
81-85	280,000 365,000
86-90	320,000 415,000
91-95	360,000 465,000
96-100	400,000 515,000

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. If the employee requests payment in a lump sum, then the compensation must be paid within 30 days. This lump sum payment may be discounted to the present value calculated up to a maximum five percent basis. If the employee does not choose to receive the compensation in a lump sum, then 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. 12. Minnesota Statutes 1998, section 176.101, subdivision 8, is amended to read:

Subd. 8. **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.

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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 For injuries occurring after October 1, 2000, an employee who receives any other service-based government retirement pension is presumed retired from the labor market. The term "service-based government retirement pension" does not include disability-based government pensions. These presumptions are rebuttable by a preponderance of the evidence.

Sec. 13. Minnesota Statutes 1998, section 176.102, subdivision 3, is amended to read:

Subd. 3. **REVIEW PANEL.** There is created a rehabilitation review panel composed of the commissioner or a designee, who shall serve as an ex officio member and two members each from employers, insurers, rehabilitation, and medicine, one member representing chiropractors, and four members representing labor. The members shall be appointed by the commissioner and shall serve four-year terms which may be renewed. Terms, compensation, and removal for members shall be governed by section 15.0575. The panel shall select a chair. The panel shall review and make a determination with respect to appeals from orders of the commissioner regarding certification approval of qualified rehabilitation consultants and vendors. The hearings are de novo and initiated by the panel under the contested case procedures of chapter 14, and are appealable to the workers' compensation court of appeals in the manner provided by section 176.421.

Sec. 14. Minnesota Statutes 1998, 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

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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 104 156 weeks of any combination of temporary total or temporary partial compensation have been paid. Retraining shall not be available after 104 156 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 104 156 weeks of compensation have been paid.

(d) The employer or insurer must notify the employee in writing of the 104 156 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. 15. Minnesota Statutes 1998, section 176.106, subdivision 7, is amended to read:

Subd. 7. **REQUEST FOR HEARING.** Any party aggrieved by the decision of the 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 \$1,500 or less and the commissioner's decision shall be final.~~ 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.

Sec. 16. Minnesota Statutes 1998, section 176.111, subdivision 5, is amended to read:

Subd. 5. **PAYMENTS, TO WHOM MADE.** In death cases compensation payable to dependents is computed on the following basis and shall be paid to the persons entitled thereto or to a guardian or conservator as required under section

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176.092. The minimum amount of dependency compensation that must be paid to persons entitled thereto is \$60,000.

Sec. 17. Minnesota Statutes 1998, section 176.111, subdivision 18, is amended to read:

Subd. 18. **BURIAL EXPENSE.** In all cases where death results to an employee from a personal injury arising out of and in the course of employment, the employer shall pay the expense of burial, not exceeding in amount ~~\$7,500~~ \$15,000. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, its reasonable value shall be determined and approved by the commissioner, a compensation judge, or workers' compensation court of appeals, in cases upon appeal, before payment, after reasonable notice to interested parties as is required by the commissioner. If the deceased leaves no dependents, no compensation is payable, except as provided by this chapter.

Sec. 18. Minnesota Statutes 1998, section 176.111, is amended by adding a subdivision to read:

Subd. 22. PAYMENTS TO ESTATE; DEATH OF EMPLOYEE. In every case of death of an employee resulting from personal injury arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay to the estate of the deceased employee the sum of \$60,000.

Sec. 19. Minnesota Statutes 1998, section 176.129, subdivision 3, is amended to read:

Subd. 3. **PAYMENTS TO FUND, INJURY.** If an employee suffers a personal injury resulting in permanent partial disability, temporary total disability, temporary partial disability, permanent total disability, or death and the employee or the employee's dependents are entitled to compensation under sections 176.101 or 176.111 the employer shall pay to the commissioner a lump sum amount, without any interest deduction, equal to 20 percent of the total compensation payable. The rate under this subdivision shall be adjusted as provided under subdivision 4a and applies to injuries occurring after June 1, 1971, for payments made on or after January 1, 1984. This payment is to be credited to the special compensation fund and shall be in addition to any compensation payments made by the employer under this chapter. Payment shall be made as soon as the amount is determined and approved by and the completed assessment form shall be submitted to the commissioner no later than April 1 and August 15 of the same calendar year.

Sec. 20. Minnesota Statutes 1998, section 176.129, subdivision 4, is amended to read:

Subd. 4. **TIME OF INJURY.** Subdivision 3 applies to all workers' compensation payments, exclusive of medical costs, paid under section 176.101 or 176.111 for an injury or death occurring on or after June 1, 1971.

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Payments made for personal injuries that occurred prior to June 1, 1971, shall be reported to the special compensation fund but shall not be assessed at the rate in effect on the date of occurrence.

Sec. 21. Minnesota Statutes 1998, section 176.231, subdivision 2, is amended to read:

Subd. 2. **INITIAL REPORT, WRITTEN REPORT.** Where subdivision 1 requires an injury to be reported within 48 hours, the employer may make an initial report by telephone, telegraph, or personal notice, and file a written report of the injury within seven days from its occurrence or within such time as the commissioner of labor and industry designates. All written reports of injuries required by subdivision 1 shall include the date of injury, amounts of payments made, if any, and the date of the first payment. The reports shall be on a form designed by the commissioner, with a clear copy suitable for imaging to the commissioner, one copy to the insurer, and one copy to the employee.

The employer must give the employee the "Minnesota Workers' Compensation System Employee Information Sheet" at the time the employee is given a copy of the first report of injury.

If an insurer or self-insurer repeatedly fails to pay benefits within three days of the due date, pursuant to section 176.221, the insurer or self-insurer shall be ordered by the commissioner to explain, in person, the failure to pay benefits due in a reasonable time. If prompt payments are not thereafter made, the commissioner shall refer the insurer or self-insurer to the commissioner of commerce for action pursuant to section 176.225, subdivision 4.

Sec. 22. Minnesota Statutes 1998, section 176.611, subdivision 2a, is amended to read:

Subd. 2a. **SETTLEMENT AND CONTINGENCY RESERVE ALTERNATIVE COST ALLOCATION ACCOUNT.** To reduce long-term costs, minimize impairment to agency operations and budgets, and distribute risk of ~~one-time~~ catastrophic claims, the commissioner of employee relations shall maintain a separate account within the state compensation revolving fund. The account shall be used to pay for lump-sum or annuitized settlements, structured claim settlements, and ~~one-time~~ large, legal, catastrophic medical, indemnity, or other ~~irregular~~ claim costs that might otherwise pose a significant burden for agencies. The commissioner of employee relations, with the approval of the commissioner of finance, may establish criteria and procedures for payment from the account on an agency's behalf. The commissioner of employee relations may assess agencies on a reimbursement or premium basis from time to time to ensure adequate account reserves. The account consists of appropriations from the general fund, receipts from billings to agencies, and credited investment gains or losses attributable to balances in the account. The state board of investment shall invest the assets of the account according to section 11A.24.

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Sec. 23. LEGISLATIVE FINDINGS.

The Minnesota workers' compensation assigned risk plan is to aid in the operation of the workers' compensation system by providing a source of workers' compensation insurance for employers unable to obtain such coverage from the private insurance market. The operations for this plan have yielded a surplus from investment returns and other sources. It is in the public interest and is the intent of the legislature to use a portion of the excess surplus currently maintained by the Minnesota workers' compensation assigned risk plan to reduce the current and future obligations of the second injury and the supplemental benefits programs of the special compensation fund administered by the department of labor and industry.

Sec. 24. MINNESOTA WORKERS' COMPENSATION ASSIGNED RISK PLAN SURPLUS TRANSFER.

Subdivision 1. EXCESS SURPLUS. "Excess surplus" means the amount of the Minnesota workers' compensation assigned risk plan funds that exceeds the amount necessary to pay all current liabilities of this plan, including, but not limited to:

- (1) administrative expenses;
- (2) benefit claims; and

(3) in the event the Minnesota workers' compensation assigned risk plan is dissolved under Minnesota Statutes, section 79.251, subdivision 8, the amounts which would be due insurers who have paid assessments to this plan.

Subd. 2. TRANSFER OF EXCESS SURPLUS FUNDS. (a) On or before July 10, 2000, the commissioner of commerce shall certify to the commissioner of finance the amount of the Minnesota workers' compensation assigned risk plan excess surplus. On or before July 10, 2000, the commissioner of finance and the commissioner of commerce must direct the transfer of \$325,000,000 of assets of the assigned risk plan excess surplus to a separate account within the special compensation fund called the excess surplus account. The assets shall be managed by the state board of investment. The principal portion of the money in the excess surplus account is appropriated to the department of labor and industry for settlement of liabilities of the second injury and supplementary benefits programs. Interest, gains, and other income of the excess surplus account shall be credited to the account. Interest earnings on the excess surplus account are appropriated to the department of labor and industry to pay annual claims in the second injury and supplementary benefits programs. Up to \$1,000,000 in the excess surplus account may be applied to administrative costs incurred by these programs.

(b) The transfer of funds authorized by this subdivision is not subject to review under Minnesota Statutes, chapter 14.

Subd. 3. ASSESSMENT. If excess surplus funds are transferred as provided in subdivision 2, by January 1, 2001, the rate assessed by the commissioner of labor and industry under Minnesota Statutes, section 176.129, subdivisions 3 and 4a, shall be reduced by at least 30 percent from the rate in effect on January 1, 2000.

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Subd. 4. STATUS REPORT. On October 15, 2002, and October 15, 2004, the department of labor and industry must report to the governor and the legislature on the status of its efforts to reduce the unfunded liabilities of the second injury and the supplementary benefits programs. These reports must include an updated projection of the remaining long-term liabilities for these programs and must make appropriate recommendations.

Sec. 25. NONSEVERABILITY.

Notwithstanding Minnesota Statutes, section 645.20, the provisions of section 24, the minimum and maximum benefit rates of section 10, and the changes in permanent partial disability impairment ratings and corresponding dollar amounts of section 11 are not severable, and the provisions of section 24, the minimum and maximum benefit rates of section 10, and the changes in permanent partial disability impairment ratings and corresponding dollar amounts of section 11 shall not be effective unless the \$325,000,000 referenced in section 24 is used to reduce the rate of assessment as required by section 24, subdivision 2, by satisfying liabilities of the special compensation fund. If any of the following events occur on or before June 1, 2003, the provisions of section 24, the minimum and maximum benefit rates of section 10, and the changes in permanent partial disability impairment ratings and corresponding dollar amounts of section 11 are repealed and the law as it existed prior to the enactment of these sections shall be reinstated effective 90 days following the occurrence of any of the following events and the law, as reinstated, shall be applicable to any personal injuries occurring after the date of reinstatement:

(1) section 24 is invalidated by final court adjudication not subject to further appeal; or

(2) the \$325,000,000 referenced in section 24 is transferred and the funds are used in a manner or for a purpose inconsistent with the requirements of section 24.

If any of the foregoing events described in clause (1) or (2) should occur on or before June 1, 2003, any unexpended funds transferred to the special compensation fund under section 24 shall be returned to the assigned risk plan.

Sec. 26. NO CLAIM OF RIGHT.

The transfer of funds required by section 24 does not create a right nor impose a liability on any person or fund to the funds transferred except as provided in section 24. If, for any reason, funds cannot be transferred as required by section 24, the funds shall remain in the assigned risk plan fund.

Sec. 27. TRANSFER PRIORITY.

The transfer of excess surplus required by section 24 shall be made prior to any other transfer of excess surplus from the assigned risk plan fund authorized by laws passed at the regular session of the 2000 legislature.

Sec. 28. REPEALER.

Minnesota Statutes 1998, section 176.129, subdivision 2, is repealed.

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Sec. 29. EFFECTIVE DATES.

Sections 1, 10, 11, and 14 are effective for dates of injury on or after October 1, 2000. Section 9 is effective for written notices of claims for legal services that were filed on or after August 1, 2000. Sections 16, 17, and 18 are effective for dates of injury on or after the day following final enactment. Sections 23 to 28 are effective the day following final enactment.

Presented to the governor April 25, 2000

Signed by the governor April 27, 2000, 11:42 a.m.

CHAPTER 448—S.F.No. 2385

VETOED

CHAPTER 449—H.F.No. 3020

An act relating to human services; modifying provisions in long-term care; amending Minnesota Statutes 1998, sections 256B.411, subdivision 2; and 256B.431, subdivisions 1, 3a, 10, 16, 18, 21, 22, and 25; Minnesota Statutes 1999 Supplement, sections 256B.0913, subdivision 5; 256B.431, subdivisions 17 and 26; and 256B.434, subdivisions 3 and 4; repealing Minnesota Statutes 1998, sections 256B.03, subdivision 2; 256B.431, subdivisions 2, 2a, 2f, 2h, 2m, 2p, 2q, 3, 3b, 3d, 3h, 3j, 4, 5, 7, 8, 9, 9a, 12, and 24; 256B.48, subdivision 9; 256B.50, subdivision 3; and 256B.74, subdivision 3.

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

Section 1. Minnesota Statutes 1999 Supplement, section 256B.0913, subdivision 5, is amended to read:

Subd. 5. **SERVICES COVERED UNDER ALTERNATIVE CARE.** (a) Alternative care funding may be used for payment of costs of:

- (1) adult foster care;
- (2) adult day care;
- (3) home health aide;
- (4) homemaker services;
- (5) personal care;
- (6) case management;
- (7) respite care;

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