

CHAPTER 79

COMPENSATION INSURANCE

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79.01 DEFINITIONS.

[For text of subd 1, see M.S.1980]

Subd. 2. **Insurer.** The word "insurer" means any insurance carrier authorized by license issued by the commissioner of insurance to transact the business of workers' compensation insurance in this state and includes a political subdivision providing self insurance or establishing a pool under section 471.981, subdivision 3.

Subd. 3. **Insurance.** The word "insurance" means workers' compensation insurance and insurance covering any part of the liability of an employer exempted from insuring his liability for compensation, as provided in section 176.181 and includes a program of self insurance, self insurance revolving fund or pool established under section 471.981.

[For text of subds 5 to 8, see M.S.1980]

History: 1981 c 346 s 9,10

79.071 RATES; HEARINGS.

Subdivision 1. The commissioner shall adopt a schedule of workers' compensation insurance rates for use in this state for each classification under which business is written until January 1, 1986. The schedule of rates shall not be excessive, inadequate, or unfairly discriminatory. In adopting a schedule of rates, the commissioner may act on the written petition of the association or any other interested party requesting that a hearing be held for modification of the schedule of rates. The commissioner may include the expense of a reasonable charge for the services of an agent of record, for the service of rejected risks as set forth in sections 79.24 to 79.27.

Subd. 1a. If the legislature enacts amendments to the workers' compensation laws of this state which indicate a reduction in the schedule of rates, or the commissioner determines that the loss experience of Minnesota workers' compensation insurers indicates a change in the existing schedule of rates, the commissioner may, in his discretion, order a change in the schedule of rates or order a hearing to determine whether and by what percentage the schedule of rates should be changed. A hearing held pursuant to this subdivision is not subject to the contested case proceeding requirements of sections 79.071 and 79.072, notwithstanding section 79.076.

[For text of subds 2 to 7, see M.S.1980]

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Subd. 8. When an insurer's estimate of amounts required to be reserved is based in any part on the operation of section 176.645, any assumption as to reserves required due to the operation of section 176.645, shall, for the purposes of determining rates, be offset by an assumption that the amount initially reserved shall be invested and yield a return equal to the annual percentage increase in the statewide average weekly wage. With respect to other reserved amounts, the commissioner shall, in determining rates, cause those rates to fully reflect the investment earnings of insurers which arise from revenues derived from the sale of workers' compensation insurance, either by use of a discount rate of no less than six percent in determining the reserves necessary for all claims, or by the use of an alternative methodology which the commissioner finds is more appropriate. Insurers shall provide the commissioner with any information which he deems necessary to arrive at the determination required by this subdivision.

Subd. 9. In no case shall more than one insurer reserve amounts in anticipation of losses on a single claim, nor shall an insurer reserve amounts in anticipation of losses which are the responsibility of the reinsurance association.

Subd. 10. No modification by an insurer or the association of an experience rating plan, an experience rating plan formula or an experience rating factor is effective unless approved by the commissioner of insurance.

History: 1981 c 346 s 11,12,37

NOTE: Subdivision 1 is also repealed by Laws 1981, Chapter 346, Section 145, effective July 1, 1983.

NOTE: Subdivisions 2, 3, 4, 5, 6 and 7 are repealed by Laws 1981, Chapter 346, Section 145, effective January 1, 1986.

79.25 COMMISSIONER TO FIX PREMIUM RATES.

Subdivision 1. When any rejected risk is called to its attention and it appears that the risk is in good faith entitled to coverage the commissioner of insurance shall fix the initial premium therefor and may fix an additional charge to compensate the agent of record for his services and, upon its payment, the commissioner of insurance shall enter into a service contract with one or more qualified members of the association, or qualified group self-insurance administrators licensed pursuant to section 176.181, subdivision 2, clause (2)(a), whose duty it shall be to issue a policy, or a group self-insurance administration contract, containing the usual and customary provisions found in such policies or contracts therefor, but for which undertaking all members of the association shall be reinsurers as among themselves in the amount which the compensation insurance written in this state during the preceding calendar year by that member bears to the total compensation insurance written in this state during the preceding year by all the members of the association. The assigned risk plan shall be treated as a group self-insurer member of the reinsurance association for the purposes of sections 79.34 to 79.40 and shall be deemed to have selected the higher retention limit provided in section 79.34, subdivision 2. A qualified member or group self-insurance administrator shall possess sufficient financial, professional, administrative and personnel resources to serve the policies or self-insurance contracts contemplated in the service contract.

Subd. 2. An insurer that issues a policy pursuant to this section shall not receive an expense allowance that exceeds the expense allowance approved by the commissioner for other insurers.

History: 1981 c 346 s 13

NOTE: This section was also repealed by Laws 1981, Chapter 346, Section 145, effective July 1, 1983.

79.251 ADMINISTRATION OF ASSIGNED RISK PLAN.

Subdivision 1. **Assigned risk plan review board.** (1) An assigned risk plan review board is created for the purposes of review of the operation of sections 79.24 to 79.27. The board shall have all the usual powers and authorities necessary for the discharge of its duties under this section and may contract with individuals in discharge of those duties.

(2) The board shall consist of five members to be appointed by the commissioner of insurance. Two members shall be insureds holding policies issued pursuant to section 79.25. Two members shall be members of the association. The commissioner shall be the fifth member and shall vote.

Initial appointments shall be made by September 1, 1981 and terms shall be for three years duration. Removal, the filling of vacancies and compensation of the members other than the commissioner shall be as provided in section 15.059.

(3) The assigned risk review board shall audit the reserves established by insurers (a) for individual cases arising under policies issued under section 79.25 and (b) for the total book of business issued under section 79.25.

(4) The assigned risk review board shall monitor the operations of sections 79.24 to 79.27 and shall periodically make recommendations to the commissioner, and to the governor and legislature when appropriate, for improvement in the operation of those sections.

(5) All members of the association issuing policies under section 79.25 shall pay and the commissioner shall receive and disburse, on behalf of the board, a .25 percent assessment on premiums for policies issued under section 79.25 for the purpose of defraying the costs of the assigned risk review board.

Subd. 2. **Appropriate merit rating plan.** The commissioner shall develop an appropriate merit rating plan which shall be applicable to all insureds holding policies issued pursuant to section 79.25 whose premium is less than the amount necessary to qualify for experience rating and to the insurers issuing those policies. The plan shall provide a maximum merit payment equal to ten percent of earned premium. The actual payment may vary with insured's loss experience.

History: 1981 c 346 s 14

79.26 COMMISSIONER TO ADOPT RULES.

The commissioner of insurance may make and adopt such rules as may be necessary to carry this law into effect. Temporary rulemaking authority is granted.

History: 1981 c 346 s 15

NOTE: This section was also repealed by Laws 1981, Chapter 346, Section 145, effective July 1, 1983.

79.27 APPLICATION.

As a prerequisite to the transaction of workers' compensation insurance in this state every insurance carrier shall file with the commissioner of insurance written authority permitting the commissioner of insurance to act in its behalf, as provided in sections 79.24 to 79.27.

History: 1981 c 346 s 16

NOTE: This section was also repealed by Laws 1981, Chapter 346, Section 145, effective July 1, 1983.

79.34 CREATION OF REINSURANCE ASSOCIATION.

Subdivision 1. A nonprofit association known as the workers' compensation reinsurance association is created, which may be incorporated under chapter 317 with all the powers of a corporation formed under that chapter, except that if the provisions of that chapter are inconsistent with sections 79.34 to 79.40 or any amendments thereto, sections 79.34 to 79.40 shall govern. Each insurer as defined by section 79.01, subdivision 2, shall as a condition of its authority to transact workers' compensation insurance in this state, be a member of the reinsurance association and shall be bound by the plan of operation of the reinsurance association; provided, that all affiliated insurers within a holding company system as defined in sections 60D.01 to 60D.13 shall be considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association. Each self-insurer approved pursuant to section 176.181 and each political subdivision which self-insures shall, as a condition of its authority to self-insure workers' compensation liability in this state, be a member of the reinsurance association and shall be bound by its plan of operation; provided, that (a) all affiliated companies within a holding company system, as determined by the commissioner in a manner consistent with the standards and definitions in sections 60D.01 to 60D.13, shall be considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association, and (b) all group self-insurers granted authority to self-insure pursuant to section 176.181 shall be considered a single entity for purposes of the exercise of all the rights and duties of membership in the reinsurance association. The reinsurance association shall not be deemed a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of insurance with respect to the reinsurance association shall not be subject to chapter 15. The reinsurance association shall be exempt from taxation under the laws of this state and all property owned by the association shall be exempt from taxation. The reinsurance association shall not be obligated to make any payments or pay any assessments to any funds or pools established pursuant to this chapter or chapter 176 or any other law.

Subd. 2. The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of \$300,000 or \$100,000 retention limit, at the option of the member. In case of occupational disease causing disablement on and after October 1, 1979, each person suffering such disablement shall be considered to be involved in a separate loss occurrence. The lesser retention limit shall be increased to the nearest \$10,000, on January 1, 1982 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, as determined in accordance with section 176.011, subdivision 20. On January 1, 1982 and on each January 1 thereafter, the greater retention limit shall be increased by the amount necessary to retain a \$200,000 difference between the two retention limits. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid by the member for workers' compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. A loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs, and a member is liable for a loss up to its retention limit in effect at the time that the loss was incurred, except that members

which are determined by the reinsurance association to be controlled by or under common control with another member, and which are liable for claims from one or more employees entitled to compensation for a single compensable event, including aggregate losses relating to a single loss occurrence, may aggregate their losses and obtain indemnification from the reinsurance association for the aggregate losses in excess of the higher retention limit in effect at the time the loss was incurred. Each member is liable for payment of its ultimate loss and shall be entitled to indemnification from the reinsurance association for the ultimate loss in excess of the member's retention limit in effect at the time of the loss occurrence.

A member that chooses the higher retention limit shall retain the liability for all losses below the higher retention limit itself and shall not transfer the liability to any other entity or reinsure or otherwise contract for reimbursement or indemnification for losses below its retention limit, except in the following cases: (a) when the reinsurance or contract is with another member which, directly or indirectly, through one or more intermediaries, control or are controlled by or are under common control with the member; (b) when the reinsurance or contract provides for reimbursement or indemnification of a member if and only if the total of all claims which the member pays or incurs, but which are not reimbursable or subject to indemnification by the reinsurance association for a given period of time, exceeds a dollar value or percentage of premium written or earned and stated in the reinsurance agreement or contract; (c) when the reinsurance or contract is a pooling arrangement with other insurers where liability of the member to pay claims pursuant to chapter 176 is incidental to participation in the pool and not as a result of providing workers' compensation insurance to employers on a direct basis under chapter 176; (d) when the reinsurance or contract is limited to all the claims of a specific insured of a member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the insured of the member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the insured of a member is not inconsistent with the bases of exception provided under clauses (a), (b) and (c) above; or (e) when the reinsurance or contract is limited to all claims of a specific self-insurer member which are reimbursed or indemnified by a reinsurer which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the self-insurer member so long as any subsequent contract or reinsurance of the reinsurer relating to the claims of the self-insurer member are not inconsistent with the bases for exception provided under clauses (a), (b) and (c) above.

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

[For text of subs 3 to 6, see M.S.1980]

History: 1981 c 346 s 17,18,139; 1Sp1981 c 4 art 1 s 62

79.35 DUTIES; RESPONSIBILITIES; POWERS.

The reinsurance association shall do the following on behalf of its members:

- (a) Assume 100 percent of the liability as provided in section 79.34;
- (b) Establish procedures by which members shall promptly report to the reinsurance association each claim which, on the basis of the injury sustained, may reasonably be anticipated to involve liability to the reinsurance association if the member is held liable under chapter 176. Solely for the purpose of reporting claims, the member shall in all instances consider itself legally liable for the injury. The member shall advise the reinsurance association of subsequent developments likely to materially affect the interest of the reinsurance association in the claim;
- (c) Maintain relevant loss and expense data relative to all liabilities of the reinsurance association and require each member to furnish statistics in connection with liabilities of the reinsurance association at the times and in the form and detail as may be required by the plan of operation;
- (d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur in excess of the higher retention limit but less than the prefunded limit, together with incurred or estimated to be incurred operating and administrative expenses for the period to which this premium applies and actual claim payments to be made by members, during the period to which this premium applies, for claims in excess of the prefunded limit in effect at the time the loss was incurred. The prefunded limit shall be \$2,500,000 on and after October 1, 1979, provided that the prefunded limit shall be increased on January 1, 1983 and on each January 1 thereafter by the percentage increase in the statewide average weekly wage, to the nearest \$100,000, as determined in accordance with section 176.011, subdivision 20. Each member shall be charged a proportion of the total premium in an amount equal to its proportion of the total standard earned premium of all members during the period to which the reinsurance association premium will apply, as determined by the commissioner. Each member exercising the lower retention option shall also be charged a premium established by the board as sufficient to cover incurred or estimated to be incurred claims for the liability the reinsurance association is likely to incur between the lower and higher retention limits for the period to which the premium applies. Each member shall also be charged a premium determined by the board to equitably distribute excess or deficient premiums from previous periods including any excess or deficient premiums resulting from a retroactive change in the prefunded limit. An equitable basis for determining standard earned premium for self-insurers shall be established by the commissioner. The premiums charged to members shall not be unfairly discriminatory as defined in section 79.074. All premiums shall be approved by the commissioner;
- (e) Require and accept the payment of premiums from members of the reinsurance association;
- (f) Receive and distribute all sums required by the operation of the reinsurance association;
- (g) Establish procedures for reviewing claims procedures and practices of members of the reinsurance association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the reinsurance association, the reinsurance association may undertake, or may contract with another person, including another member, to adjust or assist in the adjustment of claims which create a potential liability to the association and may charge the cost of the adjustment to the member; and

(h) Provide each member of the reinsurance association with an annual report of the operations of the reinsurance association in a form the board of directors may specify.

History: 1981 c 346 s 19,139

79.36 ADDITIONAL POWERS.

In addition to the powers granted in section 79.35, the reinsurance association may do the following:

(a) Sue and be sued. A judgment against the reinsurance association shall not create any direct liability against the individual members of the reinsurance association. The reinsurance association shall provide in the plan of operation for the indemnification, to the extent provided in the plan of operation, of the members, members of the board of directors of the reinsurance association, and officers, employees and other persons lawfully acting on behalf of the reinsurance association;

(b) Reinsure all or any portion of its potential liability, including potential liability in excess of the prefunded limit, with reinsurers licensed to transact insurance in this state or otherwise approved by the commissioner;

(c) Provide for appropriate housing, equipment, and personnel as may be necessary to assure the efficient operation of the reinsurance association;

(d) Contract for goods and services, including but not limited to independent claims management, actuarial, investment, and legal services from others within or without this state to assure the efficient operation of the reinsurance association;

(e) Adopt operating rules, consistent with the plan of operation, for the administration of the reinsurance association, enforce those operating rules, and delegate authority as necessary to assure the proper administration and operation of the reinsurance association;

(f) Intervene in or prosecute at any time, including but not limited to intervention or prosecution as subrogee to the member's rights in a third party action, any proceeding under this chapter or chapter 176 in which liability of the reinsurance association may, in the opinion of the board of directors of the reinsurance association or its designee, be established, or the reinsurance association affected in any other way;

(g) The net proceeds derived from intervention or prosecution of any subrogation interest, or other recovery, shall first be used to reimburse the reinsurance association for amounts paid or payable pursuant to this chapter, together with any expenses of recovery, including attorney's fees, and any excess shall be paid to the member or other person entitled thereto, as determined by the board of directors of the reinsurance association, unless otherwise ordered by a court.

(h) Hear and determine complaints of a company or other interested party concerning the operation of the reinsurance association; and

(i) Perform other acts not specifically enumerated in this section which are necessary or proper to accomplish the purposes of the reinsurance association and which are not inconsistent with sections 79.34 to 79.42 or the plan of operation.

History: 1981 c 346 s 20,139

79.50 PURPOSES.

The purposes of chapter 79 are to:

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

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

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

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

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

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

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

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

History: 1981 c 346 s 21

79.51 RULES.

Subdivision 1. **Adoption; when.** The commissioner shall adopt rules to implement provisions of chapter 79. The rules shall be finally adopted after May 1, 1982. By January 15, 1982, the commissioner shall provide the legislature a description and explanation of the intent and anticipated effect of the rules on the various factors of the rating system.

Subd. 2. **Transition period; rules govern.** Insurance rates from July 1, 1983, to December 31, 1985, shall be determined in accordance with rules adopted by the commissioner. The rules shall require (1) that a hearing be held pursuant to the provisions of section 79.071 to consider any petition requesting modification of rates and (2) that following the hearing the commissioner shall adopt a schedule of rates.

Subd. 3. **Rules; subject matter.** (a) The commissioner in issuing rules shall consider:

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

(2) Experience rating plans;

(3) Retrospective rating plans;

(4) General expenses and related expense provisions;

(5) Minimum premiums;

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

(7) Loss development and trend factors;

(8) The workers' compensation reinsurance association;

(9) Restrictions, prohibitions, and requirements with respect to the activities of the workers' compensation insurers rating association of Minnesota during the period from July 1, 1983 to January 1, 1986;

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

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

(12) The rules contained in the workers' compensation rating manual adopted by the workers' compensation insurers rating association; and

(13) Any other factors that the commissioner deems relevant to achieve the purposes of chapter 79.

(b) The rules shall provide for the following:

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

(2) Adequate safeguards against excessive or discriminatory rates in workers' compensation during the transition period;

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

(4) Assurances that employers are not unfairly relegated to the assigned risk pool;

(5) Requiring all appropriate data and other information from insurers for the purpose of issuing rules and making legislative recommendations pursuant to this section; and

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

(c) The rules shall expire on January 1, 1986.

Subd. 4. Advisory committee. The commissioner shall appoint an advisory committee which shall offer recommendations regarding rulemaking under this section. The advisory committee shall include representatives of insurers, employers, and employees.

History: 1981 c 346 s 22

79.52 DEFINITIONS.

Subdivision 1. Generally. The following words or phrases shall have the meanings ascribed to them for the purposes of chapter 79, unless the context clearly indicates that a different meaning is intended.

Subd. 2. Market. "Market" means any reasonable grouping or classification of employers.

Subd. 3. Data service organization. "Data service organization" means any entity which has ten or more members or is controlled directly or indirectly by ten or more insurers and is engaged in collecting data for use in insurance ratemaking or other activities permitted by chapter 79. Affiliated members or insurers shall be counted as a single unit for the purpose of this definition. The workers' compensation insurers rating association of Minnesota shall be considered a data service organization.

Subd. 4. Classification plan; classification. "Classification plan" or "classification" means the plan, system, or arrangement for rating insurance policyholders.

Subd. 5. Rates. "Rates" means the cost of insurance per exposure base unit.

Subd. 6. Base premium. "Base premium" means the amount of premium which an employer would pay for insurance derived by applying rates to an exposure base prior to the application of any merit rating or discount factors.

Subd. 7. Premium. "Premium" means the price charged to an insured for insurance for a specified period of time, regardless of the timing of actual payments.

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Subd. 8. **Discount factor.** "Discount factor" means any factor which is applied to the base premium and which is based upon insurer expenses or other factors not related to the risk of loss.

Subd. 9. **Merit rating.** "Merit rating" means a system or form of rating by which base premium is modified on the basis of loss experience or other factors which are reasonably related to loss or risk of loss and which may be reasonably affected by the action or activities of the insured. The sensitivity of a merit rating system to loss experience may vary by the size of risk. Merit rating shall include both prospective and retrospective methods for modifying base premium.

Subd. 10. **Loss development factors.** "Loss development factors" means factors applied to recorded incurred losses to estimate the amount of ultimate loss payments that will have been made for losses during the applicable period when all claims are paid.

Subd. 11. **Trend or trending.** "Trend" or "trending" means any procedure employing data for the purpose of projecting or forecasting the future value of that data or other data, or the factors resulting from such a procedure.

Subd. 12. **Interested party.** "Interested party" means any person, or association acting on behalf of its members, directly affected by a change in the schedule of rates and includes the staff of the insurance division.

Subd. 13. **Insurer.** "Insurer" means any insurer licensed to transact the business of workers' compensation insurance in this state.

Subd. 14. **Insurance.** "Insurance" means workers' compensation insurance.

Subd. 15. **Rating plan.** "Rating plan" means every manual, and every other rule including discount factors and merit rating necessary for the calculation of an insured's premium from an insurer's rates. An insurer may choose to adopt for use the rating plan of the data service organization in which it maintains membership.

History: 1981 c 346 s 23

79.53 PREMIUM CALCULATION.

Each insurer shall establish premiums to be paid by an employer according to its filed rates and rating plan as follows:

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

History: 1981 c 346 s 24

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.54 COMPETITIVE MARKET PRESUMPTION.

A competitive market is presumed to exist until the commissioner, after a hearing on the record, determines that a reasonable degree of competition does not exist and issues an order to that effect. The order shall include the conditions and procedures under which a determination of insufficient competition shall expire.

History: 1981 c 346 s 25

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.55 STANDARDS FOR RATES.

Subdivision 1. **General standards.** Premiums shall not be excessive, inadequate, or unfairly discriminatory.

Subd. 2. **Excessiveness.** No premium is excessive in a competitive market. In the absence of a competitive market, premiums are excessive if the expected underwriting profit, together with expected income from invested reserves for the market in question, that would accrue to an insurer would be unreasonably high in relation to the risk undertaken by the insurer in transacting the business.

Subd. 3. **Inadequacy.** Premiums are inadequate if, together with the investment income associated with an insurer's Minnesota workers' compensation insurance business, they are clearly insufficient to sustain projected losses and expenses of the insurer and (a) if their continued use could lead to an insolvent situation for the insurer; or (b) if their use destroys or lessens competition or is likely to destroy or lessen competition.

Subd. 4. **Unfair discrimination.** Premiums are unfairly discriminatory if differentials for insureds fail to reasonably reflect the differences in expected losses and expenses to the insurer attributable to the insureds. Rates are not unfairly discriminatory solely because different premiums result for insureds with like loss exposures but different expense factors, or like expense factors but different loss exposures, provided that rates reflect the differences with reasonable accuracy.

History: 1981 c 346 s 26

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.56 FILING RATES AND RATING INFORMATION.

Subdivision 1. **After effective date.** Each insurer shall file with the commissioner a complete copy of its rates and rating plan, and all changes and amendments thereto, within 15 days after their effective dates. An insurer need not file a rating plan if it uses a rating plan filed by a data service organization. If an insurer uses a rating plan of a data service organization but deviates from it, then all deviations must be filed by the insurer.

Subd. 2. **Before effective date.** The commissioner may order an insurer to file rates at least 30 days before the effective date of the rates (a) if the commissioner determines, based upon reasonable evidence, that an order is appropriate because of the insurer's financial condition or (b) due to a prior finding of unfairly discriminatory rating practices; or (c) due to a prior finding of inadequate rates. The order may require that supplementary rate and supporting information be included in a filing.

Subd. 3. **Penalties.** Any insurer using a rate or a rating plan which has not been filed shall be subject to a fine of up to \$100 for each day the failure to file continues. The commissioner may, after a hearing on the record, find that the failure is willful. A willful failure to meet filing requirements shall be punishable by a fine of up to \$500 for each day during which a willful failure continues. These penalties shall be in addition to any other penalties provided by law.

Subd. 4. **Public inspection.** All filings shall be open to public inspection during normal business hours at the offices of the insurance division.

History: 1981 c 346 s 27

79.57 FILING RATES; NONCOMPETITIVE MARKET.

Upon making a determination that a market is not competitive, the commissioner shall require rates for use in that market to be filed 30 days prior to their

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effective date. The filing shall include, in a form prescribed by the commissioner, an explanation of the rates and any data supporting the use of the rates which are not on file with a data service organization.

The commissioner may issue an order for a hearing at any time prior to the effective date of the rates and the rates shall not become effective until the commissioner has ruled on the rates following the hearing.

The commissioner may disapprove the rates subsequent to their effective date, except that rates so disapproved shall remain effective until the commissioner issues an order following a hearing.

History: 1981 c 346 s 28

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.58 DISAPPROVAL OF RATES OR RATING PLANS.

Subdivision 1. **Rates.** A rate filed by an insurer may be disapproved by the commissioner subsequent to its effective date. Following a disapproval and prior to a refiling the insurer shall use the rates as reasonably established by the commissioner.

The commissioner shall disapprove a rate if, after a hearing on the record, he finds that:

- (a) The premium is inadequate or unfairly discriminatory; or
- (b) A competitive market for workers' compensation does not exist and rates are excessive; or
- (c) The insurer failed to comply with filing requirements.

A rehearing shall be held within 30 days of any disapproval under this section at the request of the insurer whose rates are disapproved.

Subd. 2. **Rating plans.** The commissioner may disapprove a rating plan of a data service organization if, after a hearing, the commissioner finds that it is unfairly discriminatory. Any order of disapproval shall require the data service organization to use an alternative rating plan until approval of a rating plan by the commissioner. The commissioner shall not approve any rating plan based upon any data other than Minnesota data, except that other data may be utilized as a supplement to Minnesota data when the commissioner determines that an exceptional case requires such data to establish the statistical credibility of an occupational classification.

History: 1981 c 346 s 29

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.59 INSURERS AND DATA SERVICE ORGANIZATIONS; PROHIBITED ACTIVITIES.

Subdivision 1. **Monopolization.** No insurer or data service organization shall attempt to monopolize or combine or conspire with any other person to monopolize the business of insurance.

Subd. 2. **Agreement prohibited.** No insurer shall agree with any other insurer or with a data service organization to adhere to or to use any rate, rating plan, rating schedule, rating rule, or underwriting rule except as specifically authorized by chapter 79 or for the purpose of creating experience modifications for employers with employees in more than one state.

Subd. 3. **Trade restraint.** No insurer or data service organization shall make an agreement with any other insurer, data service organization, or other person which has the purpose or the effect of restraining trade or of substantially lessening competition.

Subd. 4. **Exceptions.** The fact that insurers writing not more than 25 percent of the workers' compensation premiums in Minnesota use the same rates, rating plans, rating schedules, rating rules, underwriting rules, or similar materials shall not alone constitute a violation of subdivisions 1 or 2.

Two or more insurers under common ownership or operating under common management or control may act in concert between or among themselves with respect to matters authorized under chapter 79 as if they constituted a single insurer, provided that the rating plan of such insurers shall be considered to be a single plan for the purposes of determining unfair discrimination.

Subd. 5. **Additional prohibition.** In addition to other prohibitions contained in this chapter, no data service organization shall:

(a) Refuse to supply any service for which it is licensed or any data, except for data identifiable to an individual insurer, to any insurer authorized to do business in this state which offers to pay the usual compensation for the service or data;

(b) Require the purchase of any specific service as a condition to obtaining any other services sought;

(c) Participate in the development or distribution of rates, rating plans, or rating rules except as specifically authorized by this chapter or by rules adopted pursuant to this chapter; or

(d) Refuse membership to any licensed insurer.

History: 1981 c 346 s 30

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.60 INSURERS; REQUIRED AND PERMITTED ACTIVITY.

Subdivision 1. **Required activity.** Each insurer shall perform the following activities:

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

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

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

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

Subd. 2. **Permitted activity.** In addition to any other activities not prohibited by chapter 79, insurers may:

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

(b) Develop and use classification plans and rates based upon any reasonable factors; and

(c) Develop rules for the assignment of risks to classifications.

History: 1981 c 346 s 31

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.61 DATA SERVICE ORGANIZATIONS; REQUIRED AND PERMITTED ACTIVITY.

Subdivision 1. **Required activity.** Any data service organization shall perform the following activities:

(a) File statistical plans, including classification definitions, amendments to the plans, and definitions, with the commissioner for approval, and assign each compensation risk written by its members to its approved classification for reporting purposes;

(b) Establish requirements for data reporting and monitoring methods to maintain a high quality data base;

(c) Prepare and distribute a periodic report, in a form prescribed by the commissioner, on ratemaking including, but not limited to the following elements:

(i) development factors and alternative derivations;

(ii) trend factors and alternative derivations and applications;

(iii) pure premium relativities for the approved classification system for which data are reported, provided that the relativities for insureds engaged in similar occupations and presenting substantially similar risks shall, if different, differ by at least ten percent; and

(iv) an evaluation of the effects of changes in law on loss data.

The report shall also include explicit discussion and explanation of methodology, alternatives examined, assumptions adopted, and areas of judgment and reasoning supporting judgments entered into, and the effect of various combinations of these elements on indications for modification of an overall pure premium rate level change. The pure premium relativities and rate level indications shall not include a loading for expenses or profit and no expense or profit data or recommendations relating to expense or profit shall be included in the report or collected by a data service organization;

(d) Collect, compile, summarize, and distribute data from members or other sources pursuant to a statistical plan approved by the commissioner;

(e) Prepare merit rating plan and calculate any variable factors necessary for utilization of the plan. Such a plan may be used by any of its members, at the option of the member provided that the application of a plan shall not result in rates that are unfairly discriminatory;

(f) Provide loss data specific to an insured to the insured at a reasonable cost;

(g) Distribute information to an insured or interested party that is filed with the commissioner and is open to public inspection; and

(h) Assess its members for operating expenses on a fair and equitable basis.

Subd. 2. **Permitted activity.** In addition to any other activities not prohibited by chapter 79, any data service organization may:

(a) Collect and analyze data in order to investigate, identify, and classify information relating to causes or prevention of losses;

(b) Make inspections for the sole purpose of reporting and maintaining data quality;

(c) Contract with another data service organization to fulfill any of the above requirements; and

(d) Prepare and file with the commissioner a rating plan for use by any of its members, provided that no member may be required to use any part of the plan.

History: 1981 c 346 s 32

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.62 DATA SERVICE ORGANIZATIONS; LICENSING, EXAMINATION.

Subdivision 1. **License required.** No data service organization shall provide any service and no insurer shall use the services of a data service organization unless the organization is licensed by the commissioner.

Subd. 2. **Procedure; application.** A data service organization shall apply for a license in a form and manner prescribed by the commissioner. The application of a data service organization shall include:

(a) A copy of its constitution, articles of incorporation, bylaws, and other rules pertaining to the conduct of its business;

(b) A plan and narrative describing how it will perform the activities required by section 79.61;

(c) A statement showing its technical qualifications; and

(d) Any other information that the commissioner may reasonably require.

Subd. 3. **Issuance.** The commissioner, upon finding that the applicant organization is qualified to provide the services required and proposed, or has contracted with a licensed data service organization to purchase these services which are required by chapter 79 but are not provided directly by the applicant, and that all requirements of law are met, shall issue a license. Licenses shall remain in effect until the licensee withdraws from business or until the license is suspended or revoked.

Subd. 4. **Suspension; revocation.** The commissioner may, after a hearing on the record, revoke or suspend the license of a data service organization if he finds that the organization is not in compliance with the requirements of chapter 79 or rules issued thereunder.

Subd. 5. **Licensee examination.** The commissioner may examine any licensed data service organization to determine whether its activities and practices comply with law. The cost of the examination shall be paid by the examined organization.

History: 1981 c 346 s 33

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.

79.63 ASSIGNED RISK PLAN.

Subdivision 1. **Administration.** The commissioner shall appoint a licensed data service organization to administer the assigned risk plan. The appointed data service organization shall submit to the commissioner for approval a plan and rules for administering the assigned risk plan, including a method or formula by which the organization is to be paid for administrative services.

Subd. 2. **Rejection; notice.** An insurer that refuses to write insurance for an applicant shall furnish the applicant a written notice of refusal and shall file a

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copy of the notice of refusal with the data service organization appointed pursuant to subdivision 1. Servicing insurers designated pursuant to subdivision 3 shall accept and insure any applicant for workers' compensation insurance assigned pursuant to subdivision 3.

Subd. 3. **Assignment.** An insurer or insurers shall be designated by the data service organization appointed pursuant to subdivision 1 to issue a policy of workers' compensation insurance to an applicant which has been refused insurance. A policy shall contain the usual and customary provisions of workers' compensation insurance policies, but for which undertaking all insurers doing workers' compensation business in this state shall be reinsurers among themselves in the amount which the compensation insurance written in this state during the preceding calendar year by each insurer bears to the total compensation insurance written in this state during that calendar year by all insurers.

An insurer that issues a policy pursuant to this section shall receive an expense allowance which shall be adequate for services rendered, as approved by the commissioner.

Subd. 4. **Penalty.** The commissioner may revoke the license of an insurer or agent for refusing or failing to provide an applicant with written refusal pursuant to subdivision 2 or for any other violation of this section or of the approved rules of a data service organization.

Subd. 5. **Assigned risk rates.** Insureds served by the workers' compensation insurance assigned risk plan shall be charged premiums based upon a rating plan, rates, and a merit rating plan adopted by the commissioner by rule. This rating plan shall include a feature by which rates shall vary in relation to the number or proportion of insureds in the assigned risk plan in the preceding calendar year. This relationship shall be such that assigned risk rates shall vary upward as the number or proportion of insureds in the assigned risk plan decreases and downward as the number or proportion increases. Assigned risk premiums shall not be lower than the rates generally charged by insurers for the business.

History: 1981 c 346 s 34

NOTE: This section is effective July 1, 1983. See Laws 1981, Chapter 346, Section 146.