

the effective day of the act inures not only to the benefit of the individual who was conducting the business at the time Chapter 459 became a law but, with the consent of the appropriate licensing power, passes to his successor. OAG July 7, 1949 (197-B).

## CHAPTER 79

### COMPENSATION INSURANCE

#### 79.01 DEFINITIONS

Hearings required in insurance rate making to constitute due process. 33 MLR 771.

The formula used to compute the workmen's compensation insurance rate is divided into two components, the pure premium and the expense loading. Whether a rate is reasonable is ascertained by determining the reasonableness of the components. As the determination of the pure premium part of the rate is developed from experience, it is the board's function when no experience is available to use all possible sources of information and experience in a reasonable manner to set a rate which will produce an actual loss ratio as close as possible to the established permissible loss ratio and if the board deviates from what appears to be a mathematically sound method of reaching the answer sought, it must explain the considerations and reasoning behind the deviation. Whether or not the board had a basis in reason for what was done cannot be left to speculation. The expense loading includes a reasonable profit properly computed. State ex rel v Faricy, 236 M 468, 53 NW(2d) 457.

#### 79.02 COMPENSATION INSURANCE BOARD

HISTORY. 1921 c 85 s 2; 1923 c 263 s 1; 1925 c 405 s 1; 1949 c 739 s 23; 1951 c 713 s 9.

Genesis of a rate; workmen's compensation insurance. 36 MLR 948.

#### 79.03 EXPENSES; QUORUM; OFFICE; SESSIONS AND INVESTIGATIONS

The formula used to compute the workmen's compensation insurance rate is divided into two components, the pure premium and the expense loading. Whether a rate is reasonable is ascertained by determining the reasonableness of the components. As the determination of the pure premium part of the rate is developed from experience, it is the board's function when no experience is available to use all possible sources of information and experience in a reasonable manner to set a rate which will produce an actual loss ratio as close as possible to the established permissible loss ratio and if the board deviates from what appears to be a mathematically sound method of reaching the answer sought, it must explain the considerations and reasoning behind the deviation. Whether or not the board had a basis in reason for what was done cannot be left to speculation. The expense loading includes a reasonable profit properly computed. State ex rel v Faricy, 236 M 468, 53 NW(2d) 457.

#### 79.04 ORGANIZATION; SECRETARY; RULES; POWERS

HISTORY. 1921 c 85 s 4; 1953 c 615 s 1.

Criterion of confiscation in judicial review of rate regulation. 32 MLR 60.

Where insurance rating bureau was required to and did survey insured premises in behalf of insurers before fire policies were issued, the bureau's knowledge of the nature of the premises, the ordinary use of the premises, and the manner in

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 79.07 COMPENSATION INSURANCE

178

which the premises were kept, was presumed. *Cement Co. v Agricultural Ins. Co.*, 225 M 211, 30 NW(2d) 342.

If the board wishes to adopt rules and regulations other than those pertaining solely to internal operation of the agency, a hearing must be had in conformity with section 15.042. OAG June 5, 1945 (650).

### 79.07 DUTIES; RATES OF INSURANCE

HISTORY. 1921 c 85 s 7; 1947 c 98 s 1; 1953 c 615 s 2.

A contract of indemnity may provide for indemnity against loss or damages and also indemnity against liability and a single contract may indemnify against both actual loss or damages and liability; and in case of a strict contract of indemnity, no action accrues thereon until the indemnitee has suffered a loss against which the covenant runs by being compelled to pay and paying. *Aetna Casualty & Surety Co. v Bros*, 226 M 466, 33 NW(2d) 46.

The formula used to compute the workmen's compensation insurance rate is divided into two components, the pure premium and the expense loading. Whether a rate is reasonable is ascertained by determining the reasonableness of the components. As the determination of the pure premium part of the rate is developed from experience, it is the board's function when no experience is available to use all possible sources of information and experience in a reasonable manner to set a rate which will produce an actual loss ratio as close as possible to the established permissible loss ratio, and if the board deviates from what appears to be a mathematically sound method of reaching the answer sought, it must explain the considerations and reasoning behind the deviation. Whether or not the board had a basis in reason for what was done cannot be left to speculation. The expense loading includes a reasonable profit properly computed. *State ex rel v Faricy*, 236 M 468, 53 NW(2d) 457.

The board may approve a plan for advance discounts on premiums if from the showing made the board is of the opinion that the basis of classification is economically sound. OAG Dec. 3, 1943 (517-K).

After a compensation insurance board has made its order fixing rates and the order has gone into effect, and no appeal has been taken, the board cannot make a retro-active change of rate. OAG July 31, 1953 (519-K).

### 79.10 BOARD

HISTORY. 1921 c 85 s 10; 1953 c 615 s 3.

### 79.11 INSURERS, SHALL BE MEMBERS OF BUREAU

Section 79.26 invests the compensation bureau with power to adopt necessary rules to carry out its functions, and the bureau did not exceed its power in promulgating a rule requiring insurer canceling a compensation policy to immediately file notice thereof with the bureau. Where the employee, upon instruction of his foreman, performed services outside of his employ for third party, and was injured in so doing, his employer's compensation policy covered the employee while thus engaged. *Hurley v Chaffee*, 231 M 362, 43 NW(2d) 281.

### 79.12 ORGANIZATION OF BUREAU

The compensation insurance bureau has only the powers and duties conferred upon it by law. *Yoselowitz v Peoples Bakery*, 201 M 600, 277 NW 221.

### 79.17 BUREAU SHALL MAKE CLASSIFICATION

Even after the policy has expired, where the agreed rate was not warranted by statute, the legal rate, if established, may be applied to reform a policy. *London Guaranty & Accident Co. v Board of Education*, 166 M 295, 207 NW 634.

# MINNESOTA STATUTES 1953 ANNOTATIONS

179

SECURITIES DIVISION 80.01

## **79.24 INSURERS REQUESTED TO TAKE CERTAIN RISKS; REFUSAL TO WRITE**

The mere giving of a notice that a new corporation was to take over the business of the old corporation, and a verbal request to place the insurance in the new company were not a compliance with the statute and did not impose a duty on the bureau to designate a carrier. *Yoselowitz v Peoples Bakery*, 201 M 600, 277 NW 221.

## **79.25 BUREAU TO FIX PREMIUM RATES**

"Where employer is seasonably notified by workmen's compensation rating bureau and by insurance company carrying employer's current compensation policy that upon expiration thereof insurer will not rewrite such risk as a direct account and employer is advised to apply for assigned insurance if coverage cannot otherwise be had, and where employer makes application therefor, but fails to comply with statutory and bureau rules governing such assigned risks until after expiration of current policy, new policy issued pursuant to such assignment is properly made effective as of time of completion of such statutory and bureau requirements, rather than as of expiration date of preceding policy." *Roeder v Kruger*, 223 M 79, 25 NW(2d) 686.

## **79.26 BUREAU TO ADOPT RULES**

Section 79.26 invests the compensation bureau with power to adopt necessary rules to carry out its functions, and the bureau did not exceed its power in promulgating a rule requiring insurer canceling a compensation policy to immediately file notice thereof with the bureau. Where the employee, upon instruction of his foreman, performed services outside of his employ for a third party, and was injured in so doing, his employer's compensation policy covered the employee while thus engaged. *Hurley v Chaffee*, 231 M 362, 43 NW(2d) 281.

## **79.30 SUBROGATION UPON INSOLVENCY**

Right of subrogated insurer to recover under the Federal Tort Claims Act. 32 MLR 846.

## **SECURITIES**

### **CHAPTER 80**

#### **SECURITIES DIVISION**

NOTE: The state securities commission (consisting of the public examiner, the attorney general or his deputy, and the commissioner of insurance) was created by Laws 1917, Chapter 429. Laws 1919, Chapter 105, substituted the superintendent of banks for the commissioner of insurance and added enforcement provisions. Laws 1921, Chapter 426, provided for three commissioners appointed by the governor. Laws 1925, Chapter 192, entirely revised the law, superseding Laws 1917, Chapter 429, as amended. By Laws 1925, Chapter 426, Article 8, Section 3, the duties of the commissioner were transferred to a single commissioner appointed by the governor. He is ex officio a member of the department of commerce.

The provisions of this chapter do not violate the Minnesota Constitution, Article I, Section 7, or the fourteenth amendment of the U. S. Constitution. These provisions are a valid exercise of the police power of the state. See *State v Nordstrom*, 169 M 214, 210 NW 1001; *Kerst v Nelson*, 171 M 191, 213 NW 904; *State v Swanson*, 172 M 277, 215 NW 177; *Streissguth v Chase*, 198 M 17, 268 NW 638; *State v Golden*, 216 M 97, 12 NW(2d) 617; *State v Lorentz*, 221 M 336, 22 NW(2d) 313; *Sivertsen v Bancamerica-Blair*, 43 F. Supp. 233.