CHAPTER 176

WORKERS' COMPENSATION

176.001 INTENT OF THE LEGISLATURE.

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the legislature that workers' compensation cases shall be decided on their merits and that the common law rule of "liberal construction" based on the supposed "remedial" basis of workers' compensation legislation shall not apply in such cases. The workers' compensation system in Minnesota is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter, and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

History: *1981 c 346 s 52; 1983 c 290 s 25*

176.01 [Repealed, 1953 c 755 s 83]

176.011 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this chapter the terms described in this section have the meanings ascribed to them.

Subd. 2. **Child.** "Child" includes a posthumous child, a child entitled by law to inherit as a child of a deceased person, a child of a person adjudged by a court of competent jurisdiction to be the father of the child, and a stepchild, grandchild, or foster child who was a member of the family of a deceased employee at the time of injury and dependent upon the employee for support. A stepchild is a "child" within the meaning of section 176.041.

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 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 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 consid-

ered 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.

Subd. 4. **Commercial baler.** "Commercial baler" means a person going from place to place baling hay or straw as a business, but does not include a farmer owning a baling machine not engaged in such business generally and doing the farmer's own baling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

Subd. 5. **Commercial thresher.** "Commercial thresher" means a person going from place to place threshing grain or shredding or shelling corn as a business, but does not include a farmer owning a threshing, shredding, or shelling machine not engaged in such business generally and doing the farmer's own threshing, shredding, or shelling and casually doing such work for other farmers in the same community or exchanging work with another farmer.

Subd. 6. (1) **Court of appeals.** "Court of appeals" means the workers' compensation court of appeals of Minnesota.

(2) **Division.** "Division" means the workers' compensation division of the department of labor and industry.

(3) **Department.** "Department" means the department of labor and industry.

(4) **Commissioner.** "Commissioner," unless the context clearly indicates otherwise, means the commissioner of labor and industry.

(5) **Office.** "Office" means the office of administrative hearings.

Subd. 7. **Judge.** "Judge" means a member of the workers' compensation court of appeals.

Subd. 7a. (1) **Compensation judge.** "Compensation judge" means a workers' compensation judge at the office of administrative hearings.

(2) **Calendar judge.** "Calendar judge" means a workers' compensation judge at the office of administrative hearings.

(3) **Compensation judge.** "Compensation judge" means a compensation judge at the department of labor and industry. Compensation judges may conduct settlement conferences, issue summary decisions, approve settlements and issue awards thereon, determine petitions for attorney fees and costs, and make other determinations, decisions, orders, and awards as may be delegated to them by the commissioner. Compensation judges must be learned in the law.

Subd. 8. **Compensation.** "Compensation" includes all benefits provided by this chapter on account of injury or death.

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;

(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 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;

(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.

Subd. 9a. **Employee.** For purposes of this chapter "employee" does not include farmers or members of their family who exchange work with other farmers in the same community.

Subd. 10. **Employer.** "Employer" means any person who employs another to perform a service for hire; and includes corporation, partnership, limited liability company, association, group of persons, state, county, town, city, school district, or governmental subdivision.

Subd. 11. **Executive officer of a corporation.** "Executive officer of a corporation" means any officer of a corporation elected or appointed in accordance with its charter or bylaws.

Subd. 11a. **Family farm.** (a) "Family farm" means any farm operation which pays or is obligated to pay cash wages, exclusive of machine hire, to farm laborers for services rendered during the preceding calendar year in an amount:

(1) less than $8,000; or

(2) less than the statewide average annual wage as described in subdivision 20 when the farm operation has total liability and medical payment coverage equal to $300,000 and $5,000, respectively, under a farm liability insurance policy, and the policy covers injuries to farm laborers.

(b) For purposes of this subdivision, farm laborer does not include any spouse, parent or child, regardless of age, of a farmer employed by the farmer, or any executive officer of a family farm corporation as defined in section 500.24, subdivision 2, or any spouse, parent or child, regardless of age, of such an officer employed by that family farm corporation, or other farmers in the same community or members of their families exchanging work with the employer. Notwithstanding any law to the contrary, a farm laborer shall not be considered as an independent contractor for the purposes of this chapter; provided that a commercial baler or commercial thresher shall be considered an independent contractor.

Subd. 12. **Farm laborer.** "Farm laborer" does not include an employee of a commercial thresher or commercial baler.

Subd. 13. [Repealed, 1987 c 49 s 20]

Subd. 14. **Member.** "Member" includes leg, foot, toe, hand, finger, thumb, arm, back, eye, and ear when used with reference to the anatomy.

Subd. 15. **Occupational disease.** (a) "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.

(b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota state patrol, conservation officer service, state crime bureau, as a forest officer by the department of natural resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota state patrol, conservation officer service, state crime bureau, department of natural resources, department of corrections, or

sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment and the presumption may be rebutted by substantial factors brought by the employer or insurer.

(c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer.

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

Subd. 17. **Physician.** "Physician" means one authorized by law to practice the medical profession within one of the United States and in good standing in the profession, and includes surgeon.

Subd. 18. **Weekly wage.** "Weekly wage" is arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved. If the employee normally works less than five days per week or works an irregular number of days per week, the number of days normally worked shall be computed by dividing the total number of days in which the employee actually performed any of the duties of employment in the last 26 weeks by the number of weeks in which the employee actually performed such duties, provided that the weekly wage for part time employment during a period of seasonal or temporary layoff shall be computed on the number of days and fractional days normally worked in the business of the employer for the employment involved. If, at the time of the injury, the employee was regularly employed by two or more employers, the employee's days of work for all such employments shall be included in the computation of weekly wage. Occasional overtime is not to be considered in computing the weekly wage, but if overtime is regular or frequent throughout the year it shall be taken into consideration. The maximum weekly compensation payable to an employee, or to the employee's dependents in the event of death, shall not exceed 66-2/3 percent of the product of the daily wage times the number of days normally worked, provided that the compensation payable for permanent partial disability under section 176.101, subdivision 3, and for permanent total disability under section 176.101, subdivision 4, or death under section 176.111, shall not be computed on less than the number of hours normally worked in the employment or industry in which the injury was sustained, subject also to such maximums as are specifically otherwise provided.

Subd. 19. **Worker.** "Worker" means employee.

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 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 covered workers (determined by dividing the total 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.

Subd. 21. **Household worker.** "Household worker" means one who is a domestic, repairer, groundskeeper, or maintenance worker in, for, or about a private home or household, but the term shall not include independent contractors nor shall it include persons performing labor for which they may elect workers' compensation coverage under section 176.041, subdivision 1a.

Subd. 22. **Closely held corporations.** "Closely held corporation" means a corporation whose stock is held by no more than ten persons. The determination of ownership shall be made annually on the effective date of the policy issued under this chapter. In case of self-insureds the determination shall be made annually on the date of approval of self-insurance or renewal of self-insurance.

Subd. 23. **Retraining.** "Retraining" means a formal course of study in a school setting which is designed to train an employee to return to suitable gainful employment.

Subd. 24. **Health care provider.** "Health care provider" means a physician, podiatrist, chiropractor, dentist, optometrist, osteopath, psychologist, psychiatric social worker, or any other person who furnishes a medical or health service to an employee under this chapter but does not include a qualified rehabilitation consultant or approved vendor.

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

Subd. 26. [Repealed, 1995 c 231 art 1 s 36; art 2 s 110]

Subd. 27. **Administrative conference.** An "administrative conference" is a meeting conducted by a commissioner's designee where parties can discuss on an expedited basis and in an informal setting their viewpoints concerning disputed issues arising under section 176.102, 176.103, 176.135, 176.136, or 176.239. If the parties are unable to resolve the dispute, the commissioner's designee shall issue an administrative decision under section 176.106 or 176.239.

History: *1953 c 443 s 1; 1953 c 755 s 1; 1955 c 206 s 1; 1955 c 652 s 1; 1955 c 765 s 1; 1957 c 834 s 1; 1959 c 20 s 1; 1959 c 283 s 1; 1963 c 493 s 1; 1963 c 497 s 1; 1967 c 701 s 1; 1967 c 806 s 1; 1967 c 905 s 9; Ex1967 c 1 s 6; Ex1967 c 40 s 1,2; 1969 c 9 s 53; 1969 c 148 s 2; 1969 c 276 s 1; 1969 c 936 s 2; 1973 c 123 art 5 s 7; 1973 c 388 s 12; 1973 c 420 s 2; 1973 c 657 s 1; 1975 c 271 s 6; 1975 c 359 s 3,4,23; 1976 c 331 s 36; 1977 c 342 s 1,2; 1977 c 429 s 63; 1977 c 430 s 25 subd 1; 1978 c 574 s 1; 1978 c 702 s 1; 1978 c 757 s 1; 1978 c 764 s 99; 1979 c 92 s 2; Ex1979 c 3 s 28,29; 1980 c 384 s 2; 1980 c 385 s 1,2; 1980 c 414 s 2; 1980 c 556 s 12; 1981 c 37 s 2; 1981 c 346 s 53,54,139; 1983 c 193 s 2; 1983 c 290 s 26-30; 1984 c 469 s 1; 1984 c 544 s 85; 1984 c 654 art 5 s 58; 1985 c 247 s 20; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 332 s 5-9; 1987 c 348 s 33; 1987 c 384 art 1 s 54; 1988 c 652 s 1; 1988 c 717 s 3; 1989 c 209 art 2 s 1; 1990 c 556 s 4; 1992 c 510 art 1 s 1,2; 1993 c 137 s 5; 1994 c 483 s 1; 1994 c 583 s 2; 1994 c 631 s 31; 1995 c 224 s 69; 1995 c 231 art 1 s 13; art 2 s 44; 1997 c 128 s 3; 1998 c 366 s 89; 1998 c 398 art 5 s 55; 2000 c 447 s 1-3*

176.012 [Repealed, 1987 c 332 s 117]

176.02 [Repealed, 1953 c 755 s 83]

176.021 APPLICATION TO EMPLOYERS AND EMPLOYEES.

Subdivision 1. **Liability for compensation.** Except as excluded by this chapter all employers and employees are subject to the provisions of this chapter.

Every employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence. The burden of proof of these facts is upon the employee.

If the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of the injury, then the employer is not liable for compensation. The burden of proof of these facts is upon the employer.

Subd. 1a. **Burden of proof.** All disputed issues of fact arising under this chapter shall be determined by a preponderance of the evidence, and in accordance with the principles laid down in section 176.001. Preponderance of the evidence means evidence produced in substantiation of a fact which, when weighed against the evidence opposing the fact, has more convincing force and greater probability of truth.

Questions of law arising under chapter 176 shall be determined on an even-handed basis in accordance with the principles laid down in section 176.001.

Subd. 2. **Parties liable.** The liability imposed by subdivision 1 upon the employer extends to and binds those conducting the employer's business during insolvency, assignment for the benefit of creditors, and insofar as agreeable with the controlling federal law during bankruptcy.

Subd. 3. **Compensation, commencement of payment.** All employers shall commence payment of compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or any order of the division. Except for medical, burial, and other nonperiodic benefits, payments shall be made as nearly as possible at the intervals when the wage was payable, provided, however, that payments for permanent partial disability shall be governed by section 176.101. If doubt exists as to the eventual permanent partial disability, payment shall be then made when due for the minimum permanent partial disability ascertainable, and further payment shall be made upon any later ascertainment of greater permanent partial disability. Prior to or at the time of commencement of the payment of permanent partial compensation, the employee and employer shall be furnished with a copy of the medical report upon which the payment is based and all other medical reports which the insurer has that indicate a permanent partial disability rating, together with a statement by the insurer as to whether the tendered payment is for minimum permanent partial disability or final and eventual disability. After receipt of all reports available to the insurer that indicate a permanent partial disability rating, the employee shall make available or permit the insurer to obtain any medical report that the employee has or has knowledge of that contains a permanent partial disability rating which the insurer does not already have. Permanent partial compensation pursuant to section 176.101 is payable in addition to but not concurrently with compensation for temporary total disability but is payable pursuant to section 176.101. Impairment compensation is payable concurrently and in addition to compensation for permanent total disability pursuant to section 176.101. Permanent partial compensation pursuant to section 176.101 shall be withheld pending completion of payment for temporary total disability, and no credit shall be taken for payment of permanent partial compensation against liability for temporary total or future permanent total disability. Liability on the part of an employer or the insurer for disability of a temporary total, temporary partial, and permanent total nature shall be considered as a continuing product and part of the employee's inability to earn or reduction in earning capacity due to injury or occupational disease and compensation is payable accordingly, subject to section 176.101. Permanent partial compensation is payable for functional loss of use or impairment of function, permanent in nature, and payment therefore shall be separate, distinct, and in

addition to payment for any other compensation, subject to section 176.101. The right to receive temporary total, temporary partial, or permanent total disability payments vests in the injured employee or the employee's dependents under this chapter or, if none, in the employee's legal heirs at the time the disability can be ascertained and the right is not abrogated by the employee's death prior to the making of the payment.

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

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

Subd. 3a. **Permanent partial benefits, payment.** Payments for permanent partial disability as provided in section 176.101, subdivision 2a, shall be made in the following manner:

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

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

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

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

Subd. 3b. **Temporary and permanent partial.** If an employee has returned to work for at least six months and has, if applicable, completed a rehabilitation plan, this section does not prevent the payment of compensation for permanent partial disability because the employee is receiving compensation for temporary partial disability. This subdivision is procedural and applies regardless of the date of injury.

Subd. 4. **Void agreements.** Any agreement by any employee or dependent to take as compensation an amount less than that prescribed by this chapter is void.

Subd. 5. **Accumulated credits, additional payments.** If employees of the state or a county, city or other political subdivision of the state who are entitled to the benefits of the workers' compensation law have, at the time of compensable injury, accumulated credits under a vacation, sick leave or overtime plan or system maintained by the governmental agency by which they are employed, the appointing authority may provide for the payment of additional benefits to such employees from their accumulated vacation, sick leave or overtime credits. Such additional payments to an employee may not exceed the amount of the total sick leave, vacation or overtime credits accumulated by the employee and shall not result in the payment of a total weekly rate of compensation that exceeds the weekly wage of the employee. Such additional payments to any employee shall be charged against the sick leave, vacation and overtime credits accumulated by such employee. Employees of a county, city or other political subdivision entitled to the benefits of the workers' compensation law may receive additional benefits pursuant to a collective bargaining agreement or other plan, entered into or in effect on or after January 1, 1980, providing payments by or on behalf of the employer and these additional benefits may be unrelated to any accumulated sick leave, holiday or overtime credits and need not be charged against

any accumulation; provided that the additional payments shall not result in the payment of a total weekly rate of compensation that exceeds the weekly wage of the employee. The commissioner of the department of labor and industry for the state or the governing body of any county, city or other political subdivision to which the provisions of this chapter apply, may adopt rules not inconsistent with this chapter for carrying out the provisions hereof relating to payment of additional benefits to employees from accumulated sick leave, vacation, overtime credits or other sources.

Subd. 6. **Compensation under city charter.** Where, in any city operating under a home rule charter, a mode and manner of compensation is provided by the charter which is different from that provided by this chapter, and the amount of compensation provided by the charter would, if taken thereunder, exceed the amount the employee is entitled to under this chapter for the same period, the employee shall, in addition to compensation under this chapter, receive under the charter an amount equal to the excess in compensation provided by the charter over what the employee is entitled to by this chapter; if the amount of compensation provided by the charter would, if taken thereunder, be equal to or less than the amount of compensation the employee is entitled to under this chapter for the same period, the employee shall take only under this chapter.

Subd. 7. **Public officer.** If an employee who is a public officer of the state or governmental subdivision continues to receive the compensation of office during a period when receiving benefits under the workers' compensation law for temporary total or temporary partial disability or permanent total disability and the compensation of office exceeds $100 a year, the amount of that compensation attributable to the period for which benefits under the workers' compensation law are paid shall be deducted from such benefits. If an employee covered by the Minnesota state retirement system receives total and permanent disability benefits pursuant to section 352.113 or disability benefits pursuant to sections 352.95 and 352B.10, the amount of disability benefits shall be deducted from workers' compensation benefits otherwise payable. If an employee covered by the teachers retirement fund receives total and permanent disability benefits pursuant to section 354.48, the amount of disability benefits must be deducted from workers' compensation benefits otherwise payable. Notwithstanding the provisions of Minnesota Statutes 1994, section 176.132, a deduction under this subdivision does not entitle an employee to supplemental benefits under section 176.132.

Subd. 8. **Amounts adjusted.** Amounts of compensation payable by an employer or an employer's insurer under this chapter may be rounded to the nearest dollar amount. An employer or insurer who elects to make such adjustments shall do so for all compensation payments under this chapter.

Subd. 9. **Employer responsibility for wellness programs.** Injuries incurred while participating in voluntary recreational programs sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.

History: *1953 c 755 s 2; 1967 c 701 s 2; Ex1967 c 40 s 3,5; 1973 c 123 art 5 s 7; 1973 c 388 s 13,14; 1973 c 623 s 1; 1974 c 486 s 1; 1975 c 359 s 23; 1977 c 342 s 4; Ex1979 c 3 s 30; 1981 c 346 s 55-59; 1982 c 610 s 1; 1983 c 290 s 32,33; 1985 c 234 s 3,4; 1985 c 248 s 70; 1Sp1985 c 7 s 3; 1986 c 444; 1991 c 340 s 2; 1995 c 231 art 1 s 14,15; 1996 c 305 art 1 s 44*

176.03 [Repealed, 1953 c 755 s 83]

176.031 EMPLOYER'S LIABILITY EXCLUSIVE.

The liability of an employer prescribed by this chapter is exclusive and in the place of any other liability to such employee, personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death. If an employer other than the state or any municipal subdivision thereof fails to insure or self-insure liability for compensation to

injured employees and their dependents, an injured employee, or legal representatives or, if death results from the injury, any dependent may elect to claim compensation under this chapter or to maintain an action in the courts for damages on account of such injury or death. In such action it is not necessary to plead or prove freedom from contributory negligence. The defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of employment, or that the injury was due to the contributory negligence of the employee, unless it appears that such negligence was willful on the part of the employee. The burden of proof to establish such willful negligence is upon the defendant. For the purposes of this chapter the state and each municipal subdivision thereof is treated as a self-insurer when not carrying insurance at the time of the injury or death of an employee.

History: *1953 c 755 s 3; 1986 c 444*

176.04 [Repealed, 1953 c 755 s 83]

176.041 EXCLUDED EMPLOYMENTS; APPLICATION, EXCEPTIONS, ELECTION OF COVERAGE.

Subdivision 1. **Employments excluded.** This chapter does not apply to any of the following:

(a) a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law;

(b) a person employed by a family farm as defined by section 176.011, subdivision 11a;

(c) the spouse, parent, and child, regardless of age, of a farmer-employer working for the farmer-employer;

(d) a sole proprietor, or the spouse, parent, and child, regardless of age, of a sole proprietor;

(e) a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business;

(f) an executive officer of a family farm corporation;

(g) an executive officer of a closely held corporation having less than 22,880 hours of payroll in the preceding calendar year, if that executive officer owns at least 25 percent of the stock of the corporation;

(h) a spouse, parent, or child, regardless of age, of an executive officer of a family farm corporation as defined in section 500.24, subdivision 2, and employed by that family farm corporation;

(i) a spouse, parent, or child, regardless of age, of an executive officer of a closely held corporation who is referred to in paragraph (g);

(j) another farmer or a member of the other farmer's family exchanging work with the farmer-employer or family farm corporation operator in the same community;

(k) a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer;

(l) persons who are independent contractors as defined by rules adopted by the commissioner pursuant to section 176.83 except that this exclusion does not apply to an employee of an independent contractor;

(m) an officer or a member of a veterans' organization whose employment relationship arises solely by virtue of attending meetings or conventions of the veterans' organization, unless the veterans' organization elects by resolution to provide coverage under this chapter for the officer or member;

(n) a person employed as a household worker in, for, or about a private home or household who earns less than $1,000 in cash in a three-month period from a single private home or household provided that a household worker who has earned $1,000 or

more from the household worker's present employer in a three-month period within the previous year is covered by this chapter regardless of whether or not the household worker has earned $1,000 in the present quarter;

(o) persons employed by a closely held corporation who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to an officer of the corporation, who is referred to in paragraph (g), if the corporation files a written election with the commissioner to exclude such individuals. A written election is not required for a person who is otherwise excluded from this chapter by this section;

(p) a nonprofit association which does not pay more than $1,000 in salary or wages in a year;

(q) persons covered under the Domestic Volunteer Service Act of 1973, as amended, United States Code, title 42, sections 5011, et seq.;

(r) a manager of a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year, if that manager owns at least a 25 percent membership interest in the limited liability company;

(s) a spouse, parent, or child, regardless of age, of a manager of a limited liability company described in paragraph (r);

(t) persons employed by a limited liability company having ten or fewer members and having less than 22,880 hours of payroll in the preceding calendar year who are related by blood or marriage, within the third degree of kindred according to the rules of civil law, to a manager of a limited liability company described in paragraph (r), if the company files a written election with the commissioner to exclude these persons. A written election is not required for a person who is otherwise excluded from this chapter by this section; or

(u) members of limited liability companies who satisfy the requirements of paragraph (l).

Subd. 1a. **Election of coverage.** The persons, partnerships, limited liability companies, and corporations described in this subdivision may elect to provide the insurance coverage required by this chapter.

(a) An owner or owners of a business or farm may elect coverage for themselves.

(b) A partnership owning a business or farm may elect coverage for any partner.

(c) A family farm corporation as defined in section 500.24, subdivision 2, clause (c), may elect coverage for any executive officer.

(d) A closely held corporation which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any executive officer if that executive officer is also an owner of at least 25 percent of the stock of the corporation.

(e) A limited liability company which had less than 22,880 hours of payroll in the previous calendar year may elect coverage for any manager if that manager is also an owner of at least 25 percent membership interest in the limited liability company.

(f) A person, partnership, limited liability company, or corporation hiring an independent contractor, as defined by rules adopted by the commissioner, may elect to provide coverage for that independent contractor.

A person, partnership, limited liability company, or corporation may charge the independent contractor a fee for providing the coverage only if the independent contractor (1) elects in writing to be covered, (2) is issued an endorsement setting forth the terms of the coverage, the name of the independent contractors, and the fee and how it is calculated.

The persons, partnerships, limited liability companies, and corporations described in this subdivision may also elect coverage for an employee who is a spouse, parent, or child, regardless of age, of an owner, partner, manager, or executive officer, who is eligible for coverage under this subdivision. Coverage may be elected for a spouse, parent, or child whether or not coverage is elected for the related owner, partner, manager, or executive director and whether or not the person, partnership, limited liability company, or corporation employs any other person to perform a service for

hire. Any person for whom coverage is elected pursuant to this subdivision shall be included within the meaning of the term employee for the purposes of this chapter.

Notice of election of coverage or of termination of election under this subdivision shall be provided in writing to the insurer. Coverage or termination of coverage is effective the day following receipt of notice by the insurer or at a subsequent date if so indicated in the notice. The insurance policy shall be endorsed to indicate the names of those persons for whom coverage has been elected or terminated under this subdivision. An election of coverage under this subdivision shall continue in effect as long as a policy or renewal policy of the same insurer is in effect.

Nothing in this subdivision shall be construed to limit the responsibilities of owners, partnerships, limited liability companies, or corporations to provide coverage for their employees, if any, as required under this chapter.

Subd. 2. **Extraterritorial application.** If an employee who regularly performs the primary duties of employment within this state receives an injury while outside of this state in the employ of the same employer, the provisions of this chapter shall apply to such injury. If a resident of this state is transferred outside the territorial limits of the United States as an employee of a Minnesota employer, the resident shall be presumed to be temporarily employed outside of this state while so employed.

Subd. 3. **Temporary out-of-state employment.** If an employee hired in this state by a Minnesota employer, receives an injury while temporarily employed outside of this state, such injury shall be subject to the provisions of this chapter.

Subd. 4. **Out-of-state employments.** If an employee who regularly performs the primary duties of employment outside of this state or is hired to perform the primary duties of employment outside of this state, receives an injury within this state in the employ of the same employer, such injury shall be covered within the provisions of this chapter if the employee chooses to forego any workers' compensation claim resulting from the injury that the employee may have a right to pursue in some other state, provided that the special compensation fund is not liable for payment of benefits pursuant to section 176.183 if the employer is not insured against workers' compensation liability pursuant to this chapter and the employee is a nonresident of Minnesota on the date of the personal injury.

Subd. 5. [Repealed, 1974 c 486 s 6]

Subd. 5a. **Out-of-state injuries.** Except as specifically provided by subdivisions 2 and 3, injuries occurring outside of this state are not subject to this chapter.

Subd. 6. **Commissioner of labor and industry; additional powers.** Whenever an employee is covered by subdivision 2, 3 or 4, the commissioner may enter into agreements with the appropriate agencies of other states for the purpose of resolving conflicts of jurisdiction or disputes concerning workers' compensation coverage. An agreement entered into pursuant to this subdivision may be appealed in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals or the district court.

History: *1953 c 755 s 4; Ex1967 c 40 s 6; 1971 c 669 s 1; 1973 c 657 s 2; 1974 c 286 s 1; 1975 c 271 s 2; 1975 c 359 s 5; 1977 c 342 s 5; 1978 c 722 s 2; 1979 c 15 s 1; 1979 c 74 s 2; 1979 c 92 s 4; 1981 c 346 s 60; 1983 c 290 s 34; 1983 c 311 s 8; 1984 c 432 art 1 s 3; 1986 c 444; 1986 c 461 s 3-6; 1987 c 332 s 10-12; 1993 c 137 s 6; 1994 c 512 s 1,2*

176.042 INDEPENDENT CONTRACTORS.

Subdivision 1. **General rule; are employees.** Except as provided in subdivision 2, every independent contractor doing commercial or residential building construction or improvements in the public or private sector is, for the purpose of this chapter, an employee of any employer under this chapter for whom the independent contractor is performing service in the course of the trade, business, profession, or occupation of that employer at the time of the injury.

Subd. 2. **Exception.** An independent contractor, as described in subdivision 1, is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;

(2) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year;

(3) operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;

(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;

(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under contracts to perform work or service;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

History: *1996 c 374 s 3; 2001 c 123 s 1*

176.05 [Repealed, 1953 c 755 s 83]

176.051 ASSUMPTION OF LIABILITY; FARM AND HOUSEHOLD WORKERS; RIDESHARING.

Subdivision 1. **Farm and household workers.** An employer of workers on a farm operation or household workers not otherwise covered by this chapter may assume the liability for compensation imposed by this chapter and the employer's procurement of a workers' compensation policy constitutes an assumption by the employer of liability unless the employer elects in writing not to have those persons covered and the policy states that election. This assumption of liability takes effect and continues from the effective date of the policy and only as long as the policy remains in force. If during the life of the insurance policy, an employee, who is a worker on a farm operation or a household worker, suffers personal injury or death arising out of and in the course of employment, the exclusive remedy of the employee or the employee's dependents is under this chapter. For purposes of this section, farm worker does not include a spouse, parent, or child, regardless of age, of a farmer, a partner in a farm operation, or an officer of a family farm corporation as defined in section 500.24, subdivision 1, nor does it include other farmers in the same community or members of their family exchanging work with the farmer-employer or family farm corporation operator.

Subd. 2. [Repealed, 1984 c 432 art 1 s 4]

Subd. 3. [Repealed, 1984 c 432 art 1 s 4]

Subd. 4. [Repealed, 1984 c 432 art 1 s 4]

History: *1953 c 755 s 5; 1973 c 657 s 3; 1975 c 359 s 6; 1977 c 342 s 6; 1983 c 311 s 9*

176.06 [Repealed, 1953 c 755 s 83]

176.061 THIRD PARTY LIABILITY.

Subdivision 1. **Election of remedies.** If an injury or death for which benefits are payable occurs under circumstances which create a legal liability for damages on the part of a party other than the employer and at the time of the injury or death that party

was insured or self-insured in accordance with this chapter, the employee, in case of injury, or the employee's dependents, in case of death, may proceed either at law against that party to recover damages or against the employer for benefits, but not against both.

Subd. 2. **Action for recovery of damages.** If the employee, in case of injury, or the employee's dependents, in case of death, brings an action for the recovery of damages, the amount of the damages, the manner in which they are paid, and the persons to whom they are payable, are as provided in this chapter. In no case shall the party be liable to any person other than the employee or the employee's dependents for any damages resulting from the injury or death.

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 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.

Subd. 4. **Application of subdivisions 1, 2, and 3.** The provisions of subdivisions 1, 2, and 3 apply only if the employer liable for benefits and the other party legally liable for damages are insured or self-insured and engaged, in the due course of business in, (a) furtherance of a common enterprise, or (b) in the accomplishment of the same or related purposes in operations on the premises where the injury was received at the time of the injury.

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 employ-

ee'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 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.

Subd. 6. **Costs, attorney fees, expenses.** The proceeds of all actions for damages or of a settlement of an action under this section, except for damages received under subdivision 5, clause (b) received by the injured employee or the employee's dependents or by the employer or the special compensation fund, as provided by subdivision 5, shall be divided as follows:

(a) After deducting the reasonable cost of collection, including but not limited to attorneys fees and burial expense in excess of the statutory liability, then

(b) One-third of the remainder shall in any event be paid to the injured employee or the employee's dependents, without being subject to any right of subrogation.

(c) Out of the balance remaining, the employer or the special compensation fund shall be reimbursed in an amount equal to all benefits paid under this chapter to or on behalf of the employee or the employee's dependents by the employer or special compensation fund, less the product of the costs deducted under clause (a) divided by the total proceeds received by the employee or dependents from the other party multiplied by all benefits paid by the employer or the special compensation fund to the employee or the employee's dependents.

(d) Any balance remaining shall be paid to the employee or the employee's dependents, and shall be a credit to the employer or the special compensation fund for any benefits which the employer or the special compensation fund is obligated to pay, but has not paid, and for any benefits that the employer or the special compensation fund is obligated to make in the future.

There shall be no reimbursement or credit to the employer or to the special compensation fund for interest or penalties.

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 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.

Subd. 8. [Repealed, 1983 c 290 s 35]

Subd. 8a. **Notice to employer.** In every case arising under subdivision 5, a settlement between the third party and the employee is not valid unless prior notice of the intention to settle is given to the employer within a reasonable time. If the employer or insurer pays compensation to the employee under the provisions of this chapter and becomes subrogated to the right of the employee or the employee's dependents or has a right of indemnity, any settlement between the employee or the employee's dependents and the third party is void as against the employer's right of subrogation or indemnity. When an action at law is instituted by an employee or the employee's dependents against a third party for recovery of damages, a copy of the complaint and notice of trial or note of issue in the action shall be served on the employer or insurer. Any judgment rendered in the action is subject to a lien of the employer for the amount to which it is entitled to be subrogated or indemnified under the provisions of subdivision 5.

Subd. 9. **Service of notice on attorney general.** In every case in which the state is liable to pay compensation or is subrogated to the rights of the employee or the employee's dependents or has a right of indemnity, all notices required to be given the state shall be served on the attorney general and the commissioner.

Subd. 10. MS 1974 [Repealed, 1976 c 2 s 70; 1976 c 154 s 3]

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.

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.

History: *1953 c 755 s 6; Ex1967 c 1 s 6; Ex1967 c 40 s 4; 1969 c 199 s 1,2; 1969 c 936 s 3,4; 1973 c 388 s 15; 1976 c 154 s 1,2; 1979 c 81 s 1,2; Ex1979 c 3 s 31; 1981 c 346 s 61-66; 1983 c 290 s 35; 1986 c 444; 1995 c 231 art 1 s 16; 2000 c 447 s 4-8*

176.07 [Repealed, 1953 c 755 s 83]

176.071 JOINT EMPLOYERS; CONTRIBUTION.

When compensation is payable under this chapter for the injury or death of an employee employed and paid jointly by two or more employers at the time of the injury or death these employers shall contribute to the payment of the compensation in the proportion of their wage liabilities to the employee. If any such employer is excluded from the provisions of this chapter and is not liable for compensation, the liability of those employers who are liable for compensation is the proportion of the entire compensation which their wage liability bears to the employee's entire wages. As between themselves such employers may arrange for a different distribution of payment of the compensation for which they are liable.

History: *1953 c 755 s 7*

176.08 [Repealed, 1953 c 755 s 83]

176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

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 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 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.

Subd. 2. [Repealed, 1995 c 231 art 2 s 110]

Subd. 3. **Review.** A party that is dissatisfied with its attorney fees may file an application for review by the workers' compensation court of appeals. The application shall state the basis for the need of review and whether or not a hearing is requested. A copy of the application shall be served upon the party's attorney by the court administrator and if a hearing is requested by either party, the matter shall be set for hearing. The notice of hearing shall be served upon known interested parties. The workers' compensation court of appeals shall have the authority to raise the issue of the

attorney fees at any time upon its own motion and shall have continuing jurisdiction over attorney fees.

Subd. 4. [Repealed, 1985 c 234 s 22]

Subd. 5. [Repealed, 1995 c 231 art 2 s 110]

Subd. 6. **Rules.** The commissioner, office of administrative hearings, and the workers' compensation court of appeals may adopt reasonable and proper joint rules to effect each of their obligations under this section.

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

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

If an offer by an employer or insurer is not accepted by the employee, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees.

If an offer by an employee is not accepted by the employer or insurer, it shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine attorney's fees.

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

Subd. 8. [Repealed, 1995 c 231 art 2 s 110]

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

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

Notice of Maximum Fee

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

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

Subd. 10. **Violation; penalty.** An attorney who knowingly violates any of the provisions of this chapter with respect to authorized fees for legal services in connection with any demand made or suit or proceeding brought under the provisions of this chapter is guilty of a gross misdemeanor.

Subd. 11. **When fees due.** Attorney fees and other disbursements for a proceeding under this chapter shall not be due or paid until the issue for which the fee or disbursement was incurred has been resolved.

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

History: *1953 c 755 s 8; 1973 c 388 s 16; 1975 c 271 s 6; 1975 c 359 s 7; 1976 c 134 s 78; 1977 c 342 s 7-11; Ex1979 c 3 s 32; 1981 c 346 s 67-74; 1983 c 290 s 36-41; 1986 c 444; 1986 c 461 s 7; 1987 c 332 s 13; 1989 c 209 art 2 s 23; 1992 c 510 art 2 s 1-3; 1995 c 231 art 2 s 45-49; 1997 c 7 art 1 s 80; 2000 c 447 s 9*

176.09 [Repealed, 1953 c 755 s 83]

176.091 MINOR EMPLOYEES.

Except as provided in section 176.092, a minor employee has the same power to enter into a contract, make election of remedy, make any settlement, and receive compensation as an adult employee.

History: *1953 c 755 s 9; 1957 c 781 s 1; 1973 c 388 s 17; 1975 c 271 s 6; 1975 c 359 23; 1976 c 134 s 78; 1993 c 194 s 3*

176.092 GUARDIAN; CONSERVATOR.

Subdivision 1. **When required.** An injured employee or a dependent under section 176.111 who is a minor or an incapacitated person as that term is defined in section 525.54, subdivision 2 or 3, shall have a guardian or conservator to represent the interests of the employee or dependent in obtaining compensation according to the provisions of this chapter. This section applies if the employee receives or is eligible for permanent total disability benefits, supplementary benefits, or permanent partial disability benefits totaling more than $3,000 or a dependent receives or is eligible for dependency benefits, or if the employee or dependent receives or is offered a lump sum that exceeds five times the statewide average weekly wage.

Subd. 1a. **Parent as guardian.** A parent is presumed to be the guardian for purposes of this section. Where the parents of the employee are divorced, either parent with legal custody may be considered the guardian for purposes of this section. Notwithstanding subdivision 1, where the employee receives or is eligible for a lump sum payment of permanent total disability benefits, supplementary benefits, or permanent partial disability benefits totaling more than $3,000 or if the employee receives or is offered a settlement that exceeds five times the statewide average weekly wage, the compensation judge shall review such cases to determine whether benefits should be paid in a lump sum or through an annuity.

Subd. 2. **Appointment.** If an injured employee or dependent under section 176.111 does not have a guardian or conservator and the attorney representing the employee or dependent knows or has reason to believe the employee or dependent is a minor or an incapacitated person, the attorney shall, within 30 days, seek a district court order

appointing a guardian or conservator. If the employer, insurer, or special compensation fund in a matter involving a claim against the fund knows or has reason to believe the employee or dependent is a minor or is incapacitated, the employer, insurer, or special compensation fund shall notify the attorney representing the employee or dependent. If the employee or dependent has no attorney or the attorney fails to seek appointment of a guardian or conservator within 30 days of being notified under this subdivision, the employer or insurer shall seek the appointment in district court and the special compensation fund shall notify the commissioner or a compensation judge for referral of the matter under subdivision 3. In the case of a minor who is not represented by an attorney, the commissioner shall refer the matter under subdivision 3.

Subd. 3. **Referral.** When, in a proceeding before them, it appears to the commissioner, compensation judge, or, in cases upon appeal, the workers' compensation court of appeals, that an injured employee or a dependent is a minor or an incapacitated person without a guardian or conservator, the commissioner, compensation judge, or court of appeals shall refer the matter to district court. The commissioner has no duty to monitor files at the department but must review a file for referral upon receiving a complaint that an injured employee or dependent is a minor or an incapacitated person without a guardian or conservator.

Subd. 4. **Guardian, conservator; powers, duties.** A guardian or conservator of an injured employee or dependent shall have the powers and duties granted by the district court including, but not limited to:

(1) representing the interests of the employee or dependent in obtaining compensation according to the provisions of this chapter;

(2) receiving monetary compensation benefits, including the amount of any award, settlement, or judgment; and

(3) acting as a fiduciary in distributing, managing, and investing monetary workers' compensation benefits.

History: *1993 c 194 s 4; 1995 c 189 s 8; 1996 c 277 s 1; 2002 c 262 s 1,2*

176.095 LEGISLATIVE FINDINGS.

The legislature finds that workers' compensation benefits for total disabilities should exceed those benefits provided for partial disabilities in order to fairly compensate the person unable to engage in gainful employment or suffering an injury described in section 176.101, subdivision 5. It is the policy of the legislature that any change in the benefit schedule for total disability be accompanied by an appropriate change in the benefit schedule for partial disability.

History: *1969 c 936 s 1; 1975 c 359 s 23*

176.10 [Repealed, 1953 c 755 s 83]

176.101 COMPENSATION SCHEDULE.

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, 2000, the maximum weekly compensation payable is $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 $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).

(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 if the layoff or termination occurs prior to 90 days after the employee has reached maximum medical improvement. Recommenced temporary total disability compensation under this clause ceases when any of the cessation events in paragraphs (e) to (l) occurs; or

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

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

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

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

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

(j) Temporary total disability compensation shall cease 90 days after the employee has reached maximum medical improvement, except as provided in section 176.102, subdivision 11, paragraph (b). For purposes of this subdivision, the 90-day period after maximum medical improvement commences on the earlier of: (1) the date that the employee receives a written medical report indicating that the employee has reached maximum medical improvement; or (2) the date that the employer or insurer serves the report on the employee and the employee's attorney, if any. Once temporary total

disability compensation has ceased under this paragraph, it may not be recommenced except if the employee returns to work and is subsequently medically unable to continue working as provided in paragraph (e), clause (2).

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

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

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

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

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

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

Impairment rating (percent)	Amount
0–5	$ 75,000
6–10	80,000
11–15	85,000
16–20	90,000
21–25	95,000
26–30	100,000
31–35	110,000
36–40	120,000
41–45	130,000
46–50	140,000
51–55	165,000
56–60	190,000
61–65	215,000

66–70	240,000
71–75	265,000
76–80	315,000
81–85	365,000
86–90	415,000
91–95	465,000
96–100	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.

Subd. 3. [Repealed, 1983 c 290 s 173]

Subd. 3a. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3b. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3c. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3d. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3e. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3f. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3g. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3h. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3i. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3j. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3k. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3l. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3m. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3n. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3o. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3p. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3q. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3r. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3s. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3t. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3u. [Repealed, 1995 c 231 art 1 s 36]

Subd. 3v. [Repealed, 1987 c 332 s 117]

Subd. 4. **Permanent total disability.** For permanent total disability, as defined in subdivision 5, the compensation shall be 66-2/3 percent of the daily wage at the time of the injury, subject to a maximum weekly compensation equal to the maximum weekly compensation for a temporary total disability and a minimum weekly compensation equal to 65 percent of the statewide average weekly wage. This compensation shall be paid during the permanent total disability of the injured employee but after a total of $25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to payments under this subdivision. This reduction shall also apply to any old age and survivor insurance benefits. Payments shall be made at the intervals when the wage was

payable, as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of confinement in the institution, unless there is wholly dependent on the employee for support some person named in section 176.111, subdivision 1, 2 or 3, in which case the compensation provided for in section 176.111, during the period of confinement, shall be paid for the benefit of the dependent person during dependency. The dependency of this person shall be determined as though the employee were deceased. Permanent total disability shall cease at age 67 because the employee is presumed retired from the labor market. This presumption is rebuttable by the employee. The subjective statement the employee is not retired is not sufficient in itself to rebut the presumptive evidence of retirement but may be considered along with other evidence.

Subd. 4a. **Preexisting condition or disability; apportionment.** (a) If a personal injury results in a disability which is attributable in part to a preexisting disability that arises from a congenital condition or is the result of a traumatic injury or incident, whether or not compensable under this chapter, the compensation payable for the permanent partial disability pursuant to this section shall be reduced by the proportion of the disability which is attributable only to the preexisting disability. An apportionment of a permanent partial disability under this subdivision shall be made only if the preexisting disability is clearly evidenced in a medical report or record made prior to the current personal injury. Evidence of a copy of the medical report or record upon which apportionment is based shall be made available to the employee by the employer at the time compensation for the permanent partial disability is begun.

(b) The compensable portion of the permanent partial disability under this section shall be paid at the rate at which the entire disability would be compensated but for the apportionment.

Subd. 5. **Definition.** For purposes of subdivision 4, "permanent total disability" means only:

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

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

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

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

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

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

Subd. 6. **Minors; apprentices.** (a) If any employee entitled to the benefits of this chapter is an apprentice of any age and sustains a personal injury arising out of and in the course of employment resulting in permanent total or a compensable permanent partial disability, for the purpose of computing the compensation to which the

employee is entitled for the injury, the compensation rate for temporary total, temporary partial, or permanent total disability shall be the maximum rate for temporary total disability under subdivision 1.

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

Subd. 7. [Repealed, Ex1979 c 3 s 70]

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.

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. 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.

History: *1953 c 755 s 10; 1955 c 615 s 1-5; 1957 c 781 s 2-5; Ex1967 c 40 s 7-11; 1969 c 186 s 1; 1969 c 276 s 2; 1969 c 936 s 5-8; 1971 c 422 s 1,2; 1971 c 475 s 1-4; 1973 c 388 s 18-20; 1973 c 600 s 1; 1973 c 643 s 1-4; 1974 c 486 s 2-4; 1975 c 271 s 6; 1975 c 359 s 8,23; 1976 c 134 s 78; 1977 c 342 s 12; 1977 c 347 s 30; Ex1979 c 3 s 33-35; 1981 c 346 s 75; 1983 c 290 s 42-68; 1984 c 432 art 2 s 1-12; 1985 c 234 s 5-7; 1986 c 444; 1986 c 461 s 8,9; 1989 c 209 art 2 s 24; 1992 c 510 art 1 s 3-7; 1994 c 488 s 8; 1995 c 231 art 1 s 17-23; 2000 c 447 s 10-12,25; 2002 c 220 art 13 s 9*

176.1011 [Repealed, 1996 c 310 s 1]

176.102 REHABILITATION.

Subdivision 1. **Scope.** (a) This section applies only to vocational rehabilitation of injured employees and their spouses as provided under subdivision 1a. Physical rehabilitation of injured employees is considered treatment subject to section 176.135.

(b) Rehabilitation is intended to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.

Subd. 1a. **Surviving spouse.** Upon the request of a qualified dependent surviving spouse, rehabilitation services shall be provided through the rehabilitation services section of the workers' compensation division. For the purposes of this subdivision a qualified dependent surviving spouse is a dependent surviving spouse, as determined under section 176.111, who is in need of rehabilitation assistance to become self-supporting. A spouse who is provided rehabilitation services under this subdivision is not entitled to compensation under subdivision 11.

Subd. 2. **Administrators.** The commissioner shall hire a director of rehabilitation services in the classified service. The commissioner shall monitor and supervise rehabilitation services, including, but not limited to, making determinations regarding the selection and delivery of rehabilitation services and the criteria used to approve qualified rehabilitation consultants and rehabilitation vendors. The commissioner may

also make determinations regarding fees for rehabilitation services and shall by rule establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors. The commissioner shall annually review the fees and give notice of any adjustment in the State Register. By March 1, 1993, the commissioner shall report to the legislature on the status of the commission's monitoring of rehabilitation services. The commissioner may hire qualified personnel to assist in the commissioner's duties under this section and may delegate the duties and performance.

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. Notwithstanding section 15.059, this panel does not expire unless the panel no longer fulfills the purpose for which the panel was established, the panel has not met in the last 18 months, or the panel does not comply with the registration requirements of section 15.0599, subdivision 3. 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.

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

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one labor member, one employer or insurer member, and one member representing medicine, chiropractic, or rehabilitation.

Subd. 3b. **Review panel determinations.** Recommendations from the administrative law judge following a contested case hearing shall be determined by the panel. The panel may adopt rules of procedure which may be joint rules with the medical services review board.

Subd. 4. **Rehabilitation plan; development.** (a) A rehabilitation consultation must be provided by the employer to an injured employee upon request of the employee, the employer, or the commissioner. When the commissioner has received notice or information that an employee has sustained an injury that may be compensable under this chapter, the commissioner must notify the injured employee of the right to request a rehabilitation consultation to assist in return to work. The notice may be included in other information the commissioner gives to the employee under section 176.235, and must be highlighted in a way to draw the employee's attention to it. If a rehabilitation consultation is requested, the employer shall provide a qualified rehabilitation consultant. If the injured employee objects to the employer's selection, the employee may select a qualified rehabilitation consultant of the employee's own choosing within 60 days following the filing of a copy of the employee's rehabilitation plan with the commissioner. If the consultation indicates that rehabilitation services are appropriate under subdivision 1, the employer shall provide the services. If the consultation

indicates that rehabilitation services are not appropriate under subdivision 1, the employer shall notify the employee of this determination within 14 days after the consultation.

(b) In order to assist the commissioner in determining whether or not to request rehabilitation consultation for an injured employee, an employer shall notify the commissioner whenever the employee's temporary total disability will likely exceed 13 weeks. The notification must be made within 90 days from the date of the injury or when the likelihood of at least a 13-week disability can be determined, whichever is earlier, and must include a current physician's report.

(c) The qualified rehabilitation consultant shall disclose in writing at the first meeting or written communication with the employee any ownership interest or affiliation between the firm which employs the qualified rehabilitation consultant and the employer, insurer, adjusting or servicing company, including the nature and extent of the affiliation or interest.

The consultant shall also disclose to all parties any affiliation, business referral or other arrangement between the consultant or the firm employing the consultant and any other party, attorney, or health care provider involved in the case.

(d) After the initial provision or selection of a qualified rehabilitation consultant as provided under paragraph (a), the employee may request a different qualified rehabilitation consultant which shall be granted or denied by the commissioner or compensation judge according to the best interests of the parties.

(e) The employee and employer shall enter into a program if one is prescribed in a rehabilitation plan within 30 days of the rehabilitation consultation if the qualified rehabilitation consultant determines that rehabilitation is appropriate. A copy of the plan, including a target date for return to work, shall be submitted to the commissioner within 15 days after the plan has been developed.

(f) If the employer does not provide rehabilitation consultation requested under paragraph (a), the commissioner or compensation judge shall notify the employer that if the employer fails to provide a qualified rehabilitation consultant within 15 days to conduct a rehabilitation consultation, the commissioner or compensation judge shall appoint a qualified rehabilitation consultant to provide the consultation at the expense of the employer unless the commissioner or compensation judge determines the consultation is not required.

(g) In developing a rehabilitation plan consideration shall be given to the employee's qualifications, including but not limited to age, education, previous work history, interest, transferable skills, and present and future labor market conditions.

(h) The commissioner or compensation judge may waive rehabilitation services under this section if the commissioner or compensation judge is satisfied that the employee will return to work in the near future or that rehabilitation services will not be useful in returning an employee to work.

Subd. 5. **On-the-job training.** On-the-job training is to be given consideration in developing a rehabilitation plan especially where it would produce an economic status similar to that enjoyed prior to disability.

Subd. 6. **Plan, eligibility for rehabilitation, approval and appeal.** (a) The commissioner or a compensation judge shall determine eligibility for rehabilitation services and shall review, approve, modify, or reject rehabilitation plans developed under subdivision 4. The commissioner or a compensation judge shall also make determinations regarding rehabilitation issues not necessarily part of a plan including, but not limited to, determinations regarding whether an employee is eligible for further rehabilitation and the benefits under subdivisions 9 and 11 to which an employee is entitled.

(b) A rehabilitation consultant must file a progress report on the plan with the commissioner six months after the plan is filed. The progress report must include a current estimate of the total cost and the expected duration of the plan. The commissioner may require additional progress reports. Based on the progress reports and available information, the commissioner may take actions including, but not limited to, redirecting, amending, suspending, or terminating the plan.

Subd. 6a. [Repealed, 1987 c 332 s 117]

Subd. 7. **Plan implementation; reports.** Upon request by the commissioner, insurer, employer or employee, medical and rehabilitation reports shall be made by the provider of the medical and rehabilitation service to the commissioner, insurer, employer or employee.

Subd. 8. **Plan modification.** Upon request to the commissioner or compensation judge by the employer, the insurer, or employee, or upon the commissioner's own request, the plan may be suspended, terminated, or altered upon a showing of good cause, including:

(a) a physical impairment that does not allow the employee to pursue the rehabilitation plan;

(b) the employee's performance level indicates the plan will not be successfully completed;

(c) an employee does not cooperate with a plan;

(d) that the plan or its administration is substantially inadequate to achieve the rehabilitation plan objectives;

(e) that the employee is not likely to benefit from further rehabilitation services.

An employee may request a change in a rehabilitation plan once because the employee feels ill-suited for the type of work for which rehabilitation is being provided. If the rehabilitation plan includes retraining, this request must be made within 90 days of the beginning of the retraining program.

Subd. 9. **Plan; costs.** (a) An employer is liable for the following rehabilitation expenses under this section:

(1) Cost of rehabilitation evaluation and preparation of a plan;

(2) Cost of all rehabilitation services and supplies necessary for implementation of the plan;

(3) Reasonable cost of tuition, books, travel, and custodial day care; and, in addition, reasonable costs of board and lodging when rehabilitation requires residence away from the employee's customary residence;

(4) Reasonable costs of travel and custodial day care during the job interview process;

(5) Reasonable cost for moving expenses of the employee and family if a job is found in a geographic area beyond reasonable commuting distance after a diligent search within the present community. Relocation shall not be paid more than once during any rehabilitation program, and relocation shall not be required if the new job is located within the same standard metropolitan statistical area as the employee's job at the time of injury. An employee shall not be required to relocate and a refusal to relocate shall not result in a suspension or termination of compensation under this chapter; and

(6) Any other expense agreed to be paid.

(b) Charges for services provided by a rehabilitation consultant or vendor must be submitted on a billing form prescribed by the commissioner. No payment for the services shall be made until the charges are submitted on the prescribed form.

(c) Except as provided in this paragraph, an employer is not liable for charges for services provided by a rehabilitation consultant or vendor unless the employer or its insurer receives a bill for those services within 45 days of the provision of the services. The commissioner or a compensation judge may order payment for charges not timely billed under this paragraph if the rehabilitation consultant or vendor can prove that the failure to submit the bill as required by this paragraph was due to circumstances beyond the control of the rehabilitation consultant or vendor. A rehabilitation consultant or vendor may not collect payment from any other person, including the employee, for bills that an employer is relieved from liability for paying under this paragraph.

Subd. 10. **Rehabilitation; consultants and vendors.** The commissioner shall approve rehabilitation consultants who may propose and implement plans if they satisfy

rules adopted by the commissioner for rehabilitation consultants. A consultant may be an individual or public or private entity, and except for the division of rehabilitation services, department of economic security, a consultant may not be a vendor or the agent of a vendor of rehabilitation services. The commissioner shall also approve rehabilitation vendors if they satisfy rules adopted by the commissioner.

Subd. 11. **Retraining; compensation.** (a) Retraining is limited to 156 weeks. An employee who has been approved for retraining may petition the commissioner or compensation judge for additional compensation not to exceed 25 percent of the compensation otherwise payable. If the commissioner or compensation judge determines that this additional compensation is warranted due to unusual or unique circumstances of the employee's retraining plan, the commissioner may award additional compensation in an amount not to exceed the employee's request. This additional compensation shall cease at any time the commissioner or compensation judge determines the special circumstances are no longer present.

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

(c) Any request for retraining shall be filed with the commissioner before 156 weeks of any combination of temporary total or temporary partial compensation have been paid. Retraining shall not be available after 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 156 weeks of compensation have been paid.

(d) The employer or insurer must notify the employee in writing of the 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 commissioner for deposit in the assigned risk safety account.

Subd. 11a. **Applicability of section.** This section is applicable to all employees injured prior to or on and after October 1, 1979, except for those provisions which affect an employee's monetary benefits.

Subd. 12. [Repealed, 1983 c 290 s 173]

Subd. 13. **Discontinuance.** All benefits payable under chapter 176 may, after a determination and order by the commissioner or compensation judge, be discontinued or forfeited for any time during which the employee refuses to submit to any reasonable examinations and evaluative procedures ordered by the commissioner or compensation judge to determine the need for and details of a plan of rehabilitation, or refuses to participate in rehabilitation evaluation as required by this section or does not make a good faith effort to participate in a rehabilitation plan. A discontinuance under this section is governed by sections 176.238 and 176.239.

Subd. 14. **Fees.** The commissioner shall impose fees sufficient to cover the cost of approving and monitoring qualified rehabilitation consultants, consultant firms, and vendors of rehabilitation services. These fees are payable to the commissioner for deposit in the special compensation fund.

History: *Ex1979 c 3 s 36; 1981 c 346 s 76; 1983 c 290 s 69-83; 1984 c 432 art 2 s 13,14; 1985 c 234 s 8,9; 1Sp1985 c 13 s 273; 1986 c 444; 1987 c 332 s 14-21; 1992 c 510 art 1 s 8; art 4 s 1-5; 1994 c 483 s 1; 1994 c 632 art 4 s 57,58; 1995 c 231 art 2 s 50,51; 1997 c 187 art 3 s 26; 1999 c 250 art 3 s 22; 2000 c 447 s 13,14; 2001 c 123 s 2-4; 2001 c 161 s 33*

176.1021 CONTINUING EDUCATION; COMPENSATION JUDGES.

The commissioner and the chief administrative law judge shall provide continuing education and training for workers' compensation judges in the conduct of administrative hearings, new trends in workers' compensation, techniques of alternative dispute resolution and, at least annually, continuing education in the areas of physical and vocational rehabilitation.

History: *1987 c 332 s 22*

176.103 MEDICAL HEALTH CARE REVIEW.

Subdivision 1. **Purpose.** It is the purpose of this section to provide for review of clinical health care providers who render services to injured employees. This review shall be achieved by establishing a quality control system within the department of labor and industry.

The commissioner shall hire a medical consultant to assist in the administration of this section.

The medical consultant shall be a doctor of medicine licensed under the laws of Minnesota.

The medical consultant shall perform all duties assigned by the commissioner relating to the supervision of the total continuum of care of injured employees and shall also advise the department on matters on which the commissioner requests the consultant's advice or if the consultant deems it appropriate.

Subd. 2. **Scope.** The commissioner shall monitor the medical and surgical treatment provided to injured employees, the services of other health care providers and shall also monitor hospital utilization as it relates to the treatment of injured employees. This monitoring shall include determinations concerning the appropriateness of the service, whether the treatment is necessary and effective, the proper cost of services, the quality of the treatment, the right of providers to receive payment under this chapter for services rendered or the right to receive payment under this chapter for future services. Insurers and self-insurers must assist the commissioner in this monitoring by reporting to the commissioner cases of suspected excessive, inappropriate, or unnecessary treatment. The commissioner in consultation with the medical services review board shall adopt rules defining standards of treatment including inappropriate, unnecessary, or excessive treatment and the sanctions to be imposed for inappropriate, unnecessary, or excessive treatment. The sanctions imposed may include, without limitation, a warning, a restriction on providing treatment, requiring preauthorization by the board for a plan of treatment, and suspension from receiving compensation for the provision of treatment under chapter 176. The commissioner's authority under this section also includes the authority to make determinations regarding any other activity involving the questions of utilization of medical services, and any other determination the commissioner deems necessary for the proper administration of this section, but does not include the authority to make the initial determination of primary liability, except as provided by section 176.305.

Subd. 2a. [Repealed, 1995 c 231 art 2 s 110]

Subd. 3. **Medical services review board; selection; powers.** (a) There is created a medical services review board composed of the commissioner or the commissioner's designee as an ex officio member, two persons representing chiropractic, one person

representing hospital administrators, one physical therapist, one registered nurse, and six physicians representing different specialties which the commissioner determines are the most frequently utilized by injured employees. The board shall also have one person representing employees, one person representing employers or insurers, and one person representing the general public. The members shall be appointed by the commissioner and shall be governed by section 15.0575. Terms of the board's members may be renewed. The board may appoint from its members whatever subcommittees it deems appropriate. Notwithstanding section 15.059, this board does not expire unless the board no longer fulfills the purpose for which the board was established, the board has not met in the last 18 months, or the board does not comply with the registration requirements of section 15.0599, subdivision 3.

The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable. The number of alternates shall not exceed one chiropractor, one physical therapist, one registered nurse, one hospital administrator, three physicians, one employee representative, one employer or insurer representative, and one representative of the general public.

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

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

In evaluating the clinical consequences of the services provided to an employee by a clinical health care provider, the board shall consider the following factors in the priority listed:

(1) the clinical effectiveness of the treatment;

(2) the clinical cost of the treatment; and

(3) the length of time of treatment.

The board shall advise the commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.

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

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

Subd. 4. [Repealed, 1987 c 332 s 117]

History: *1983 c 290 s 84; 1984 c 432 art 2 s 15,16; 1985 c 234 s 10; 1986 c 461 s 10; 1987 c 329 s 21; 1987 c 332 s 23,24; 1992 c 510 art 4 s 6-8; 1995 c 231 art 2 s 52,53; 2001 c 123 s 5; 2001 c 161 s 34; 2002 c 262 s 3*

176.104 REHABILITATION PRIOR TO DETERMINATION OF LIABILITY.

Subdivision 1. **Dispute.** If there exists a dispute regarding medical causation or whether an injury arose out of and in the course and scope of employment and an employee is otherwise eligible for rehabilitation services under section 176.102 prior to determination of liability, the employee shall be referred by the commissioner to the department's vocational rehabilitation unit which shall provide rehabilitation consulta-

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

Subd. 2. **Liability for rehabilitation; lien.** (a) If liability is determined after the employee has commenced rehabilitation under this section the liable party is responsible for the cost of rehabilitation provided. Future rehabilitation after liability is established is governed by section 176.102.

(b) If the employer, insurer, or defendant is given written notice by the department of a claim for rehabilitation services or disbursements, the claim is a lien against the amount paid or payable as compensation.

Subd. 3. **Reimbursements.** All money received under this section must be credited to the special compensation fund.

Subd. 4. **Vocational rehabilitation unit funding.** The cost of the vocational rehabilitation unit shall be financed by the special compensation fund beginning July 1, 1992.

History: *1983 c 290 s 85; 1984 c 432 art 2 s 17,18; 1986 c 461 s 11; 1991 c 292 art 10 s 2; 1992 c 513 art 3 s 34-36; 1995 c 231 art 2 s 54*

176.1041 CERTIFICATION FOR FEDERAL TAX CREDIT.

Subdivision 1. **Certification program.** The vocational rehabilitation unit shall establish a program authorizing qualified rehabilitation consultants and approved vendors to refer an employee to the unit for the sole purpose of federal targeted jobs tax credit eligibility determination. The unit shall set forth the specific requirements, procedures and eligibility criteria for purposes of this section. The unit shall not be required to certify an injured employee who does not meet the eligibility requirements set forth in the federal Rehabilitation Act of 1973, as amended.

Subd. 2. **Fee.** The division is authorized to collect a fee from the qualified rehabilitation consultant or approved vendor in the amount necessary to determine eligibility and to certify an employee for this program.

History: *1984 c 432 art 2 s 19; 1992 c 464 art 1 s 4*

176.105 COMMISSIONER TO ESTABLISH DISABILITY SCHEDULES.

Subdivision 1. **Schedule; rules.** (a) The commissioner of labor and industry shall by rule establish a schedule of degrees of disability resulting from different kinds of injuries. Disability ratings under the schedule for permanent partial disability must be based on objective medical evidence. The commissioner, in consultation with the medical services review board, shall periodically review the rules adopted under this paragraph to determine whether any injuries omitted from the schedule should be included and amend the rules accordingly.

(b) No permanent partial disability compensation shall be payable except in accordance with the disability ratings established under this subdivision, except as provided in paragraph (c). The schedule may provide that minor impairments receive a zero rating.

(c) If an injury for which there is objective medical evidence is not rated by the permanent partial disability schedule, the unrated injury must be assigned and compensated for at the rating for the most similar condition that is rated.

Subd. 2. **Rules; internal organs.** The commissioner shall by rule establish a schedule of internal organs that are compensable and indicate in the schedule to what extent the organs are compensable under section 176.101, subdivision 3.

Subd. 3. **Study.** In order to accomplish the purposes of this section, the commissioner shall study disability or permanent impairment schedules set up by other states, the American Medical Association and other organizations.

Subd. 4. **Legislative intent; rules; loss of more than one body part.** For the purpose of establishing a disability schedule, the legislature declares its intent that the

commissioner establish a disability schedule which shall be determined by sound actuarial evaluation and shall be based on the benefit level which exists on January 1, 1983.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: *Ex1979 c 3 s 62; 1981 c 346 s 77; 1983 c 290 s 86; 1984 c 640 s 32; 1986 c 461 s 12; 1992 c 510 art 2 s 4; 1995 c 231 art 1 s 24*

176.106 ADMINISTRATIVE CONFERENCE.

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

Subd. 2. **Request for conference.** Any party may request an administrative conference by filing a request on a form prescribed by the commissioner.

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

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

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

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

Subd. 6. **Penalty.** At a conference, if the insurer does not provide a specific reason for nonpayment of the items in dispute, the commissioner's designee may assess a penalty of $300 payable to the commissioner for deposit in the assigned risk safety account, unless it is determined that the reason for the lack of specificity was the failure of the insurer, upon timely request, to receive information necessary to remedy the lack of specificity. This penalty is in addition to any penalty that may be applicable for nonpayment.

Subd. 7. **Request for hearing.** Any party aggrieved by the decision of the commissioner'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. Requests shall be referred to the office of administrative hearings for a de novo hearing before a compensation judge. Except where the only issues to be determined pursuant to this section involve liability for past treatment or services that will not affect entitlement to ongoing or future proposed treatment or services under section 176.102 or 176.135, the commissioner shall refer a timely request to the office of administrative hearings within five working days after filing of the request and the hearing at the office of administrative hearings must be held on the first date that all parties are available but not later than 60 days after the office of administrative hearings receives the matter. Following the hearing, the compensation judge must issue the decision within 30 days. The decision of the compensation judge is appealable pursuant to section 176.421.

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

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

History: *1986 c 444; 1987 c 332 s 25; 1992 c 510 art 3 s 11; 1995 c 231 art 2 s 55; 2000 c 447 s 15; 2002 c 262 s 4*

176.107 TELECONFERENCES.

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

History: *1995 c 231 art 2 s 56*

176.108 LIGHT-DUTY WORK POOLS.

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

History: *1995 c 231 art 2 s 57; 1997 c 7 art 5 s 13*

176.11 [Repealed, 1953 c 755 s 83]

176.111 DEPENDENTS, ALLOWANCES.

Subdivision 1. **Persons wholly dependent, presumption.** For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent:

(a) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;

(b) children under 18 years of age, or a child under the age of 25 years who is regularly attending as a full time student at a high school, college, or university, or regularly attending as a full time student in a course of vocational or technical training.

Subd. 2. **Children.** Children 18 years of age, or over 18 when physically or mentally incapacitated from earning, are prima facie considered dependent.

Subd. 3. **Persons wholly supported.** A wife, child, husband, mother, father, grandmother, grandfather, grandchild, sister, brother, mother-in-law, father-in-law, wholly supported by a deceased worker at the time of death and for a reasonable time prior thereto are considered actual dependents of the deceased worker and compensation shall be paid to them in the order named.

Subd. 4. **Persons partially supported.** Any member of a class named in subdivision 3 who regularly derived partial support from the wages of a deceased worker at the time of death and for a reasonable time prior thereto is considered a partial dependent and compensation shall be paid to such dependents in the order named.

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

Subd. 6. **Spouse, no dependent child.** If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.

Subd. 7. **Spouse, one dependent child.** If the deceased employee leaves a surviving spouse and one dependent child, there shall be paid to the surviving spouse for the benefit of the spouse and child 60 percent of the daily wage at the time of the injury of the deceased until the child is no longer a dependent as defined in subdivision 1. At that time there shall be paid to the dependent surviving spouse weekly benefits at a rate which is 16-2/3 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, including adjustments as provided in section 176.645.

Subd. 8. **Spouse, two dependent children.** If the deceased employee leaves a surviving spouse and two dependent children, there shall be paid to the surviving spouse for the benefit of the spouse and children 66-2/3 percent of the daily wage at the time of the injury of the deceased until the last dependent child is no longer dependent. At that time the dependent surviving spouse shall be paid weekly benefits at a rate which is 25 percent less than the last weekly workers' compensation benefit payment, as defined in subdivision 8a, while the surviving child was a dependent, for a period of ten years, adjusted according to section 176.645.

Subd. 8a. **Last weekly benefit payment.** For the purposes of subdivisions 7 and 8, "last weekly workers' compensation benefit payment" means the workers' compensation benefit which would have been payable without the application of subdivision 21.

Subd. 9. [Repealed, 1975 c 359 s 22]

Subd. 9a. **Remarriage of spouse.** A surviving spouse who remarries and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.

Subd. 10. **Allocation of compensation.** In all cases where compensation is payable to the surviving spouse for the benefit of the surviving spouse and dependent children, the commissioner, compensation judge, or workers' compensation court of appeals or district court in cases upon appeal shall determine what portion of the compensation applies for the benefit of dependent children and may order that portion paid to a guardian. This subdivision shall not be construed to increase the combined total of weekly government survivor benefits and workers' compensation beyond the limitation established in subdivision 21.

Subd. 11. [Repealed, 1981 c 346 s 145]

Subd. 12. **Orphans.** If the deceased employee leaves a dependent orphan, there shall be paid 55 percent of the weekly wage at the time of the injury of the deceased, for two or more orphans there shall be paid 66-2/3 percent of the wages.

Subd. 13. [Repealed, 1977 c 342 s 28]

Subd. 14. **Parents.** If the deceased employee leave no surviving spouse or child entitled to any payment under this chapter, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly 45 percent of the weekly wage at the time of the injury of the deceased. In case of the death of either of the wholly dependent parents the survivor shall receive 35 percent of the weekly wage thereafter. If the deceased employee leave one parent wholly dependent on the deceased, there shall be paid to such parent 35 percent of the weekly wage at the time of the injury of the deceased employee. The compensation payments under this section shall not exceed the actual contributions made by the deceased employee to the support of the employee's parents for a reasonable time immediately prior to the injury which caused the death of the deceased employee.

Subd. 15. **Remote dependents.** If the deceased employee leaves no surviving spouse or child or parent entitled to any payment under this chapter, but leaves a grandparent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on the employee for support, there shall be paid to such dependent, if but one, 30 percent of the weekly wage at the time of injury of the deceased, or if more than one, 35 percent of the weekly wage at the time of the injury of the deceased, divided among them share and share alike.

Subd. 16. **Cessation of compensation.** Except as provided in this chapter, compensation ceases upon the death or marriage of any dependent.

Subd. 17. **Partial dependents.** Partial dependents are entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependents at the time of and for a reasonable time immediately prior to the injury bore to the total income of the dependent during the same time; and if the amount regularly contributed by the deceased to such partial dependents cannot be ascertained because of the circumstances of the case, the commissioner, compensation judge, or court of appeals, in cases upon appeal, shall make a reasonable estimate thereof taking into account all pertinent factors of the case.

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 $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.

Subd. 19. [Repealed, 1975 c 359 s 22]

Subd. 20. **Actual dependents, compensation.** Actual dependents are entitled to take compensation in the order named in subdivision 3 during dependency until 66-2/3 percent of the weekly wage of the deceased at the time of injury is exhausted. The total weekly compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate an amount equal to the maximum weekly compensation for a temporary total disability.

Subd. 21. **Death, benefits; coordination with governmental survivor benefits.** The following provision shall apply to any dependent entitled to receive weekly compensation benefits under this section as the result of the death of an employee, and who is also receiving or entitled to receive benefits under any government survivor program:

The combined total of weekly government survivor benefits and workers' compensation death benefits provided under this section shall not exceed 100 percent of the weekly wage being earned by the deceased employee at the time of the injury causing death; provided, however, that no state workers' compensation death benefit shall be paid for any week in which the survivor benefits paid under the federal program, by themselves, exceed 100 percent of such weekly wage provided, however, the workers' compensation benefits payable to a dependent surviving spouse shall not be reduced on account of any governmental survivor benefits payable to decedent's children if the support of the children is not the responsibility of the dependent surviving spouse.

For the purposes of this subdivision "dependent" means dependent surviving spouse together with all dependent children and any other dependents. For the purposes of this subdivision, mother's or father's insurance benefits received pursuant to United States Code, title 42, section 402(g), are benefits under a government survivor program.

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. This payment must be made within 14 days of notice to the insurer of the appointment of a personal representative of the estate. Within 14 days of notice to the insurer of the death of the employee, the insurer must send notice to the estate, at the deceased employee's last known address, that this payment will be made after a personal representative has been appointed by a probate court.

History: *1953 c 755 s 11; 1955 c 615 s 6-8; 1957 c 781 s 6,7; 1965 c 742 s 1; Ex1967 c 40 s 12,13; 1969 c 936 s 9-12; 1971 c 475 s 5-7; 1973 c 388 s 21-25; 1973 c 643 s 5-7; 1975 c 271 s 6; 1975 c 359 s 9-16,23; 1976 c 134 s 78; 1977 c 342 s 13-15; Ex1979 c 3 s 37; 1981 c 346 s 78-83; 1983 c 290 s 87-91; 1984 c 655 art 1 s 34; 1986 c 444; 1986 c 461 s 13-16; 1987 c 49 s 3,4; 1987 c 332 s 26; 1992 c 510 art 1 s 9; 1993 c 194 s 5; 2000 c 447 s 16-18; 2002 c 262 s 5*

176.12 [Repealed, 1953 c 755 s 83]

176.121 COMMENCEMENT OF COMPENSATION.

In cases of temporary total or temporary partial disability no compensation is allowed for the three calendar days after the disability commenced, except as provided by section 176.135, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 176.141. If the disability continues for ten calendar days or longer, the compensation is computed from the commencement of the disability. Disability is deemed to commence on the first calendar day or fraction of a calendar day that the employee is unable to work.

History: *1953 c 755 s 12; 1969 c 936 s 13; 1983 c 290 s 92*

176.129 CREATION OF THE SPECIAL COMPENSATION FUND.

Subdivision 1. **Deposit of funds.** The special compensation fund is created for the purposes provided for in this chapter and chapter 182. The state treasurer is the custodian of the special compensation fund. Sums paid to the commissioner pursuant to this section shall be deposited with the state treasurer for the benefit of the fund and used to pay the benefits under this chapter and administrative costs pursuant to subdivision 11. Any interest or profit accruing from investment of these sums shall be credited to the special compensation fund. Subject to the provisions of this section, all the powers, duties, functions, obligations, and rights vested in the special compensation fund immediately prior to January 1, 1984 are transferred to and vested in the special compensation fund recreated by this section. All rights and obligations of employers with regard to the special compensation fund which existed immediately prior to January 1, 1984, continue, subject to the provisions of this section.

Subd. 1a. **Interest.** Interest earned on revenue collected by the special compensation fund shall be deposited into the special compensation fund.

Subd. 1b. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Paid indemnity losses" means gross benefits paid for temporary total disability, economic recovery compensation, permanent partial disability, temporary partial disability, impairment compensation, permanent total disability, vocational rehabilitation benefits, or dependency benefits, exclusive of medical and supplementary benefits. In the case of policy deductibles, paid indemnity losses includes all benefits paid, including the amount below deductible limits.

(c) "Standard workers' compensation premium" means the data service organization's designated statistical reporting pure premium after the application of experience rating plan adjustments but prior to the application of premium discounts, policyholder dividends, other premium adjustments, expense constants, and other deviations from the designated statistical reporting pure premium.

Subd. 2. [Repealed, 2000 c 447 s 28]

Subd. 2a. **Payments to fund.** (a) On or before April 1 of each year, all self-insured employers shall report paid indemnity losses and insurers shall report paid indemnity losses and standard workers' compensation premium in the form and manner prescribed by the commissioner. On June 1 of each year, the commissioner shall determine the total amount needed to pay all estimated liabilities, including administrative expenses, of the special compensation fund for the following fiscal year. The commissioner shall assess this amount against self-insured employers and insurers. The total amount of the assessment must be allocated between self-insured employers and insured employers based on paid indemnity losses for the preceding calendar year. The method of assessing self-insured employers must be based on paid indemnity losses. The method of assessing insured employers is based on premium, collectible through a policyholder surcharge. On or before June 30 of each year, the commissioner shall provide notification to each self-insured employer and insurer of amounts due. At least one-half of the payment shall be made to the commissioner for deposit into the special

compensation fund on or before August 1 of the same calendar year. The remaining balance is due on February 1 of the following calendar year.

(b) The portion of the total amount that is collected from self-insured employers is equal to that proportion of the paid indemnity losses for the preceding calendar year, which the paid indemnity losses of all self-insured employers bore to the total paid indemnity losses made by all self-insured employers and insured employers during the preceding calendar year. The portion of the total amount that is collected from insured employers is equal to that proportion of the total paid indemnity losses on behalf of all insured employers bore to the total paid indemnity losses on behalf of all self-insured employers and insured employers during the preceding calendar year. The portion of the total assessment allocated to insured employers that is collected from each insured employer must be based on standard workers' compensation premium written in the state during the preceding calendar year. An employer who has ceased to be self-insured shall continue to be liable for assessments based on paid indemnity losses made by the employer in the preceding calendar year.

(c) Insurers shall collect the assessments from their insured employers through a surcharge based on premium, as provided in paragraph (a). Assessments when collected do not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but for the purpose of collection are treated as separate costs imposed on insured employers. The premium surcharge is included in the definition of gross premium as defined in section 297I.01. An insurer may cancel a policy for nonpayment of the premium surcharge. The premium surcharge is excluded from the definition of premium except as otherwise provided in this paragraph.

Subd. 3. [Repealed, 2002 c 262 s 23]

Subd. 4. [Repealed, 2002 c 262 s 23]

Subd. 4a. [Repealed, 2002 c 262 s 23]

Subd. 5. [Repealed, 1984 c 432 art 2 s 55]

Subd. 6. **Payments out of fund.** The workers' compensation division, a compensation judge, the workers' compensation court of appeals, or district court in cases before them shall direct the distribution of benefits provided by this chapter. These benefits are payable in the same manner as other payments of compensation.

Subd. 7. **Refunds.** In case deposit is or has been made pursuant to subdivision 2a by mistake or inadvertence, or under circumstances that justice requires a refund, the state treasurer is authorized to refund the deposit under order of the commissioner, a compensation judge, the workers' compensation court of appeals, or a district court. Claims for refunds must be submitted to the commissioner within three years of the assessment due date. There is appropriated to the commissioner from the fund an amount sufficient to make the refund and payment.

Subd. 8. **Commissioner as administrator.** The commissioner is the administrator of the special compensation fund. The special fund shall be designated a party in an action regarding any right, obligation, and liability of the special fund. The state treasurer, as custodian, does not have standing in an action determining any right, obligation, or liability of the special fund. As requested by the commissioner, the attorney general shall represent the special fund in all legal matters in which the special fund has an interest. The commissioner may designate one or more division employees to appear on behalf of the special fund in proceedings under this chapter. The division employees so designated need not be attorneys-at-law.

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

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

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

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

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

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

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

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

Subd. 11. **Administrative provisions.** The accounting, investigation, and legal costs necessary for the administration of the programs financed by the special compensation fund shall be paid from the fund during each biennium commencing July 1, 1981. Staffing and expenditures related to the administration of the special compensation fund shall be approved through the regular budget and appropriations process. All sums recovered by the special compensation fund as a result of action under section 176.061, or recoveries of payments made by the special compensation fund under section 176.183 or 176.191, or sums recovered under chapter 182, shall be credited to the special compensation fund.

Subd. 12. **Report of commissioner.** The commissioner shall report biennially to the governor and to the legislature as to the financial status of the special compensation fund. The report shall include a statement of the receipts and the disbursements for the period covered.

Subd. 13. **Employer reports.** All employers and insurers shall make reports to the commissioner as required for the proper administration of this section and Minnesota Statutes 1990, section 176.131, and Minnesota Statutes 1994, section 176.132. Employers and insurers may not be reimbursed from the special compensation fund for any periods unless the employer or insurer is up to date with all past due and currently due assessments, penalties, and reports to the special compensation fund under this section.

History: *1983 c 290 s 93; 1984 c 432 art 2 s 20-22; 1986 c 461 s 17; 1987 c 268 art 2 s 28; 1987 c 332 s 27-29; 1992 c 510 art 3 s 12; 1992 c 513 art 3 s 37,38; 1995 c 231 art 2 s 58,59; 1996 c 305 art 1 s 45,46; 2000 c 447 s 19,20; 2001 c 123 s 6-8; 2002 c 262 s 6-11*

NOTE: Subdivisions 1b and 2a, as added by Laws 2002, chapter 262, sections 6 and 7, are effective with assessments due after July 1, 2003. Laws 2002, chapter 262, section 24.

NOTE: Subdivisions 3, 4, and 4a are repealed by Laws 2002, chapter 262, section 23, effective with assessments due after July 1, 2003. Laws 2002, chapter 262, section 24.

NOTE: The amendments to subdivisions 7, 9, 10, and 13, by Laws 2002, chapter 262, sections 8 to 11, are effective with assessments due after July 1, 2003. Laws 2002, chapter 262, section 24.

176.13 [Repealed, 1965 c 327 s 2]

176.130 TARGETED INDUSTRY FUND; LOGGERS.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given them, except where the context clearly indicates a different meaning.

(a) "Commissioner" means the commissioner of labor and industry, unless otherwise provided.

(b) "Logger" means the following occupations:

(1) timber fellers: those who employ chainsaws or other mechanical devices mounted on logging vehicles to fell or delimb trees;

(2) buckers or chippers: those who cut trees into merchantable lengths with either chainsaws or heavier machinery, including slashers, harvesters, and processors;

(3) skidders or forwarders: those who either drag logs or trees to roadside landings, or load and transport logs or short wood (fuel wood or pulp wood) to similar destinations; and

(4) timber harvesters or processors: those who combine two or more of the operations listed in clauses (1) to (3).

(c) "Logging industry" means loggers and employers of loggers.

(d) "Wood mill" means the primary processors of wood or wood chips including, but not limited to, hard board manufacturers, wafer board or oriented strand board manufacturers, pulp and paper manufacturers, sawmills, and other primary manufacturers who do the initial processing of wood purchased from loggers.

(e) "Insurer" means an insurance company that provides workers' compensation coverage for loggers, including the Minnesota assigned risk plan.

(f) "Qualified employer" means a self-employed logger, or an employer of a logger, who has paid a premium for workers' compensation insurance coverage for the preceding calendar year and who has attended, or whose logger employees have attended, in the preceding calendar year, at least one safety seminar sponsored by or approved by the commissioner.

(g) "Rebate" means amounts allocated and paid to qualified employers under subdivision 6.

Subd. 2. **Administration.** The commissioner shall administer and enforce this section. Payments and reports required by this section must be made with forms provided by the commissioner. The commissioner shall collect all assessments and allocate the rebate as provided in this section.

Subd. 3. **Proof of insurance; logging industry.** Purchasers of wood from the logging industry shall obtain from the logger a certification of compliance with the mandatory insurance requirements of this chapter, or reason for exemption, on a form prescribed by the commissioner. A purchaser includes, but is not limited to, dealers and jobbers buying from the logging industry to sell to wood mills, and wood mills that buy directly from the logging industry. Certificates obtained by the purchaser shall be submitted to the commissioner on request. The powers of inspection and enforcement pertaining to employers under section 176.184 shall be available with regard to purchasers under this section.

Subd. 4. **Assessment.** There is imposed an assessment, at the rate of 30 cents per cord of wood, for every cord or equivalent measurement of wood in excess of 5,000 cords, purchased or acquired in any calendar year, either inside or outside the state, by a wood mill located in Minnesota. This assessment must be paid by the wood mill to the commissioner on or before February 15 for the previous calendar year and may not, in any way, be recovered by the wood mill from the logging industry. All revenue collected from this assessment must be deposited in a separately maintained account in the special compensation fund for the payment of rebates under subdivision 6 and the loggers safety and education program under subdivision 11.

Subd. 5. **Annual reports; wood mills; qualified employers.** (a) Each wood mill that purchases or acquires more than 5,000 cords or equivalent measurement of wood in a calendar year shall, on or before February 15, make and file with the commissioner a report setting forth the number of cords purchased or acquired in the preceding calendar year, and other information the commissioner may require for the proper administration of this section.

(b) Each qualified employer shall, on or before February 15 each year, make and file with the commissioner a report setting forth the total amount of payroll paid to loggers in the preceding calendar year, together with proof of attendance at an approved safety seminar in the preceding calendar year, and other information the

commissioner may require for the proper administration of this section. The commissioner may, for enforcement purposes, share reported payroll data for a particular employer with the workers' compensation insurer for that employer or with the workers' compensation insurance association.

Subd. 6. **Allocation of rebate.** Money collected under this section, less an amount as provided in subdivision 11, is appropriated to and, must be paid by the commissioner, on or before June 1 each year, directly to each qualified employer in a proportion equal to the proportion that the qualified employer's reported payroll dollars for loggers in the preceding calendar year is to the total reported payroll dollars for loggers from all qualified employers in the preceding calendar year. Payment under this section shall be made only to those qualified employers reporting within the time limits provided in subdivision 5, paragraph (b).

Subd. 7. **Inspection.** The commissioner or duly authorized employees may, at all reasonable hours, enter in and upon the premises of a wood mill or a qualified employer and examine books, papers, and records to determine whether the assessment has been properly paid or payroll properly reported.

Subd. 8. **Penalties; wood mills.** If the assessment provided for in this chapter is not paid on or before February 15 of the year when due and payable, the commissioner may impose penalties as provided in section 176.129, subdivision 10, payable to the commissioner for deposit in the assigned risk safety account.

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

Subd. 10. **Employer-employee relationship.** This section does not create an employer-employee relationship nor can it be used as a factor in determining the existence of an employer-employee relationship.

Subd. 11. **Safety program.** The commissioner shall establish or approve a safety and education program for Minnesota loggers. Funding for the program must be in the amount of $125,000 each calendar year provided from amounts collected in the previous calendar year pursuant to subdivision 4. If the amounts collected under subdivision 4 are less than $125,000 in any calendar year, funding for the safety and education program for the next calendar year must be the actual amount collected.

History: *1990 c 521 s 1,4; 1992 c 510 art 3 s 13,14; 1995 c 224 s 126; 1995 c 231 art 1 s 36; art 2 s 60; 2002 c 262 s 12,13*

176.131 [Repealed, 1992 c 510 art 3 s 36]

176.1311 SECOND INJURY FUND DATA.

No person shall, directly or indirectly, provide the names of persons who have registered a preexisting physical impairment under Minnesota Statutes 1990, section 176.131, to an employer with the intent of assisting the employer to discriminate against those persons who have so registered with respect to hiring or other terms and conditions of employment.

A violation of this section is a gross misdemeanor.

History: *1992 c 510 art 2 s 5; 1993 c 13 art 2 s 1*

176.132 [Repealed, 1995 c 231 art 1 s 35; art 2 s 110]

176.1321 EFFECTIVE DATE OF BENEFIT CHANGES.

Unless otherwise specified in the act making the change, any workers' compensation benefit change shall be effective on the October 1 next following its final enactment.

History: *Ex1979 c 3 s 42*

176.133 [Repealed, 1995 c 231 art 2 s 110]

176.134 [Repealed, 1985 c 234 s 22]

176.135 TREATMENT; APPLIANCES; SUPPLIES.

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

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

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

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

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

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

Subd. 1a. **Nonemergency surgery; second surgical opinion.** The employer is required to furnish surgical treatment pursuant to subdivision 1 when the surgery is reasonably required to cure and relieve the effects of the personal injury or occupational disease. An employee may not be compelled to undergo surgery. If an employee desires a second opinion on the necessity of the surgery, the employer shall pay the costs of obtaining the second opinion. Except in cases of emergency surgery, the employer or insurer may require the employee to obtain a second opinion on the necessity of the surgery, at the expense of the employer, before the employee undergoes surgery. Failure to obtain a second surgical opinion shall not be reason for nonpayment of the charges for the surgery. The employer is required to pay the reasonable value of the surgery unless the commissioner or compensation judge determines that the surgery is not reasonably required.

Subd. 2. **Change of physicians, podiatrists, or chiropractors.** The commissioner shall adopt rules establishing standards and criteria to be used when a dispute arises over a change of physicians, podiatrists, or chiropractors in the case that either the employee or the employer desire a change. If a change is agreed upon or ordered, the medical expenses shall be borne by the employer upon the same terms and conditions as provided in subdivision 1.

Subd. 2a. **Definitions.** For the purposes of this section, the word "physicians" shall include persons holding the degree M. D. (Doctor of Medicine) and persons holding

the degree D. O. (Doctor of Osteopathy); and the terms "medical, surgical and hospital treatment" shall include professional services rendered by licensed persons who have earned the degree M. D. or the degree D. O.

Subd. 3. [Repealed, 1992 c 510 art 4 s 26]

Subd. 4. **Christian Science treatment.** Any employee electing to receive Christian Science treatment as provided in subdivision 1 shall notify the employer in writing of the election within 30 days after July 1, 1953, and any person hereafter accepting employment shall give such notice at the time of accepting employment. Any employer may elect not to be subject to the provisions for Christian Science treatment provided for in this section by filing a written notice of such election with the commissioner of the department of labor and industry, in which event the election of the employee shall have no force or effect whatsoever.

Subd. 5. **Occupational disease medical eligibility.** Notwithstanding section 176.66, an employee who has contracted an occupational disease is eligible to receive compensation under this section even if the employee is not disabled from earning full wages at the work at which the employee was last employed.

Payment of compensation under this section shall be made by the employer and insurer on the date of the employee's last exposure to the hazard of the occupational disease. Reimbursement for medical benefits paid under this subdivision or subdivision 1a is allowed from the employer and insurer liable under section 176.66, subdivision 10, only in the case of disablement.

Subd. 6. **Commencement of payment.** As soon as reasonably possible, and no later than 30 calendar days after receiving the bill, the employer or insurer shall pay the charge or any portion of the charge which is not denied, or deny all or a part of the charge with written notification to the employee and the provider explaining the basis for denial. All or part of a charge must be denied if any of the following conditions exists:

(1) the injury or condition is not compensable under this chapter;

(2) the charge or service is excessive under this section or section 176.136;

(3) the charges are not submitted on the prescribed billing form; or

(4) additional medical records or reports are required under subdivision 7 to substantiate the nature of the charge and its relationship to the work injury.

If payment is denied under clause (3) or (4), the employer or insurer shall reconsider the charges in accordance with this subdivision within 30 calendar days after receiving additional medical data, a prescribed billing form, or documentation of enrollment or certification as a provider.

Subd. 7. **Medical bills and records.** Health care providers shall submit to the insurer an itemized statement of charges on a billing form prescribed by the commissioner. Health care providers shall also submit copies of medical records or reports that substantiate the nature of the charge and its relationship to the work injury. Health care providers may charge for copies of any records or reports that are in existence and directly relate to the items for which payment is sought under this chapter. The commissioner shall adopt a schedule of reasonable charges by rule.

A health care provider shall not collect, attempt to collect, refer a bill for collection, or commence an action for collection against the employee, employer, or any other party until the information required by this section has been furnished.

A United States government facility rendering health care services to veterans is not subject to the uniform billing form requirements of this subdivision.

History: *1953 c 439 s 1; 1953 c 755 s 13; 1971 c 863 s 1,2; 1973 c 258 s 1; 1973 c 388 s 35-38; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1979 c 107 s 1,2; Ex1979 c 3 s 44; 1983 c 290 s 106,107; 1984 c 432 art 2 s 23,24; 1986 c 444; 1986 c 461 s 20,21; 1987 c 332 s 33-38; 1989 c 335 art 1 s 180; 1990 c 522 s 3; 1992 c 510 art 4 s 9-12; 1995 c 231 art 2 s 61*

176.1351 MANAGED CARE.

Subdivision 1. **Application.** Any person or entity, other than a workers' compensation insurer or an employer for its own employees, may make written application to the commissioner to have a plan certified that provides management of quality treatment to injured workers for injuries and diseases compensable under this chapter. Specifically, and without limitation, an entity licensed under chapter 62C or 62D or a preferred provider organization that is subject to chapter 72A is eligible for certification under this section. Each application for certification shall be accompanied by a reasonable fee prescribed by the commissioner which shall be deposited in the special compensation fund. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the commissioner prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the commissioner may prescribe. The information shall include, but not be limited to:

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

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

Subd. 2. **Certification.** The commissioner shall certify a managed care plan if the commissioner finds that the plan:

(1) proposes to provide quality services that meet uniform treatment standards prescribed by the commissioner and all medical and health care services that may be required by this chapter in a manner that is timely, effective, and convenient for the worker;

(2) is reasonably geographically convenient to employees it serves;

(3) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(4) provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment, and excludes participation in the plan by those individuals who violate these treatment standards;

(5) provides a procedure for the resolution of medical disputes;

(6) provides aggressive case management for injured workers and provides a program for early return to work and cooperative efforts by the workers, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(7) provides a timely and accurate method of reporting to the commissioner necessary information regarding medical and health care service cost and utilization to enable the commissioner to determine the effectiveness of the plan;

(8) authorizes workers to receive compensable treatment from a health care provider who is not a member of the managed care plan, if that provider maintains the employee's medical records and has a documented history of treatment with the employee and agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the health care provider agrees to comply with all the rules, terms, and conditions of the managed care plan;

(9) authorizes necessary emergency medical treatment for an injury provided by a health care provider not a part of the managed care plan;

(10) does not discriminate against or exclude from participation in the plan any category of health care provider and includes an adequate number of each category of health care providers to give workers convenient geographic accessibility to all categories of providers and adequate flexibility to choose health care providers from among those who provide services under the plan;

(11) provides an employee the right to change health care providers under the plan at least once; and

(12) complies with any other requirement the commissioner determines is necessary to provide quality medical services and health care to injured workers.

The commissioner may accept findings, licenses, or certifications of other state agencies as satisfactory evidence of compliance with a particular requirement of this subdivision.

Subd. 3. **Dispute resolution.** An employee must exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the commissioner or a compensation judge on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan on the issue of a rating for a disability, the employee may seek a disability rating from a health care provider outside of the managed care organization. The employer is liable for the reasonable fees of the outside provider as limited by the medical fee schedule adopted under this chapter.

Subd. 4. **Access to all health care disciplines.** The commissioner may refuse to certify or may revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any health care provider profession. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the commissioner has adopted standards of treatment, the standards adopted by the commissioner.

Subd. 5. **Revocation, suspension, and refusal to certify; penalties and enforcement.** (a) The commissioner shall refuse to certify or shall revoke or suspend the certification of a managed care plan if the commissioner finds that the plan for providing medical or health care services fails to meet the requirements of this section, or service under the plan is not being provided in accordance with the terms of a certified plan.

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

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

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

(3) the effect or potential effect of the violation or noncompliance on workers' understanding of their rights and obligations under the workers' compensation law and rules;

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

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

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

(c) If the commissioner, for any reason, has cause to believe that a managed care plan has or may violate a statute or rule or a provision of the managed care plan as certified, the commissioner may, before commencing action under paragraph (a) or (b), call a conference with the managed care plan and other persons who may be involved in the suspected violation or noncompliance for the purpose of ascertaining the facts

relating to the suspected violation or noncompliance and arriving at an adequate and effective means of correcting or preventing the violation or noncompliance. The commissioner may enter into stipulated consent agreements with the managed care plan for corrective or preventive action or the amount of the penalty to be paid. Proceedings under this paragraph shall not be governed by any formal procedural requirements, and may be conducted in a manner the commissioner deems appropriate under the circumstances.

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

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

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

Subd. 6. **Rules.** The commissioner may adopt rules necessary to implement this section.

History: *1992 c 510 art 4 s 13; 1995 c 231 art 2 s 62,63; 1997 c 7 art 5 s 14,15; 2001 c 123 s 9*

176.136 MEDICAL FEE REVIEW.

Subdivision 1. **Schedule.** (a) The commissioner shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups.

(b) The procedures established by the commissioner must limit, in accordance with subdivisions 1a, 1b, and 1c, the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive must be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures must incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to ensure that quality hospital care is available to injured employees.

Subd. 1a. **Relative value fee schedule.** The liability of an employer for services included in the medical fee schedule is limited to the maximum fee allowed by the schedule in effect on the date of the medical service, or the provider's actual fee, whichever is lower. The medical fee schedule effective on October 1, 1991, remains in effect until the commissioner adopts a new schedule by permanent rule. The commissioner shall adopt permanent rules regulating fees allowable for medical, chiropractic, podiatric, surgical, and other health care provider treatment or service, including those provided to hospital outpatients, by implementing a relative value fee schedule to be

effective on October 1, 1993. The commissioner may adopt by reference the relative value fee schedule adopted for the federal Medicare program or a relative value fee schedule adopted by other federal or state agencies. The relative value fee schedule must contain reasonable classifications including, but not limited to, classifications that differentiate among health care provider disciplines. The conversion factors for the original relative value fee schedule must reasonably reflect a 15 percent overall reduction from the medical fee schedule most recently in effect. The reduction need not be applied equally to all treatment or services, but must represent a gross 15 percent reduction.

After permanent rules have been adopted to implement this section, the conversion factors must be adjusted annually on October 1 by no more than the percentage change computed under section 176.645, but without the annual cap provided by that section. The commissioner shall annually give notice in the State Register of the adjusted conversion factors and may also give annual notice of any additions, deletions, or changes to the relative value units or service codes adopted by the federal Medicare program. The relative value units may be statistically adjusted in the same manner as for the original workers' compensation relative value fee schedule. The notices of the adjusted conversion factors and additions, deletions, or changes to the relative value units and service codes is in lieu of the requirements of chapter 14. The commissioner shall follow the requirements of section 14.386, paragraph (a). The annual adjustments to the conversion factors and the medical fee schedules adopted under this section, including all previous fee schedules, are not subject to expiration under section 14.386, paragraph (b).

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

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

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

Subd. 1c. **Charges for independent medical examinations.** The commissioner shall adopt rules that reasonably limit amounts which may be charged for, or in connection with, independent or adverse medical examinations requested by any party, including the amount that may be charged for depositions, witness fees, or other expenses. No party may pay fees above the amount in the schedule.

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

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

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

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

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

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

Subd. 3. **Report.** The commissioner shall contract with a review organization as defined in section 145.61 for the purposes listed in section 145.61, subdivision 5, and report to the legislature on January 15 of every odd-numbered year, regarding the delivery of medical and health care services, including rehabilitation services, under the workers' compensation laws of this state.

The commissioner shall also conduct a study of the qualifications and background of rehabilitation consultants and vendors providing services under section 176.102 for the purpose of determining whether there are adequate professional standards provided, including safeguards to protect against conflicts of interest.

Subd. 4. [Repealed, 1987 c 332 s 117]

Subd. 5. [Repealed, 1992 c 510 art 4 s 26]

History: *Ex1979 c 3 s 45; 1981 c 346 s 87; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1983 c 290 s 108; 1984 c 432 art 2 s 25; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1985 c 234 s 11; 1987 c 332 s 39; 1989 c 282 art 2 s 51,52; 1992 c 510 art 4 s 14-18; 1993 c 194 s 6; 1995 c 231 art 2 s 64-66; 1996 c 374 s 4; 1997 c 187 art 5 s 26*

176.1361 TESTIMONY OF PROVIDERS.

When the commissioner, a compensation judge, or the court of appeals has reason to believe that a medical or other provider of treatment services has submitted false testimony or a false report in any proceeding under this chapter, the commissioner, compensation judge, or the court of appeals shall refer the matter to an appropriate licensing body or other professional certifying organization for review and recommendations. Based upon their recommendation, the medical services review board, after hearing, may bar the provider from making an appearance, and disallow the admission into evidence of written reports of the provider, in any proceeding under this chapter for a period not to exceed one year in the first instance and three years in the second instance, and may permanently bar the provider from appearance and the provider's reports from admission in evidence thereafter.

History: *1981 c 346 s 88; 1986 c 444; 1987 c 332 s 40*

176.137 REMODELING OF RESIDENCE; HANDICAPPED EMPLOYEES.

Subdivision 1. **Requirement; determination.** The employer shall furnish to an employee who is permanently disabled because of a personal injury suffered in the course of employment with that employer such alteration or remodeling of the employee's principal residence as is reasonably required to enable the employee to move freely into and throughout the residence and to otherwise adequately accommodate the disability. Any remodeling or alteration shall be furnished only when the division or workers' compensation court of appeals determines that the injury is to such a degree that the employee is substantially prevented from functioning within the principal residence.

Subd. 2. **Cost.** The pecuniary liability of an employer for remodeling or alteration required by this section is limited to prevailing costs in the community for remodeling or alteration of that type.

Subd. 3. **New residence.** Where the alteration or remodeling of the employee's residence is not practicable, the award may be to purchase or lease a new or different residence if the new or different residence would better accommodate the disability.

Subd. 4. **Certification.** No award may be made except upon the certification of a licensed architect to the division or workers' compensation court of appeals that the proposed alteration or remodeling of an existing residence or the building or purchase of a new or different residence is reasonably required for the purposes specified in subdivision 1. The council on disability shall advise the division or workers' compensation court of appeals as provided in section 256.482, subdivision 5, clause (7). The alteration or remodeling of an existing residence, or the building or purchase of a new home must be done under the supervision of a licensed architect relative to the specific needs to accommodate the handicap.

Subd. 5. **Limitation.** An employee is limited to $60,000 under this section for each personal injury.

History: *1977 c 177 s 1; 1986 c 444; 1987 c 354 s 8; 1992 c 510 art 4 s 19*

176.138 MEDICAL DATA; ACCESS.

(a) Notwithstanding any other state laws related to the privacy of medical data or any private agreements to the contrary, the release in writing, by telephone discussion, or otherwise of medical data related to a current claim for compensation under this chapter to the employee, employer, or insurer who are parties to the claim, or to the department of labor and industry, shall not require prior approval of any party to the claim. This section does not preclude the release of medical data under section 175.10 or 176.231, subdivision 9. Requests for pertinent data shall be made, and the date of discussions with medical providers about medical data shall be confirmed, in writing to the person or organization that collected or currently possesses the data. Written medical data that exists at the time the request is made shall be provided by the collector or possessor within seven working days of receiving the request. Nonwritten medical data may be provided, but is not required to be provided, by the collector or possessor. In all cases of a request for the data or discussion with a medical provider about the data, except when it is the employee who is making the request, the employee shall be sent written notification of the request by the party requesting the data at the same time the request is made or a written confirmation of the discussion. This data shall be treated as private data by the party who requests or receives the data and the party receiving the data shall provide the employee or the employee's attorney with a copy of all data requested by the requester.

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

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

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

subject of the data which is used in a manner not allowed by this paragraph has a cause of action for actual damages and punitive damages for a minimum of $5,000.

History: *1983 c 290 s 109; 1984 c 432 art 2 s 26; 1985 c 234 s 12; 1986 c 461 s 22; 1990 c 522 s 4; 1992 c 510 art 3 s 15; 1995 c 231 art 2 s 67; 2001 c 123 s 10*

176.139 NOTICE OF RIGHTS POSTED.

Subdivision 1. **Posting requirement.** All employers required or electing to carry workers' compensation coverage in the state of Minnesota shall post and display in a conspicuous location a notice, in a form approved by the commissioner, advising employees of their rights and obligations under this chapter, assistance available to them, and the operation of the workers' compensation system, the name and address of the workers' compensation carrier insuring them or the fact that the employer is self-insured.

The notice shall be displayed at all locations where the employer is engaged in business.

Subd. 2. **Failure to post; penalty.** The commissioner may assess a penalty of $500 against the employer payable to the commissioner for deposit in the assigned risk safety account if, after notice from the commissioner, the employer violates the posting requirement of this section.

History: *Ex1979 c 3 s 46; 1987 c 332 s 41; 1992 c 510 art 3 s 16; 1995 c 231 art 2 s 68; 2002 c 262 s 14*

176.14 [Repealed, 1953 c 755 s 83]

176.141 NOTICE OF INJURY.

Unless the employer has actual knowledge of the occurrence of the injury or unless the injured worker, or a dependent or someone in behalf of either, gives written notice thereof to the employer within 14 days after the occurrence of the injury, then no compensation shall be due until the notice is given or knowledge obtained. If the notice is given or the knowledge obtained within 30 days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation unless the employer shows prejudice by such want, defect, or inaccuracy, and then only to the extent of the prejudice. If the notice is given or the knowledge obtained within 180 days, and if the employee or other beneficiary shows that failure to give prior notice was due to the employee's or beneficiary's mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of the employer or agent, then compensation may be allowed, unless the employer shows prejudice by failure to receive the notice, in which case the amount of compensation shall be reduced by a sum which fairly represents the prejudice shown. Unless knowledge is obtained or written notice given within 180 days after the occurrence of the injury no compensation shall be allowed, except that an employee who is unable, because of mental or physical incapacity, to give notice to the employer within 180 days from the injury shall give the prescribed notice within 180 days from the time the incapacity ceases.

History: *1953 c 755 s 14; 1977 c 342 s 19; Ex1979 c 3 s 47; 1986 c 444*

176.145 SERVICE OF NOTICE, FORM.

The notice referred to in section 176.141 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by certified mail to the employer at the last known residence or business place thereof within the state, and may be substantially in the following form:

"NOTICE

You are hereby notified that an injury was received by (Name) ....., who was in your employment at (place) ....., while engaged as (kind of work) ....., on

or about the ..... day of ....., ..., and who is now located at (give town, street, and number) .....; that, so far as now known, the nature of the injury was ....., and that compensation may be claimed therefor.

Dated ....., ... (signed) .....

(giving address)"

No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received a specified injury in the course of employment on or about a specified time, at or near a certain place specified.

History: *1953 c 755 s 15; 1978 c 674 s 60; 1986 c 444; 1998 c 254 art 1 s 107*

176.15 [Repealed, 1953 c 755 s 83]

176.151 TIME LIMITATIONS.

The time within which the following acts shall be performed shall be limited to the following periods, respectively:

(1) Actions or proceedings by an injured employee to determine or recover compensation, three years after the employer has made written report of the injury to the commissioner of the department of labor and industry, but not to exceed six years from the date of the accident.

(2) Actions or proceedings by dependents to determine or recover compensation, three years after the receipt by the commissioner of the department of labor and industry of written notice of death, given by the employer, but not to exceed six years from the date of injury, provided, however, if the employee was paid compensation for the injury from which the death resulted, such actions or proceedings by dependents must be commenced within three years after the receipt by the commissioner of the department of labor and industry of written notice of death, given by the employer, but not to exceed six years from the date of death. In any such case, if a dependent of the deceased, or any one in the dependent's behalf, gives written notice of such death to the commissioner of the department of labor and industry, the commissioner shall forthwith give written notice to the employer of the time and place of such death. In case the deceased was a native of a foreign country and leaves no known dependent within the United States, the commissioner of the department of labor and industry shall give written notice of the death to the consul or other representative of the foreign country forthwith.

(3) In case of physical or mental incapacity, other than minority, of the injured person or dependents to perform or cause to be performed any act required within the time specified in this section, the period of limitation in any such case shall be extended for three years from the date when the incapacity ceases.

(4) In the case of injury caused by X-rays, radium, radioactive substances or machines, ionizing radiation, or any other occupational disease, the time limitations otherwise prescribed by Minnesota Statutes 1961, chapter 176, and acts amendatory thereof, shall not apply, but the employee shall give notice to the employer and commence an action within three years after the employee has knowledge of the cause of such injury and the injury has resulted in disability.

History: *1953 c 755 s 16; 1965 c 419 s 1; Ex1967 c 40 s 14; 1973 c 388 s 39; 1973 c 643 s 10; 1975 c 359 s 17; 1986 c 444*

176.152 [Repealed, 1983 c 290 s 173]

176.155 EXAMINATIONS.

Subdivision 1. **Employer's physician.** The injured employee must submit to examination by the employer's physician, if requested by the employer, and at reasonable times thereafter upon the employer's request. The examination must be scheduled at a location within 150 miles of the employee's residence unless the employer can show cause to the department to order an examination at a location further from the employee's residence. The employee is entitled upon request to have a personal

physician present at any such examination. Each party shall defray the cost of that party's physician. Any report or written statement made by the employer's physician as a result of an examination of the employee, regardless of whether the examination preceded the injury or was made subsequent to the injury, shall be made available, upon request and without charge, to the injured employee or representative of the employee. The employer shall pay reasonable travel expenses incurred by the employee in attending the examination including mileage, parking, and, if necessary, lodging and meals. The employer shall also pay the employee for any lost wages resulting from attendance at the examination. A self-insured employer or insurer who is served with a claim petition pursuant to section 176.271, subdivision 1, or 176.291, shall schedule any necessary examinations of the employee, if an examination by the employer's physician or health care provider is necessary to evaluate benefits claimed. The examination shall be completed and the report of the examination shall be served on the employee and filed with the commissioner within 120 days of service of the claim petition.

No evidence relating to the examination or report shall be received or considered by the commissioner, a compensation judge, or the court of appeals in determining any issues unless the report has been served and filed as required by this section, unless a written extension has been granted by the commissioner or compensation judge. The commissioner or a compensation judge shall extend the time for completing the adverse examination and filing the report upon good cause shown. The extension must not be for the purpose of delay and the insurer must make a good faith effort to comply with this subdivision. Good cause shall include but is not limited to:

(1) that the extension is necessary because of the limited number of physicians or health care providers available with expertise in the particular injury or disease, or that the extension is necessary due to the complexity of the medical issues, or

(2) that the extension is necessary to gather additional information which was not included on the petition as required by section 176.291.

Subd. 2. **Neutral physician.** In each case of dispute as to the injury the commissioner of labor and industry, or in case of a hearing the compensation judge conducting the hearing, or the workers' compensation court of appeals if the matter is before it, may with or without the request of any interested party, designate a neutral physician to make an examination of the injured worker and report the findings to the commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals, as the case may be; provided that the request of the interested party must comply with the rules of the commissioner of labor and industry and the workers' compensation court of appeals regulating the proper time and forms for the request, and further provided that when an interested party requests, not later than 30 days prior to a scheduled prehearing conference, that a neutral physician be designated, the compensation judge shall make such a designation. When a party has requested the designation of a neutral physician prior to a prehearing conference, that party may withdraw the request at any time prior to the hearing. The commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals, as the case may be, may request the neutral physician to answer any particular question with reference to the medical phases of the case, including questions calling for an opinion as to the cause and occurrence of the injury insofar as medical knowledge is relevant in the answer. A copy of the signed certificate of the neutral physician shall be mailed to the parties in interest and either party, within five days from date of mailing, may demand that the physician be produced for purposes of cross-examination. The signed certificate of a neutral physician is competent evidence of the facts stated therein. The expense of the examination shall be paid as ordered by the commissioner of labor and industry, compensation judge, or the workers' compensation court of appeals.

Subd. 3. **Refusal to be examined.** If the injured employee refuses to comply with any reasonable request for examination, the right to compensation may be suspended by order of the commissioner or a compensation judge, and no compensation shall be paid while the employee continues in the refusal.

Subd. 4. **Autopsies.** In all death claims where the cause of death is obscure or disputed any interested party may request an autopsy and, if denied, the compensation judge, or workers' compensation court of appeals upon appeal, upon petition and proper showing, shall order an autopsy. If any dependent claiming compensation or benefits does not consent to such autopsy within the time fixed by the order, all dependents shall forfeit all rights to compensation. The party demanding an autopsy shall bear the cost thereof.

Subd. 5. **Testimony of health care provider.** Any physician or other health care provider designated by the commissioner or compensation judge, or whose services are furnished or paid for by the employer, or who treats, examines, or is present at any examination, of an injured employee, may be required to testify as to any knowledge acquired by the physician or health care provider in the course of the treatment or examination relative to the injury or disability resulting from the injury only in cases involving occupational disease, cardiopulmonary injuries or diseases, injuries resulting from cumulative trauma, issues of apportionment of liability, and mental disorders, or upon an order of a compensation judge. In all other cases all evidence related to health care must be submitted by written report as prescribed by the chief administrative law judge. A party may cross-examine by deposition a physician or health care provider who has examined or treated the employee. If a physician or health care provider is not available for cross-examination prior to the hearing and the physician's or health care provider's written report is submitted at the hearing, the compensation judge shall, upon request of the adverse party, require the physician or health care provider to testify at the hearing or to be present at a posthearing deposition for the purpose of being cross-examined by the adverse party. All written evidence relating to health care must be submitted prior to or at the time of the hearing and no evidence shall be considered which was submitted after the hearing unless the compensation judge orders otherwise, and, in no case later than 30 days following the final hearing date unless an extension is granted by the chief administrative law judge. Existing medical reports must be submitted with a claim petition or answer as provided in sections 176.291 and 176.321. All reports shall substantially conform to rules prescribed by the chief administrative law judge. When a written report is used to present the testimony, it shall be admitted into evidence without the necessity for foundational testimony and shall be considered as prima facie evidence of the opinions it contains.

History: *1953 c 755 s 17; 1969 c 276 s 2; 1973 c 388 s 40-43; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 342 s 20; Ex1979 c 3 s 48; 1983 c 290 s 110,111; 1984 c 640 s 32; 1986 c 444; 1987 c 332 s 42-44; 1992 c 510 art 4 s 20; 2002 c 262 s 15*

176.16 [Repealed, 1953 c 755 s 83]

176.161 ALIEN DEPENDENTS.

Subdivision 1. **Residing outside United States.** In case a deceased employee for whose injury or death compensation is payable leaves surviving an alien dependent residing outside the United States the commissioner shall direct the payment of all compensation due the dependent to be made to the duly accredited consular officer of the country of which the beneficiary is a citizen residing within the state, or to a designated representative residing within the state; or, if the commissioner believes that the interests of the dependent will be better served and at any time prior to the final settlement the dependent files with the commissioner a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, the commissioner may appoint such person. If it appears necessary to institute proceedings to enforce payment of compensation due the dependent, the commissioner may permit the consular officer to institute these proceedings. If during the pendency of these proceedings, such power of attorney is filed by the alien dependent, the commissioner shall then determine whether such attorney in fact be substituted to represent such dependent or if the consular officer or a representative continue therein. The person so appointed may carry on proceedings to settle all claims for compensation and receive for distribution to such dependent all compensation

arising under this chapter. The settlement and distribution of the funds shall be made only on the written order of the commissioner. The person so appointed shall furnish a bond satisfactory to the commissioner, conditioned upon the proper application of the money received. Before the bond is discharged, the person so appointed shall file with the commissioner a verified account of receipts and disbursements of such compensation.

Subd. 2. **List of dependents.** Before receiving the first payment of such compensation and thereafter when ordered so to do by the commissioner of the department of labor and industry, the person so appointed shall furnish to the commissioner of the department of labor and industry a sworn statement containing a list of the dependents showing the name, age, residence, extent of dependency, and relationship to the deceased of each dependent.

Subd. 3. **Certain proceedings legalized.** In any proceedings heretofore taken to recover compensation for any alien dependent carried on for at least five years in the name of a person as petitioner, designated by power of attorney from the alien dependent, the right of this designated petitioner to conclude the proceedings or final settlement and to fully bind all parties thereby is hereby legalized in all respects.

History: *1953 c 755 s 18; 1973 c 388 s 44,45; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 90; 1986 c 444*

176.165 LUMP SUM PAYMENTS.

The amounts of compensation payable periodically may be commuted to one or more lump sum payments only by order of the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal, and on such terms and conditions as the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals prescribes. In making these commutations the lump sum payments shall amount, in the aggregate, to a sum equal to the present value of all future installments of the compensation calculated on a five percent basis.

History: *1953 c 755 s 19; 1973 c 388 s 46; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78*

176.17 [Repealed, 1953 c 755 s 83]

176.171 PAYMENT TO TRUSTEE.

At any time after the amount of any award or commutation is finally determined, a sum equal to the present value of all future installments of the compensation, calculated on a five percent basis, where death or the nature of the injury renders the amount of future payments certain, may be paid by the employer to any bank, mutual savings bank, savings association, or trust company in this state approved and designated by the commissioner of the department of labor and industry, compensation judge, or workers' compensation court of appeals in cases upon appeal. Such sum, together with all interest thereon, shall be held in trust for the employee or for the dependents of the employee, who shall have no further recourse against the employer. The employer's payment of this sum evidenced by a receipt of the trustee filed with the commissioner of the department of labor and industry, operates as a satisfaction of the compensation liability as to the employer. The trustee shall make payments from the fund in the same amounts and at the same time as are required of the employer until the fund and interest is exhausted, except when otherwise ordered by the commissioner of the department of labor and industry. In the appointment of trustee the preference shall be given to the choice of the injured employee or the choice of the dependents of the deceased employee.

History: *1953 c 755 s 20; 1971 c 422 s 3; 1973 c 388 s 47; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1995 c 202 art 1 s 25*

176.175 RIGHT TO COMPENSATION, AWARD.

Subdivision 1. **Preferred claim.** The right to compensation and all compensation awarded any injured employee or for death claims to dependents have the same preference against the assets of the employer as unpaid wages for labor. This compensation does not become a lien on the property of third persons by reason of this preference.

Subd. 2. **Nonassignability.** No claim for compensation or settlement of a claim for compensation owned by an injured employee or dependents is assignable. Except as otherwise provided in this chapter, any claim for compensation owned by an injured employee or dependents is exempt from seizure or sale for the payment of any debt or liability.

History: *1953 c 755 s 21; 1986 c 444; 1999 c 212 s 1*

176.178 FRAUD.

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

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

History: *1992 c 510 art 2 s 6; 1995 c 231 art 1 s 25*

176.179 RECOVERY OF OVERPAYMENTS.

Notwithstanding section 176.521, subdivision 3, or any other provision of this chapter to the contrary, except as provided in this section, no lump sum or weekly payment, or settlement, which is voluntarily paid to an injured employee or the survivors of a deceased employee in apparent or seeming accordance with the provisions of this chapter by an employer or insurer, or is paid pursuant to an order of the workers' compensation division, a compensation judge, or court of appeals relative to a claim by an injured employee or the employee's survivors, and received in good faith by the employee or the employee's survivors shall be refunded to the paying employer or insurer in the event that it is subsequently determined that the payment was made under a mistake in fact or law by the employer or insurer. When the payments have been made to a person who is entitled to receive further payments of compensation for the same injury, the mistaken compensation may be taken as a partial credit against future periodic benefits. The credit applied against further payments of temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, retraining benefits, death benefits, or weekly payments of economic recovery or impairment compensation shall not exceed 20 percent of the amount that would otherwise be payable.

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

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

History: *1974 c 486 s 5; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 49; 1983 c 290 s 112; 1986 c 461 s 23; 1987 c 332 s 45; 1992 c 510 art 1 s 11; 1995 c 231 art 1 s 26*

176.18 [Repealed, 1953 c 755 s 83]

176.181 INSURANCE.

Subdivision 1. **Authorization.** Any employer responsible for compensation may insure the risk in any manner authorized by law.

Subd. 2. **Compulsory insurance; self-insurers.** (1) Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain a written order from the commissioner of commerce exempting the employer from insuring liability for compensation and permitting self-insurance of the liability. The terms, conditions and requirements governing self-insurance shall be established by the commissioner pursuant to chapter 14. The commissioner of commerce shall also adopt, pursuant to clause (2)(c), rules permitting two or more employers, whether or not they are in the same industry, to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as group self-insurers. With the approval of the commissioner of commerce, any employer may exclude medical, chiropractic and hospital benefits as required by this chapter. An employer conducting distinct operations at different locations may either insure or self-insure the other portion of operations as a distinct and separate risk. An employer desiring to be exempted from insuring liability for compensation shall make application to the commissioner of commerce, showing financial ability to pay the compensation, whereupon by written order the commissioner of commerce, on deeming it proper, may make an exemption. An employer may establish financial ability to pay compensation by providing financial statements of the employer to the commissioner of commerce. Upon ten days' written notice the commissioner of commerce may revoke the order granting an exemption, in which event the employer shall immediately insure the liability. As a condition for the granting of an exemption the commissioner of commerce may require the employer to furnish security the commissioner of commerce considers sufficient to insure payment of all claims under this chapter, consistent with subdivision 2b. If the required security is in the form of currency or negotiable bonds, the commissioner of commerce shall deposit it with the state treasurer. In the event of any default upon the part of a self-insurer to abide by any final order or decision of the commissioner of labor and industry directing and awarding payment of compensation and benefits to any employee or the dependents of any deceased employee, then upon at least ten days' notice to the self-insurer, the commissioner of commerce may by written order to the state treasurer require the treasurer to sell the pledged and assigned securities or a part thereof necessary to pay the full amount of any such claim or award with interest thereon. This authority to sell may be exercised from time to time to satisfy any order or award of the commissioner of labor and industry or any judgment obtained thereon. When securities are sold the money obtained shall be deposited in the state treasury to the credit of the commissioner of commerce and awards made against any such self-insurer by the commissioner of commerce shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commissioner of commerce and approved by the commissioner of finance out of the proceeds of the sale of securities. Where the security is in the form of a surety bond or personal guaranty the commissioner of commerce, at any time, upon at least ten days' notice and opportunity to be heard, may require the surety to pay the amount of the award, the payments to be enforced in like manner as the award may be enforced.

(2)(a) No association, corporation, partnership, sole proprietorship, trust or other business entity shall provide services in the design, establishment or administration of a group self-insurance plan under rules adopted pursuant to this subdivision unless it is licensed, or exempt from licensure, pursuant to section 60A.23, subdivision 8, to do so by the commissioner of commerce. An applicant for a license shall state in writing the type of activities it seeks authorization to engage in and the type of services it seeks authorization to provide. The license shall be granted only when the commissioner of commerce is satisfied that the entity possesses the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered. The commissioner of commerce may issue a license subject to restrictions or limitations,

including restrictions or limitations on the type of services which may be supplied or the activities which may be engaged in. The license is for a two-year period.

(b) To assure that group self-insurance plans are financially solvent, administered in a fair and capable fashion, and able to process claims and pay benefits in a prompt, fair and equitable manner, entities licensed to engage in such business are subject to supervision and examination by the commissioner of commerce.

(c) To carry out the purposes of this subdivision, the commissioner of commerce may promulgate administrative rules pursuant to sections 14.001 to 14.69. These rules may:

(i) establish reporting requirements for administrators of group self-insurance plans;

(ii) establish standards and guidelines consistent with subdivision 2b to assure the adequacy of the financing and administration of group self-insurance plans;

(iii) establish bonding requirements or other provisions assuring the financial integrity of entities administering group self-insurance plans;

(iv) establish standards, including but not limited to minimum terms of membership in self-insurance plans, as necessary to provide stability for those plans;

(v) establish standards or guidelines governing the formation, operation, administration, and dissolution of self-insurance plans; and

(vi) establish other reasonable requirements to further the purposes of this subdivision.

Subd. 2a. **Application fee.** Every initial application filed pursuant to subdivision 2 requesting authority to self-insure shall be accompanied by a nonrefundable fee of $4,000. When an employer seeks to be added as a member of an existing approved group under section 79A.03, subdivision 6, the proposed new member shall pay a nonrefundable $400 application fee to the commissioner at the time of application. Each annual report due August 1 under section 79A.03, subdivision 9, shall be accompanied by an annual fee of $500.

Subd. 2b. **Acceptable securities.** The following are acceptable securities and surety bonds for the purpose of funding self-insurance plans and group self-insurance plans:

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

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

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

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

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

(6) surety bonds issued by a corporate surety authorized by the commissioner of commerce to transact such business in the state;

(7) obligations of or instruments unconditionally guaranteed by Minnesota insurance companies, whose long-term debt rating is at least AA-, Aa3, or their equivalent, by at least two nationally recognized rating agencies and whose rating is A+ by A. M. Best, Inc.; and

(8) any guarantee from the United States government whereby the payment of the workers' compensation liability of a self-insurer is guaranteed; and bonds which are the general obligation of the Minnesota housing finance agency.

Subd. 3. **Failure to insure, penalty.** (a) The commissioner, having reason to believe that an employer is in violation of subdivision 2, may issue an order directing the employer to comply with subdivision 2, to refrain from employing any person at any time without complying with subdivision 2, and to pay a penalty of up to $1,000 per employee per week during which the employer was not in compliance.

(b) An employer shall have ten working days to contest such an order by filing a written objection with the commissioner, stating in detail its reasons for objecting. If the commissioner does not receive an objection within ten working days, the commissioner's order shall constitute a final order not subject to further review, and violation of that order shall be enforceable by way of civil contempt proceedings in district court. If the commissioner does receive a timely objection, the commissioner shall refer the matter to the office of administrative hearings for an expedited hearing before a compensation judge. The compensation judge shall issue a decision either affirming, reversing, or modifying the commissioner's order within ten days of the close of the hearing. If the compensation judge affirms the commissioner's order, the compensation judge may order the employer to pay an additional penalty if the employer continued to employ persons without complying with subdivision 2 while the proceedings were pending.

(c) All penalties assessed under this subdivision shall be payable to the commissioner for deposit in the assigned risk safety account. Penalties assessed under this section shall constitute a lien for government services pursuant to section 514.67, on all the employer's property and shall be subject to the Revenue Recapture Act in chapter 270A.

(d) For purposes of this subdivision, the term "employer" includes any owners or officers of a corporation who direct and control the activities of employees.

Subd. 4. **Gross misdemeanor.** In addition to being subject to the penalty prescribed in subdivision 3, any employer willfully and intentionally failing to comply with the provisions of subdivision 2 is guilty of a gross misdemeanor.

Subd. 5. **Indemnification.** A political subdivision or association of political subdivisions which is self insured, may be indemnified by the special compensation fund for payments for which the political subdivision or association is liable under this chapter. This indemnification shall be made only if all other assets together with the interest earned thereon which have been contributed by the subdivision pursuant to rules adopted by the commissioner of commerce as provided for in this section have been exhausted.

The state treasurer, as custodian of the fund, has a cause of action for all money paid out or to be paid out if the political subdivisions or association of subdivisions fail to meet a repayment schedule which the treasurer establishes at the time the request for indemnification is granted.

Subd. 6. **Financial statements.** No employer shall be required to provide financial statements certified by an "independent certified public accountant" or "certified public accountant" as a condition of approval for group self-insurance.

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

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

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

History: *1953 c 755 s 22; 1959 c 265 s 1; 1971 c 863 s 3; 1973 c 388 s 48,49; 1973 c 492 s 14; 1978 c 797 s 4; Ex1979 c 3 s 50,51; 1981 c 346 s 91-93; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1983 c 290 s 113; 1984 c 592 s 80,81; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 332 s 46; 1987 c 384 art 2 s 1; 1988 c 674 s 18; 1990 c 422 s 10; 1992 c 510 art 3 s 17,18; 1992 c 545 art 2 s 1,2; 1994 c 483 s 1; 1994 c 485 s 60; 1995 c 231 art 2 s 69,70; 1995 c 233 art 2 s 56; 1995 c 258 s 62; 1997 c 200 art 1 s 64; 1999 c 223 art 2 s 33; 2002 c 262 s 16*

176.1812 COLLECTIVE BARGAINING AGREEMENTS.

Subdivision 1. **Requirements.** Upon appropriate filing, the commissioner, compensation judge, workers' compensation court of appeals, and courts shall recognize as valid and binding a provision in a collective bargaining agreement between a qualified employer or qualified groups of employers engaged in construction, construction maintenance, and related activities and the certified and exclusive representative of its employees to establish certain obligations and procedures relating to workers' compensation. For purposes of this section, "qualified employer" means any self-insured employer, any employer, through itself or any affiliate as defined in section 60D.15, subdivision 2, who is responsible for the first $100,000 or more of any claim, or a private employer developing or projecting an annual workers' compensation premium, in Minnesota, of $250,000 or more. For purposes of this section, a "qualified group of employers" means a group of private employers engaged in workers' compensation group self-insurance complying with chapter 79A, or a group of private employers who purchase workers' compensation insurance as a group, which develops or projects annual workers' compensation insurance premiums of $2,000,000 or more. This agreement must be limited to, but need not include, all of the following:

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

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

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

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

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

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

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

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

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

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

(ii) number of claims filed;

(iii) average cost per claim;

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

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

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

(vii) employer's safety history;

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

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

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

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

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

Subd. 6. **Pilot program.** The commissioner shall establish a pilot program ending December 31, 2004, in which up to 20 private and up to 20 public employers shall be authorized to enter into valid agreements under this section with their employees. The agreements shall be recognized and enforced as provided by this section. Employers shall participate in the pilot program through collectively bargained agreements with the certified and exclusive representatives of their employees and without regard to the dollar insurance premium limitations in subdivision 1. A group of employers engaged in workers' compensation group self-insurance complying with chapter 79A, or a group of employers who purchase workers' compensation insurance as a group, may not participate in any pilot program under this subdivision.

Subd. 7. **Rules.** The commissioner may adopt rules necessary to implement this section.

History: *1995 c 231 art 2 s 71; 1996 c 374 s 5,6; 1997 c 7 art 5 s 16; 2001 c 123 s 11*

176.182 BUSINESS LICENSES OR PERMITS; COVERAGE REQUIRED.

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

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

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

History: *1981 c 346 s 94; 1983 c 290 s 114; 1987 c 332 s 47; 1992 c 510 art 3 s 19; 1995 c 231 art 2 s 72; 2002 c 262 s 17*

176.183 UNINSURED AND SELF-INSURED EMPLOYERS; BENEFITS TO EMPLOYEES AND DEPENDENTS; LIABILITY OF EMPLOYER.

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

Subd. 1a. [Repealed, 1988 c 674 s 22]

Subd. 2. After a hearing on a petition for benefits and prior to issuing an order against the special compensation fund to pay compensation benefits to an employee, a compensation judge shall first make findings regarding the insurance status of the employer and its liability. The special compensation fund shall not be found liable in the absence of a finding of liability against the employer. Where the liable employer is found after the hearing to be not insured or self-insured as provided for in this chapter, the compensation judge shall assess and order the employer to pay all compensation benefits to which the employee is entitled, the amount for actual and necessary disbursements expended by the special compensation fund, and a penalty in the amount of 65 percent of all compensation benefits ordered to be paid. The award issued against an employer after the hearing shall constitute a lien for government services pursuant to section 514.67 on all property of the employer and shall be subject to the provisions of the Revenue Recapture Act in chapter 270A. The special compensation fund may enforce the terms of that award in the same manner as a district court judgment. The commissioner of labor and industry, in accordance with the terms of the order awarding

compensation, shall pay compensation to the employee or the employee's dependent from the special compensation fund. The commissioner of labor and industry shall certify to the commissioner of finance and to the legislature annually the total amount of compensation paid from the special compensation fund under subdivision 1. Compensation paid under this section shall remain a liability of the special compensation fund and shall be financed by the percentage assessed under section 176.129.

Subd. 3. (a) Notwithstanding subdivision 2, the commissioner may direct payment from the special compensation fund for compensation payable pursuant to subdivision 1, including benefits payable under sections 176.102 and 176.135, prior to issuance of an order of a compensation judge or the workers' compensation court of appeals directing payment or awarding compensation. Where payment is issued pursuant to a petition for a temporary order, the terms of any resulting order shall have the same status and be governed by the same provisions as an award issued pursuant to subdivision 2.

(b) The commissioner may suspend or terminate an order under clause (a) for good cause as determined by the commissioner.

Subd. 4. If the commissioner authorizes the special fund to commence payment without the issuance of a temporary order, the commissioner shall serve by certified mail notice upon the employer and other interested parties of the intention to commence payment. This notice shall be served at least ten calendar days before commencing payment and shall be mailed to the last known address of the parties. The notice shall include a statement that failure of the employer to respond within ten calendar days of the date of service will be deemed acceptance by the employer of the proposed action by the commissioner and will be deemed a waiver of defenses the employer has to a subrogation or indemnity action by the commissioner. At any time prior to final determination of liability, the employer may appear as a party and present defenses the employer has, whether or not an appearance by the employer has previously been made in the matter. The commissioner has a cause of action against the employer to recover compensation paid by the special fund under this section.

History: *1967 c 330 s 1; 1969 c 372 s 1; 1969 c 399 s 49; 1973 c 388 s 50; 1973 c 750 s 1,2; 1974 c 355 s 22; 1977 c 403 s 6; 1981 c 356 s 328; 1983 c 290 s 115-118; 1983 c 301 s 147; 1984 c 432 art 2 s 27; 1986 c 444; 1987 c 332 s 48,49; 1988 c 674 s 19,20; 1992 c 510 art 3 s 20; 1992 c 513 art 3 s 39; 1995 c 231 art 2 s 73,74; 1998 c 294 s 1*

176.184 INSPECTIONS; ENFORCEMENT.

Subdivision 1. **Proof of insurance.** The commissioner of labor and industry, in order to carry out the purpose of section 176.181, may request satisfactory proof of authority to self-insure workers' compensation liability or satisfactory proof of insurance coverage for workers' compensation liability. If an employer does not provide satisfactory proof as requested within seven working days of the mailing of the request, the commissioner may proceed in accordance with the provisions of subdivisions 2 to 7.

Subd. 2. **At place of employment.** In order to carry out the purposes of section 176.181, the commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to enter without delay and at reasonable times any place of employment and to inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any records pertaining to that employer's workers' compensation insurance policy, number of employees, documents governing conditions and benefits of employment, contracts with employees and their authorized representatives, and any other documents which may be relevant to the enforcement of section 176.181 and to question privately any employer, owner, operator, agent, or employee with respect to matters relevant to the enforcement of section 176.181.

Subd. 3. **Powers; commissioner and district court.** In making inspections and investigations under this chapter, the commissioner shall have the power to administer oaths, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of papers, books,

documents, records, and testimony. In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify to any matter regarding which the person may be lawfully interrogated, the district court shall, upon application of the commissioner, compel obedience in proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify.

Subd. 4. **Rights of employer and employee representative.** A representative of the employer and a representative authorized by employees shall be given an opportunity to participate in any conference or discussion held prior to, during, or after any inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees. No employee as a consequence of aiding an inspection shall lose any privilege or payment that the employee would otherwise earn.

Subd. 5. **Request for investigation by employee.** (a) Any employee or representative of an employee who believes that their employer is uninsured against workers' compensation liability, may request an inspection by giving notice to the commissioner of the belief and grounds for the belief. Any notice shall be written, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer, representative, or agent no later than the time of inspection, except that, upon the request of a person giving the notice, the employee's name and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available. If upon receipt of the notification the commissioner determines that reasonable grounds exist to believe that the employer is uninsured against workers' compensation liability, the commissioner shall make an inspection in accordance with this section as soon as practicable. If the commissioner determines that there are not reasonable grounds to believe that a violation exists, the commissioner shall so notify the employee or representative of employees in writing. Upon notification, the employee or the employee representative may request the commissioner to reconsider the determination. Upon receiving the request, the commissioner shall review the determination.

(b) The commissioner, upon receipt of a report of violation of the mandatory insurance provisions of section 176.181 or 176.185 verified by review of the department's insurance registration records and other relevant information, shall initiate a preliminary investigation to determine if reasonable grounds exist to believe that the employer is uninsured against workers' compensation liability, and upon certification of reasonable belief that the employer is uninsured the commissioner shall make an inspection in accordance with paragraph (a).

Subd. 6. **Order permitting entry.** Upon the refusal of an owner, operator, or agent in charge to permit entry as specified in this section, the commissioner may apply for an order in the district court in the county which entry was refused, to compel the employer to permit the commissioner to enter and inspect the place of employment.

Subd. 7. **Advance notice.** Advance notice may not be authorized by the commissioner except:

(1) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(2) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

(3) in other circumstances where the commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

When advance notice is given to an employer, notice shall also be given by the commissioner to the authorized representative of employees if the identity of the representative is known to the employer.

History: *1987 c 332 s 50*

176.185 POLICY OF INSURANCE.

Subdivision 1. **Notice of coverage, termination, cancellation.** (a) Within ten days after the issuance of a policy of insurance covering the liability to pay compensation under this chapter written by an insurer licensed to insure such liability in this state, the insurer shall file notice of coverage with the commissioner under rules and on forms prescribed by the commissioner. No policy shall be canceled by the insurer within the policy period nor terminated upon its expiration date until a notice in writing is delivered or mailed to the insured and filed with the commissioner, fixing the date on which it is proposed to cancel it, or declaring that the insurer does not intend to renew the policy upon the expiration date. A cancellation or termination is not effective until 30 days after written notice has been filed with the commissioner in a manner prescribed by the commissioner unless prior to the expiration of the 30-day period the employer obtains other insurance coverage or an order exempting the employer from carrying insurance as provided in section 176.181. Upon receipt of the notice, the commissioner shall notify the insured that the insured must obtain coverage from some other licensed carrier and that, if unable to do so, the insured shall request the commissioner of commerce to require the issuance of a policy as provided in section 79.251, subdivision 4. Upon a cancellation or termination of a policy by the insurer, the employer is entitled to be assigned a policy in accordance with sections 79.251 and 79.252.

(b) Notice of cancellation or termination by the insured shall be served upon the insurer by written statement mailed or delivered to the insurer. Upon receipt of the notice, the insurer shall notify the commissioner of the cancellation or termination and the commissioner shall ask the employer for the reasons for the cancellation or termination and notify the employer of the duty under this chapter to insure the employer's employees.

(c) In addition to the requirements under paragraphs (a) and (b), with respect to any trucker employer in classification 7219, 7230, 7231, or 7360 pursuant to the classification plan required to be filed under section 79.61, if the insurer or its agent has delivered or mailed a written certificate of insurance certifying that a policy in the name of a trucker employer under this paragraph is in force, then the insurer or its agent shall also deliver or mail written notice of any midterm cancellation to the trucker employer recipient of the certificate of insurance at the address listed on the certificate. If an insurer or its agent fails to mail or deliver notice of any midterm cancellation of the trucker employer's policy to the trucker employer recipient of the certificate of insurance, then the special compensation fund shall indemnify and hold harmless the recipient from any award of benefits or other damages under this chapter resulting from the failure to give notice.

Subd. 2. **Conditions.** A policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state shall in every case be subject to the conditions of this section hereinafter named.

Subd. 3. **Provision for benefits conferred by this chapter.** Where the employer's risk is carried by an insurer the insurance policy shall provide compensation for injury or death in accordance with the full benefits conferred by this chapter.

Subd. 4. **Compulsory provisions.** Every insurance policy which insures the payment of compensation shall contain provisions declaring the following:

(1) Notice to or knowledge by the employer is notice to or knowledge by the insurer.

(2) Jurisdiction of the employer for any purpose is jurisdiction of the insurer.

(3) The insurer is bound by an award rendered against the employer.

(4) The employee has an equitable lien upon any amount which the insurer owes under the policy to the employer. Where the employer is legally incapacitated or otherwise unable to receive this amount and pay it over to the employee or the employee's dependent, the insurer will pay the amount directly to the employee or dependent. This payment by the insurer directly to the employee or dependent

discharges the obligation of the insurer to the employee, and the obligations of the insurer and the employer to the employee or dependent.

(5) The insolvency or bankruptcy of the employer does not relieve the insurer from its obligation to pay compensation.

Subd. 5. **Agreement that employee pay part of cost of insurance.** Subject to the provisions of subdivision 6, an agreement between an employee and employer under which the employee is to pay any part of the cost of insuring the employer's risk is void. An employer who makes a charge or deduction prohibited by this subdivision is guilty of a misdemeanor.

Subd. 5a. **Penalty for improper withholding.** An employer who violates subdivision 5 after notice from the commissioner is subject to a penalty of 400 percent of the amount withheld from or charged the employee. The penalty shall be imposed by the commissioner. Forty percent of this penalty is payable to the commissioner for deposit in the assigned risk safety account and 60 percent is payable to the employee.

Subd. 6. **Joining risks with other risks in policy.** Where the agreement has been approved by the commissioner of the department of labor and industry the employer and employee may agree to carry the risk provided for in this chapter in conjunction with other and greater risks providing other and greater benefits in the form of additional compensation, or accident, sickness, or old age insurance or benefits. This agreement may provide for appropriate contribution by the employee.

Subd. 7. **Notice, effect.** Where an employer has properly insured the payment of compensation to an employee, and posts a notice in conspicuous places about the place of business stating that there is insurance and the name of the insurer, and files a copy of that notice with the commissioner of the department of labor and industry, the employee, or the employee's dependent, shall proceed directly against the insurer. In such case but subject to subdivision 8, the employer is released from further liability in this respect.

Subd. 8. [Repealed, 1977 c 342 s 28]

Subd. 9. **Application of section.** Where an employer, who has been exempted from the requirement to insure liability for compensation under this chapter, insures any part of that liability, this section applies to such an employer to the extent that its provisions are applicable.

Subd. 10. **Data collection contracts.** The commissioner may contract with other parties regarding the collection of appropriate data to assist in meeting the requirements of this section.

History: *1953 c 755 s 23; Ex1967 c 1 s 6; 1969 c 178 s 1; 1973 c 388 s 51-53; 1983 c 289 s 114 subd 1; 1983 c 290 s 119,120; 1984 c 655 art 1 s 92; 1985 c 248 s 70; 1986 c 444; 1987 c 332 s 51; 1990 c 522 s 5; 1992 c 510 art 3 s 21; 1995 c 231 art 2 s 75; 2002 c 262 s 18*

176.186 RECORDS FROM OTHER STATE AGENCIES.

Notwithstanding any other state law to the contrary except chapter 270B, the commissioner may obtain from the department of economic security, and office of the secretary of state, or any other state agency, upon request, names or lists of employers doing business in the state. This information shall be treated by the commissioner in the manner provided by chapter 13 and shall be used only for insurance verification by the commissioner.

History: *1983 c 290 s 121; 1984 c 514 art 3 s 2; 1Sp1985 c 14 art 9 s 75; 1989 c 184 art 2 s 8; 1994 c 483 s 1*

176.19 [Repealed, 1953 c 755 s 83]

176.191 DISPUTE BETWEEN TWO OR MORE EMPLOYERS OR INSURERS REGARDING LIABILITY.

Subdivision 1. **Order; employer, insurer, or special compensation fund payment.** Where compensation benefits are payable under this chapter, and a dispute exists

between two or more employers or two or more insurers or the special compensation fund as to which is liable for payment, the commissioner, compensation judge, or court of appeals upon appeal shall direct that one or more of the employers or insurers or the special compensation fund make payment of the benefits pending a determination of which has liability. The special compensation fund may be ordered to make payment only if it has been made a party to the claim because the petitioner has alleged that one or more of the employers is uninsured for workers' compensation under section 176.183. A temporary order may be issued under this subdivision whether or not the employers, insurers, or special compensation fund agree to pay under the order, and whether or not they agree that benefits are payable under this chapter. A temporary order shall be issued if the commissioner or compensation judge determines based on evidence submitted by the employee that benefits are payable under this chapter and if two or more employers, insurers, or the special compensation fund deny liability based on an assertion that another employer, insurer, or the special compensation fund is liable. A temporary order shall not be withheld where the denials of liability are frivolous as defined in section 176.225, subdivision 1, or nonspecific as defined in section 176.84, subdivision 1.

If the parties do not agree to a temporary order, the commissioner or compensation judge shall summarily hear and determine the issues and issue an order without the need for a formal evidentiary hearing. At any time after a temporary order is issued, the paying party may request to discontinue payment of benefits based on new evidence that benefits are not payable under this chapter by following the procedures of section 176.238 or 176.239.

At any time after a temporary order is issued, the paying party may also petition for a formal hearing before a compensation judge for a determination of liability among the parties. If the petition is filed within one year after a temporary order was issued, the hearing shall be held within 45 days after the petition was filed. Payments under a temporary order shall continue pending the determination of the compensation judge. The compensation judge shall have jurisdiction to resolve all issues properly raised, including equitable apportionment. The procedures and monetary thresholds contained in section 176.191, subdivisions 1a and 5, shall not apply to these proceedings. This subdivision applies to all dates of injury.

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

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

Subd. 1a. **Equitable apportionment.** Equitable apportionment of liability for an injury under this chapter is not allowed except that apportionment among employers and insurers is allowed in a settlement agreement filed pursuant to section 176.521, and an employer or insurer may request equitable apportionment of liability for workers' compensation benefits among employer and insurers by arbitration pursuant to subdivision 5. For purposes of this subdivision, the term "equitable apportionment of liability" shall include all attempts to obtain contribution and/or reimbursement from other employers or insurers. To the same extent limited by this subdivision, contribution and reimbursement actions based on equitable apportionment are not allowed under this chapter. If the insurers choose to arbitrate apportionment, contribution, or reimbursement issues pursuant to subdivision 5, the arbitration proceeding is for the limited purpose of apportioning liability for workers' compensation benefits payable among employers and insurers. This subdivision applies without regard to whether one or more of the injuries results from cumulative trauma or a specific injury, but does not apply to an occupational disease. In the case of an occupational disease, section 176.66 applies. Apportionment against preexisting disability is allowed only for permanent partial disability as provided in section 176.101, subdivision 4a. Nothing in this

subdivision shall be interpreted to repeal or in any way affect the law with respect to special compensation fund statutory liability or benefits.

Subd. 2. [Repealed, 1995 c 231 art 2 s 110]

Subd. 3. **Insurer payment.** If a dispute exists as to whether an employee's injury is compensable under this chapter and the employee is otherwise covered by an insurer pursuant to chapters 62A, 62C and 62D, that insurer shall pay any medical costs incurred by the employee for the injury up to the limits of the applicable coverage and shall make any disability payments otherwise payable by that insurer in the absence of or in addition to workers' compensation liability. If the injury is subsequently determined to be compensable pursuant to this chapter, the workers' compensation insurer shall be ordered to reimburse the insurer that made the payments for all payments made under this subdivision by the insurer, including interest at a rate of 12 percent a year. If a payment pursuant to this subdivision exceeds the reasonable value as permitted by sections 176.135 and 176.136, the provider shall reimburse the workers' compensation insurer for all the excess as provided by rules promulgated by the commissioner.

Subd. 4. **Program payments.** If the employee's medical expenses for a personal injury are paid pursuant to any program administered by the commissioner of human services, or if the employee or spouse or dependents living with the employee receive subsistence or other payments pursuant to such a program, and it is subsequently determined that the injury is compensable pursuant to this chapter, the workers' compensation insurer shall reimburse the commissioner of human services for the payments made, including interest at a rate of 12 percent a year.

Amounts paid to an injured employee or spouse or dependents living with the employee pursuant to such a program and attributable to the personal injury shall be deducted from any settlement or award of compensation or benefits under this chapter, including, but not limited to, temporary and permanent disability benefits.

The insurer shall attempt, with due diligence, to ascertain whether payments have been made to an injured employee pursuant to such a program prior to any settlement or issuance of a binding award and shall notify the department of human services, benefit recovery section, when such payments have been made. An employee who has received public assistance payments shall notify the department of human services, benefit recovery section, of its potential intervention claim prior to making or settling a claim for benefits under this chapter. Notice served on local human services agencies is not sufficient to meet the notification requirement in this subdivision.

Subd. 5. **Arbitration.** Where a dispute exists between an employer, insurer, the special compensation fund, or the workers' compensation reinsurance association, regarding apportionment of liability for benefits payable under this chapter, and the requesting party has expended over $10,000 in medical or 52 weeks worth of indemnity benefits and made the request within one year thereafter, a party may require submission of the dispute as to apportionment of liability among employers and insurers to binding arbitration. However, these monetary thresholds shall not apply in any case where the employers and insurers agree to submit the apportionment dispute to arbitration. The decision of the arbitrator shall be conclusive on the issue of apportionment among employers and insurers. Consent of the employee is not required for submission of a dispute to arbitration pursuant to this section and the employee is not bound by the results of the arbitration. An arbitration award shall not be admissible in any other proceeding under this chapter. Notice of the proceeding shall be given to the employee.

The employee, or any person with material information to the facts to be arbitrated, shall attend the arbitration proceeding if any party to the proceeding deems it necessary. Nothing said by an employee in connection with any arbitration proceeding may be used against the employee in any other proceeding under this chapter. Reasonable expenses of meals, lost wages, and travel of the employee or witnesses in attending shall be reimbursed on a pro rata basis. Arbitration costs shall be paid by the parties, except the employee, on a pro rata basis.

Subd. 6. **Award.** If the employee commences an action under this chapter for benefits arising out of the same injury which resulted in the dispute arbitrated under subdivision 5, and if the benefits awarded to the employee under the employee's claim are inconsistent with the arbitration decision, any increase in benefits over those paid pursuant to the arbitration proceeding is paid by the party or parties who ordinarily would have been required to pay the increased benefits but for the arbitration. Any reimbursement from the employee of any decrease in benefits from those paid pursuant to the arbitration is paid to the party or parties who previously had paid the increased benefits. The provisions of this subdivision apply regardless of whether more or fewer employers and insurers or the special fund have been added or omitted as parties to the employee's subsequent action after arbitration.

Subd. 7. **Representation.** If an employee brings an action under the circumstances described in subdivision 6, the parties to the previous arbitration may be represented at the new action by a common or joint attorney.

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

History: *1953 c 755 s 24; Ex1967 c 1 s 6; 1973 c 388 s 54; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 52; 1981 c 346 s 95; 1983 c 290 s 122-125; 1984 c 654 art 5 s 58; 1985 c 234 s 13,14; 1986 c 444; 1987 c 332 s 52,53; 1987 c 370 art 2 s 2; 1993 c 13 art 2 s 1; 1995 c 231 art 2 s 76-79; 1997 c 128 s 4,5; 2001 c 123 s 12*

176.192 BOMB DISPOSAL UNIT EMPLOYEES.

For purposes of this chapter, a member of a bomb disposal unit approved by the commissioner of public safety and employed by a municipality defined in section 466.01, is considered an employee of the department of public safety solely for the purposes of this chapter when disposing of or neutralizing bombs or other similar hazardous explosives, as defined in section 299C.063, outside the jurisdiction of the employer-municipality.

History: *1988 c 717 s 2; 1995 c 226 art 4 s 2; 2001 c 123 s 13*

176.194 PROHIBITED PRACTICES.

Subdivision 1. **Application.** This section applies to insurers, self-insurers, group self-insurers, political subdivisions of the state, and the administrator of state employees' claims.

This section also applies to adjusters and third-party administrators who act on behalf of an insurer, self-insurer, group self-insurer, the assigned risk plan, the Minnesota insurance guaranty association, a political subdivision, or any other entity.

This section shall be enforceable only by the commissioner of labor and industry. Evidence of violations under this section shall not be admissible in any civil action.

Subd. 2. **Purpose.** This section is not intended to replace existing requirements of this chapter which govern the same or similar conduct; these requirements and penalties are in addition to any others provided by this chapter.

Subd. 3. **Prohibited conduct.** The following conduct is prohibited:

(1) failing to reply, within 30 calendar days after receipt, to all written communication about a claim from a claimant that requests a response;

(2) failing, within 45 calendar days after receipt of a written request, to commence benefits or to advise the claimant of the acceptance or denial of the claim by the insurer;

(3) failing to pay or deny medical bills within 45 days after the receipt of all information requested from medical providers;

(4) filing a denial of liability for workers' compensation benefits without conducting an investigation;

(5) failing to regularly pay weekly benefits in a timely manner as prescribed by rules adopted by the commissioner once weekly benefits have begun. Failure to regularly pay weekly benefits means failure to pay an employee on more than three occasions in any 12-month period within three business days of when payment was due;

(6) failing to respond to the department within 30 calendar days after receipt of a written inquiry from the department about a claim;

(7) failing to pay pursuant to an order of the department, compensation judge, court of appeals, or the supreme court, within 45 days from the filing of the order unless the order is under appeal;

(8) advising a claimant not to obtain the services of an attorney or representing that payment will be delayed if an attorney is retained by the claimant; or

(9) altering information on a document to be filed with the department without the notice and consent of any person who previously signed the document and who would be adversely affected by the alteration.

Subd. 4. **Penalties.** The penalties for violations of subdivision 3, clauses (1) through (6) and (9), are as follows:

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

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

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

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

Subd. 5. **Rules.** The commissioner may, by rules adopted in accordance with chapter 14, specify additional illegal, misleading, deceptive, fraudulent practices or conduct which are subject to the penalties under this section.

History: *1987 c 332 s 54; 1992 c 510 art 3 s 22,23; 1995 c 231 art 2 s 80; 2001 c 123 s 14; 2002 c 262 s 19,20*

176.195 REVOCATION OF INSURER'S LICENSE.

Subdivision 1. **Grounds.** Where an insurer, or an agent of an insurer, has been guilty of fraud, misrepresentation, or culpable, persistent, and unreasonable delay in making payments or settlements under this chapter, the commissioner of commerce shall revoke the license of the insurer to write workers' compensation insurance.

Subd. 1a. **Additional grounds.** Where an insurer or agent of an insurer has failed to comply with provisions of this chapter, other than the provisions in subdivision 1, the commissioner of commerce may revoke the license of the insurer to write workers' compensation insurance.

Subd. 2. **Commencement of proceedings.** The commissioner of commerce may act under subdivision 1 or subdivision 1a upon the commissioner's own motion, the recommendation of the commissioner of labor and industry, the chief administrative law judge, or the workers' compensation court of appeals, or the complaint of any interested person.

Subd. 3. **Complaint, answer; hearing.** A complaint against an insurer shall include a notice and order for hearing, shall be in writing and shall specify clearly the grounds upon which the license is sought to be suspended or revoked. The insurer shall file a written answer to the complaint within 20 days of service of the complaint. The hearing shall be conducted under chapter 14.

Subd. 4. [Repealed, 1987 c 332 s 117]

Subd. 5. [Repealed, 1987 c 332 s 117]

Subd. 6. [Repealed, 1987 c 332 s 117]

Subd. 7. **Report to commissioner of commerce.** The commissioner may send reports to the commissioner of commerce regarding compliance with this chapter by insurers writing workers' compensation insurance. A report may include a recommendation for revocation of an insurer's license under this section and may also recommend the imposition of other penalties which may be imposed upon insurers by the commissioner of commerce.

History: *1953 c 755 s 25; Ex1967 c 1 s 6; 1973 c 388 s 55,56; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 289 s 114 subd 1; 1983 c 290 s 126-128; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 332 s 55*

176.20 [Repealed, 1953 c 755 s 83]

176.201 DISCRIMINATORY RATES.

Subdivision 1. **Physically handicapped persons.** An insurer, or an agent or employee of an insurer, shall not make or charge a rate which discriminates against the employment of a person who is physically handicapped through the loss or loss of use of a member whether due to accident or other cause.

Subd. 2. **Violation a misdemeanor.** A person who violates subdivision 1 is guilty of a misdemeanor.

Subd. 3. **Conviction of violation, cancellation of license.** Where an insurer, or an agent or employee of an insurer, has been convicted under this section, the fact of conviction is sufficient cause for the commissioner of commerce to cancel the license of the insurer to write workers' compensation insurance.

History: *1953 c 755 s 26; 1975 c 359 s 23; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

176.205 PERSON DEEMED EMPLOYER.

Subdivision 1. **Fraudulent device to evade responsibility to worker.** Subject to subdivision 2, a person who creates or executes any fraudulent scheme, artifice, or device to enable the person to execute work without being responsible to the worker under this chapter, is deemed an "employer" and is subject to the liabilities which this chapter imposes on employers.

Subd. 2. **Contractor, subcontractor.** Subdivision 1 does not apply to an owner who in good faith lets a contract to a contractor. In such case, the contractor or subcontractor is deemed the "employer."

Subd. 3. **Exceptions.** A person shall not be deemed a contractor or subcontractor where:

(a) the person performs work upon another's premises, with the other's tools or appliances, and under the other's direction; or,

(b) the person does what is commonly called "piece work;" or,

(c) in any way the system of employment merely provides a method of fixing the worker's wages.

Subd. 4. **Calculation of compensation.** Where compensation is claimed against a person under the terms of this section, the compensation shall be calculated with reference to the wages the worker was receiving at the time of the injury or death from the person by whom the worker was immediately employed.

History: *1953 c 755 s 27; 1986 c 444*

176.21 [Repealed, 1953 c 755 s 83]

176.211 ACTS OR OMISSIONS OF THIRD PERSONS.

Except as provided by this chapter the employer need not pay compensation for injuries due to the acts or omissions of third persons who are at the time neither in the service of the employer nor engaged in the work in which the injury occurs.

History: *1953 c 755 s 28*

176.215 SUBCONTRACTOR'S FAILURE TO COMPLY WITH CHAPTER.

Subdivision 1. **Liability for payment of compensation.** Where a subcontractor fails to comply with this chapter, the general contractor, or intermediate contractor, or subcontractor is liable for payment of all compensation due an employee of a subsequent subcontractor who is engaged in work upon the subject matter of the contract.

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

Subd. 2. **Subrogation.** A person who has paid compensation under this section is subrogated to the rights of the injured employee against the employee's immediate employer, or any person whose liability for compensation payment to the employee is prior to the liability of the person who paid it.

Subd. 3. **Determination of respective liabilities.** The workers' compensation division may determine the respective liabilities of persons under this section.

History: *1953 c 755 s 29; Ex1967 c 1 s 6; 1973 c 388 s 57; 1975 c 359 s 23; 1986 c 444; 1995 c 231 art 2 s 81*

176.22 [Repealed, 1953 c 755 s 83]

176.221 PAYMENT OF COMPENSATION AND TREATMENT CHARGES, COMMENCEMENT.

Subdivision 1. **Commencement of payment.** Within 14 days of notice to or knowledge by the employer of an injury compensable under this chapter the payment of temporary total compensation shall commence. Within 14 days of notice to or knowledge by an employer of a new period of temporary total disability which is caused by an old injury compensable under this chapter, the payment of temporary total compensation shall commence; provided that the employer or insurer may file for an extension with the commissioner within this 14-day period, in which case the compensation need not commence within the 14-day period but shall commence no later than 30 days from the date of the notice to or knowledge by the employer of the new period of disability. Commencement of payment by an employer or insurer does not waive any

rights to any defense the employer has on any claim or incident either with respect to the compensability of the claim under this chapter or the amount of the compensation due. Where there are multiple employers, the first employer shall pay, unless it is shown that the injury has arisen out of employment with the second or subsequent employer. Liability for compensation under this chapter may be denied by the employer or insurer by giving the employee written notice of the denial of liability. If liability is denied for an injury which is required to be reported to the commissioner under section 176.231, subdivision 1, the denial of liability must be filed with the commissioner and served on the employee within 14 days after notice to or knowledge by the employer of an injury which is alleged to be compensable under this chapter. If the employer or insurer has commenced payment of compensation under this subdivision but determines within 60 days of notice to or knowledge by the employer of the injury that the disability is not a result of a personal injury, payment of compensation may be terminated upon the filing of a notice of denial of liability within 60 days of notice or knowledge. After the 60-day period, payment may be terminated only by the filing of a notice as provided under section 176.239. Upon the termination, payments made may be recovered by the employer if the commissioner or compensation judge finds that the employee's claim of work related disability was not made in good faith. A notice of denial of liability must state in detail the facts forming the basis for the denial and specific reasons explaining why the claimed injury or occupational disease was determined not to be within the scope and course of employment and shall include the name and telephone number of the person making this determination.

Subd. 2. [Repealed, 1983 c 290 s 129]

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

The amount of penalty shall be determined as follows:

Numbers of days late	Penalty
1 – 15	30 percent of compensation due, not to exceed $500,
16 – 30	55 percent of compensation due, not to exceed $1,500,
31 – 60	80 percent of compensation due, not to exceed $3,500,
61 or more	105 percent of compensation due, not to exceed $5,000.

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

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

Subd. 4. [Repealed, 1983 c 290 s 129]

Subd. 5. [Repealed, 1983 c 290 s 129]

Subd. 6. **Assessment of penalties.** The division or compensation judge shall assess the penalty payments provided for by subdivision 3 or 3a and any increase in benefit payments provided by section 176.225, subdivision 5, against the insurer. The insurer is

liable for a penalty payment assessed against it even if the delay is attributable to the employer.

An insurer who has paid a penalty under this section may recover from the employer the portion of the penalty attributable to the acts of the employer which resulted in the delay. A penalty paid by an insurer under this section which is attributable to the fault of the employer shall be treated as a loss in an experience rated plan, retrospective rating plan, or dividend calculation where appropriate.

Subd. 6a. **Medical, rehabilitation, and permanent partial compensation.** The penalties provided by this section apply in cases where payment for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivisions 9 and 11, or permanent partial compensation are not made in a timely manner as required by law or by rule adopted by the commissioner.

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

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

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

Subd. 8. **Method and timeliness of payment.** Payment of compensation under this chapter shall be by immediately payable negotiable instrument, or if by any other method, arrangements shall be available to provide for the immediate negotiability of the payment instrument.

All payment of compensation shall be made within 14 days of the filing of an appropriate order by the division or a compensation judge, unless the order is appealed or if a different time period is provided by this chapter.

Subd. 9. **Payment of full wages.** An employer who pays full wages to an injured employee is not relieved of the obligation for reporting the injury and making a liability determination within the times specified in this chapter. If the full wage is paid the employer's insurer or self-insurer shall report the amount of this payment to the division and determine the portion which is temporary total compensation for purposes of administering this chapter and special compensation fund assessments. The employer shall also make appropriate adjustments to the employee's payroll records to assure that the employee's sick leave or the vacation time is not inappropriately charged against the employee, and to assure the proper income tax treatment for the payments.

History: *1953 c 755 s 30; 1973 c 388 s 58-61; 1977 c 342 s 21; Ex1979 c 3 s 53; 1981 c 346 s 96; 1983 c 290 s 129; 1984 c 432 art 2 s 28-30; 1987 c 332 s 56-58; 1992 c 510 art 3 s 24,25; 1995 c 231 art 1 s 27; art 2 s 82-85; 2001 c 123 s 15-18*

176.222 REPORT ON COLLECTION AND ASSESSMENT OF FINES AND PENALTIES.

The commissioner shall annually, by January 30, submit a report to the legislature detailing the assessment and collection of fines and penalties under this chapter on a fiscal year basis for the immediately preceding fiscal year and for as many prior years as the data is available.

History: *1992 c 510 art 3 s 26*

176.223 PROMPT PAYMENT REPORT.

The department shall publish an annual report providing data on the promptness of all insurers and self-insurers in making first payments on a claim for injury. The

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

History: *1995 c 231 art 2 s 86*

176.225 ADDITIONAL AWARD AS PENALTY.

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

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

(b) unreasonably or vexatiously delayed payment; or

(c) neglected or refused to pay compensation; or

(d) intentionally underpaid compensation; or

(e) frivolously denied a claim; or

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

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

Subd. 2. **Examination of books and records.** To determine whether an employer or insurer is liable for the payment provided by subdivision 1, the division, a compensation judge, or the workers' compensation court of appeals upon appeal may examine the books and records of the employer or insurer relating to the payment of compensation, and may require the employer or insurer to furnish any other information relating to the payment of compensation.

The right of the division to review the records of an employer or insurer includes the right of the special compensation fund to examine records for the proper administration of section 176.129, Minnesota Statutes 1990, section 176.131, Minnesota Statutes 1994, section 176.132, and sections 176.181 and 176.183. The special compensation fund may not review the records of the employer or insurer relating to a claim under Minnesota Statutes 1990, section 176.131, until the special compensation fund has accepted liability under that section or a final determination of liability under that section has been made. The special compensation fund may withhold reimbursement to the employer or insurer under Minnesota Statutes 1990, section 176.131, or Minnesota Statutes 1994, section 176.132, if the employer or insurer denies access to records requested for the proper administration of section 176.129, Minnesota Statutes 1990, section 176.131, Minnesota Statutes 1994, section 176.132, section 176.181 or 176.183.

Subd. 3. **Defiance of division, compensation judge, or workers' compensation court of appeals, complaint.** If an insurer persists in an action or omission listed in subdivision 1, or does not permit the examination of books and records, or fails to furnish information as required, the commissioner or the chief administrative law judge shall file a written complaint with the commissioner of commerce. The complaint shall specify the facts and recommend the revocation of the license of the insurer to do business in this state. The workers' compensation court of appeals may also file a written complaint.

Subd. 4. **Hearing before commissioner of commerce.** Upon receipt of a complaint filed under subdivision 3, the commissioner of commerce shall hear and determine the matter in the manner provided by chapter 14. On finding that a charge made by the

complaint is true, the commissioner of commerce may suspend or revoke the license of the insurer to do business in this state. The insurer may appeal from the action of the commissioner revoking the license in the manner provided in chapter 14.

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

History: *1953 c 755 s 31; Ex1967 c 1 s 6; 1973 c 388 s 62-64; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 97; 1983 c 289 s 114 subd 1; 1983 c 290 s 130-132; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1986 c 444; 1986 c 461 s 24; 1987 c 332 s 59-61; 1995 c 231 art 2 s 87,88; 1996 c 305 art 1 s 47*

176.23 [Repealed, 1953 c 755 s 83]

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF DEPARTMENT OF LABOR AND INDUSTRY.

Subdivision 1. **Time limitation.** Where death or serious injury occurs to an employee during the course of employment, the employer shall report the injury or death to the commissioner and insurer within 48 hours after its occurrence. Where any other injury occurs which wholly or partly incapacitates the employee from performing labor or service for more than three calendar days, the employer shall report the injury to the insurer on a form prescribed by the commissioner within ten days from its occurrence. An insurer and self-insured employer shall report the injury to the commissioner no later than 14 days from its occurrence. Where an injury has once been reported but subsequently death ensues, the employer shall report the death to the commissioner and insurer within 48 hours after the employer receives notice of this fact.

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. 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.

Subd. 3. **Physicians, chiropractors, or other health care providers to report injuries.** A physician, chiropractor, or other health care provider who has examined, treated, or has special knowledge of an injury to an employee which may be compensable under this chapter, shall report to the commissioner all facts relating to the nature and extent of the injury and disability, and the treatment provided for the injury or disability, within ten days after the health care provider has received a written

request for the information from the commissioner or an authorized representative of the commissioner.

Subd. 4. **Supplementary reports.** The commissioner or an authorized representative may require the filing of supplementary reports of accidents as is deemed necessary to provide information required by law.

Supplementary reports related to the current nature and extent of the employee's injury, disability, or treatment may be requested from a physician, surgeon, chiropractor, or other health care provider by the commissioner or a representative, an employer or insurer, or the employee.

Subd. 5. **Forms for reports.** The commissioner shall prescribe forms for use in making the reports required by this section. The first report of injury form which the employer submits shall include a declaration by the employer that the employer will pay the compensation the law requires. Forms for reports required by this section shall be as prescribed by the commissioner and shall be the only forms used by an employer, insurer, self-insurer, group self-insurer, and all health care providers.

Subd. 6. **Commissioner of the department of labor and industry; duty to keep informed.** The commissioner of the department of labor and industry shall keep fully informed of the nature and extent of all injuries compensable under this chapter, their resultant disabilities, and of the rights of employees to compensation. The insurer or self-insured employer must keep the department advised of all payments of compensation, the amounts of payments made, and the date of the first payment. Where a physician or surgeon has examined, treated, or has special knowledge relating to an injury which may be compensable under this chapter, the commissioner of the department of labor and industry or any member or employee thereof shall request in writing a report from such person of the attendant facts.

Subd. 7. **Medical reports.** If requested by the division, a compensation judge, the workers' compensation court of appeals, or any member or employee thereof an employer, insurer, or employee shall file with the commissioner a verified copy suitable for imaging of any medical report in possession which bears upon the case and shall also file a verified copy of the same report with the agency or individual who made the request.

Subd. 8. **No public inspection of reports.** Subject to subdivision 9, a report or its copy which has been filed with the commissioner of the department of labor and industry under this section is not available to public inspection. Any person who has access to such a report shall not disclose its contents to anyone in any manner.

A person who unauthorizedly discloses a report or its contents to another is guilty of a misdemeanor.

Subd. 9. **Uses which may be made of reports.** Reports filed with the commissioner under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics. These reports are available to the department of revenue for use in enforcing Minnesota income tax and property tax refund laws, and the information shall be protected as provided in chapter 270B.

The division or office of administrative hearings or workers' compensation court of appeals may permit the examination of its file by the employer, insurer, employee, or dependent of a deceased employee or any person who furnishes written authorization to do so from the employer, insurer, employee, or dependent of a deceased employee. Reports filed under this section and other information the commissioner has regarding injuries or deaths shall be made available to the workers' compensation reinsurance association for use by the association in carrying out its responsibilities under chapter 79.

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

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

Penalties collected by the state under this subdivision shall be payable to the commissioner for deposit into the assigned risk safety account.

Subd. 11. **Failure to file required report; substitute filing.** Where this section requires the employer to file a report of injury with the commissioner, and the employer is unable or refuses to file the report, the insurer shall file the report within ten days of a request from the division. The report shall be filed in the manner prescribed by this section. If both the employer and the insurer fail to file the report within 30 days of notice of the injury, the commissioner shall file the report.

The filing of a report of injury by the commissioner does not subject an employee or the dependents of an employee to the three-year time limitations under section 176.151, paragraphs (1) and (2).

A substitute filing under this subdivision shall not be a defense to a penalty assessed under subdivision 10.

Subd. 12. **Reports; electronic monitoring.** Beginning July 1, 1995, the commissioner shall monitor electronically all reports of injury, all payments for reported injuries, and compliance with all reporting and payment timelines.

History: *1953 c 755 s 32; 1969 c 583 s 1; 1971 c 422 s 4-9; 1973 c 388 s 65-74; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 54,55; 1981 c 346 s 98,99; 1983 c 15 s 2; 1983 c 289 s 114 subd 1; 1983 c 290 s 133-137; 1984 c 432 art 2 s 31,32; 1984 c 655 art 1 s 92; 1986 c 444; 1986 c 461 s 25,26; 1987 c 332 s 62-64; 1989 c 184 art 2 s 9; 1992 c 510 art 3 s 27; 1995 c 224 s 70; 1995 c 231 art 2 s 89; 1998 c 294 s 2,3; 2000 c 447 s 21; 2001 c 123 s 19-21*

176.232 [Repealed, 1995 c 231 art 2 s 110]

176.234 RELEASE OF DATA FOR EPIDEMIOLOGIC STUDY.

The commissioner of the department of labor and industry shall, upon request, provide the commissioner of health data classified as private data under section 13.02, subdivision 12, which are contained in the initial report of injury under section 176.231, and other workers' compensation records related to any individual's injury or illness. Data to be provided include, but are not limited to, all personal identifiers such as name, address, age, sex, and social security number for the injured person, employer identification information, insurance information, compensation payments, and physician and rehabilitation reports which the commissioner of labor and industry determines may pertain to specific epidemiologic investigations being conducted by the department of health.

History: *1991 c 202 s 15*

176.235 NOTICE TO EMPLOYERS AND INJURED EMPLOYEE OF RIGHTS AND DUTIES.

Subdivision 1. **Employee brochure.** When the commissioner of labor and industry has received notice or information that an employee has sustained an injury which may be compensable under this chapter, the commissioner of labor and industry shall mail a brochure, written in language easily readable and understandable by a person of average intelligence and education, to the employee explaining the rights and obligations of the employee, the assistance available to the employee, the operation of the workers' compensation system, and whatever other relevant information the commissioner of labor and industry deems necessary.

Subd. 2. **Employer brochure.** The commissioner shall prepare, in language easily readable and understandable by a person of average intelligence and education, a brochure explaining to employers their rights and obligations under this chapter and shall furnish it to employers subject to this chapter.

History: *1953 c 755 s 33; Ex1967 c 1 s 6; 1973 c 388 s 75; Ex1979 c 3 s 56*

176.238 NOTICE OF DISCONTINUANCE OF COMPENSATION.

Subdivision 1. **Necessity for notice and showing; contents.** Except as provided in section 176.221, subdivision 1, once the employer has commenced payment of benefits, the employer may not discontinue payment of compensation until it provides the employee with notice in writing of intention to do so. A copy of the notice shall be filed with the division by the employer. The notice to the employee and the copy to the division shall state the date of intended discontinuance and set forth a statement of facts clearly indicating the reason for the action. Copies of whatever medical reports or other written reports in the employer's possession which are relied on for the discontinuance shall be attached to the notice.

Subd. 2. **Continuance of employer's liability; suspension.** (a) **Discontinuance because of return to work.** If the reason for discontinuance is that the employee has returned to work, temporary total compensation may be discontinued effective the day the employee returned to work. Written notice shall be served on the employee and filed with the division within 14 days of the date the insurer or self-insured employer has notice that the employee has returned to work.

(b) **Discontinuance for reasons other than return to work.** If the reason for the discontinuance is for other than that the employee has returned to work, the liability of the employer to make payments of compensation continues until the copy of the notice and reports have been filed with the division. When the division has received a copy of the notice of discontinuance, the statement of facts and available medical reports, the duty of the employer to pay compensation is suspended, except as provided in the following subdivisions and in section 176.239.

Subd. 3. **Interim administrative decision.** An employee may request the commissioner to schedule an administrative discontinuance conference to obtain an expedited interim decision concerning the discontinuance of compensation. Procedures relating to discontinuance conferences are set forth in section 176.239.

Subd. 4. **Objection to discontinuance.** An employee may serve on the employer and file with the commissioner an objection to discontinuance if:

(a) the employee elects not to request an administrative conference under section 176.239;

(b) if the employee fails to timely proceed under that section;

(c) if the discontinuance is not governed by that section; or

(d) if the employee disagrees with the commissioner's decision issued under that section. Within ten calendar days after receipt of an objection to discontinuance, the commissioner shall refer the matter to the office for a de novo hearing before a compensation judge to determine the right of the employee to further compensation.

Subd. 5. **Petition to discontinue.** Instead of filing a notice of discontinuance, an employer may serve on the employee and file with the commissioner a petition to discontinue compensation. A petition to discontinue compensation may also be used when the employer disagrees with the commissioner's decision under section 176.239. Within ten calendar days after receipt of a petition to discontinue, the commissioner shall refer the matter to the office for a de novo hearing before a compensation judge to determine the right of the employer to discontinue compensation.

The petition shall include copies of medical reports or other written reports or evidence in the possession of the employer bearing on the physical condition or other present status of the employee which relate to the proposed discontinuance. The employer shall continue payment of compensation until the filing of the decision of the compensation judge and thereafter as the compensation judge, court of appeals, or the supreme court directs, unless, during the interim, occurrences arise justifying the filing of a notice under subdivision 1 or 2 and the discontinuance is permitted by the commissioner's order or no conference under section 176.239 is requested.

Subd. 6. **Expedited hearing before a compensation judge.** A hearing before a compensation judge shall be held within 60 calendar days after the office receives the file from the commissioner if:

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

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

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

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

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

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

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

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

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

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

Subd. 7. **Order of compensation judge.** If the order of the compensation judge confirms a discontinuance of compensation, the service and filing of the order relieves the employer from further liability for compensation subject to the right of review provided by this chapter, and to the right of the compensation judge to set aside the order at any time prior to the review and to grant a new hearing pursuant to this chapter. Once an appeal to the workers' compensation court of appeals is filed, a compensation judge may not set aside the order. In any appeal from the compensation judge's decision under this section, the court of appeals shall conclude any oral arguments by the parties within 60 days following certification of the record from the office.

Subd. 8. **Notice forms.** Notices under this section shall be on forms prescribed by the commissioner.

Subd. 9. **Service on attorney.** If the employee has been presently represented by an attorney for the same injury, all notices required by this section shall also be served on the last attorney of record.

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

Subd. 11. **Application of section.** This section shall not apply to those employees who have been adjudicated permanently totally disabled, or to those employees who have been administratively determined pursuant to division rules to be permanently totally disabled.

History: *1987 c 332 s 65; 1995 c 231 art 2 s 90,91; 2001 c 123 s 22*

176.239 ADMINISTRATIVE DECISION CONCERNING DISCONTINUANCE OF COMPENSATION.

Subdivision 1. **Purpose.** The purpose of this section is to provide a procedure for parties to obtain an expedited interim administrative decision in disputes over discontinuance of temporary total, temporary partial, or permanent total compensation.

Subd. 2. **Request for administrative conference.** If the employee disagrees with the notice of discontinuance, the employee may request that the commissioner schedule an administrative conference to be conducted pursuant to this section.

If temporary total, temporary partial, or permanent total compensation has been discontinued because the employee has returned to work, and the employee believes benefits should be reinstated due to occurrences during the initial 14 calendar days of the employee's return to work, the employee's request must be received by the commissioner within 30 calendar days after the employee has returned to work. If the employer has failed to properly serve and file the notice as provided in section 176.238, the employee's time period to request an administrative conference is extended up to and including the 40th calendar day subsequent to the return to work.

If temporary total, temporary partial, or permanent total compensation has been discontinued for a reason other than a return to work, the employee's request must be received by the commissioner within 12 calendar days after the notice of discontinuance is received by the commissioner. If the employer discontinues compensation without giving notice as required by section 176.238, the employee's time period for requesting an administrative conference is extended up to and including the 40th calendar day after which the notice should have been served and filed.

The commissioner may determine that an administrative conference is not necessary under this section for reasons prescribed by rule and permit the employer to discontinue compensation, subject to the employee's right to file an objection to discontinuance under section 176.238, subdivision 4.

In lieu of making a written request for an administrative conference with the commissioner, an employee may make an in-person or telephone request for the administrative conference.

Subd. 3. **Payment through date of discontinuance conference.** If a notice of discontinuance has been served and filed due to the employee's return to work, and the employee requests a conference, the employer is not obligated to reinstate or otherwise pay temporary total, temporary partial, or permanent total compensation unless so ordered by the commissioner.

When an administrative conference is conducted under circumstances in which the employee has not returned to work, compensation shall be paid through the date of the administrative conference unless:

(a) the employee has returned to work since the notice was filed;

(b) the employee fails to appear at the scheduled administrative conference; or

(c) due to unusual circumstances or pursuant to the rules of the division, the commissioner orders otherwise.

Subd. 4. **Scheduling of conference.** If the employee timely requests an administrative conference under this section, the commissioner shall schedule a conference within ten calendar days after receiving the request.

Subd. 5. **Continuances.** An employee or employer may request a continuance of a scheduled administrative conference. If the commissioner determines there is good cause for a continuance, the commissioner may grant the continuance for not more than 14 calendar days unless the parties agree to a longer continuance. If compensation is payable through the day of the administrative conference pursuant to subdivision 3, and the employee is granted a continuance, compensation need not be paid during the period of continuance unless the commissioner orders otherwise. If the employer is granted a continuance and compensation is payable through the day of the administrative conference pursuant to subdivision 3, then compensation shall continue to be paid during the continuance. The commissioner may grant an unlimited number of continu-

ances provided that payment of compensation during any continuance is subject to this subdivision.

Subd. 6. **Scope of the administrative decision.** If benefits have been discontinued due to the employee's return to work, the commissioner shall determine whether, as a result of occurrences arising during the initial 14 calendar days after the return to work, the employee is entitled to additional payment of temporary total, temporary partial, or permanent total compensation.

If periodic payment of temporary total, temporary partial, or permanent total compensation has been discontinued for reasons other than a return to work, the commissioner shall determine whether the employer has reasonable grounds to support the discontinuance. Only information or reasons specified on the notice of discontinuance shall provide a basis for a discontinuance, unless the parties agree otherwise.

Subd. 7. **Interim administrative decision.** After considering the information provided by the parties at the administrative conference, the commissioner shall issue to all interested parties a written decision on payment of compensation. Administrative decisions under this section shall be issued within five working days from the close of the conference. Disputed issues of fact shall be determined by a preponderance of the evidence.

Subd. 8. **Disagreement with administrative decision.** An employee who disagrees with the commissioner's decision under this section may file an objection to discontinuance under section 176.238, subdivision 4. An employer who disagrees with the commissioner's decision under this section may file a petition to discontinue under section 176.238, subdivision 5.

Subd. 9. **Administrative decision binding; effect of subsequent determinations.** The commissioner's decision under this section is binding upon the parties and the rights and obligations of the parties are governed by the decision.

If an objection or a petition is filed under subdivision 8, the commissioner's administrative decision remains in effect and the parties' obligations or rights to pay or receive compensation are governed by the commissioner's administrative decision, pending a determination by a compensation judge pursuant to section 176.238, subdivision 6.

If the commissioner has denied a discontinuance or otherwise ordered commencement of benefits, the employer shall continue paying compensation until an order is issued by a compensation judge, the court of appeals, or the supreme court, allowing compensation to be discontinued, or unless, during the interim, occurrences arise justifying the filing of a notice under section 176.238, subdivision 1 or 2, and the discontinuance is permitted by the commissioner or no conference is requested. If a compensation judge, the court of appeals, or the supreme court later rules that the discontinuance was proper or that benefits were otherwise not owing the employee, payments made under the commissioner's administrative decision and order shall be treated as an overpayment which the insurer may recover from the employee subject to section 176.179.

If the commissioner has permitted a discontinuance or otherwise not ordered commencement of benefits, the service and filing of the administrative decision relieves the employer from further liability for compensation subject to the right of review afforded by this chapter.

Subd. 10. **Application of section.** This section is applicable to all cases in which the employee's request for an administrative conference is received by the division after July 1, 1987, even if the injury occurred prior to July 1, 1987. This section shall not apply to those employees who have been adjudicated permanently totally disabled, or to those employees who have been administratively determined pursuant to division rules to be permanently totally disabled.

History: *1987 c 332 s 66*

176.24 [Repealed, 1953 c 755 s 83]

176.241 [Repealed, 1987 c 332 s 117]

176.242 [Repealed, 1987 c 332 s 117]

176.2421 [Repealed, 1987 c 332 s 117]

176.243 [Repealed, 1987 c 332 s 117]

176.244 [Repealed, 1987 c 332 s 117]

176.245 RECEIPTS FOR PAYMENT OF COMPENSATION, FILING.

An employer shall promptly file with the division receipts for payment of compensation as may be required by the rules of the division.

The commissioner of the department of labor and industry shall periodically check its records in each case to determine whether these receipts have been promptly filed, and if not, shall require the employer to do so.

History: *1953 c 755 s 35; 1973 c 388 s 80*

176.25 [Repealed, 1953 c 755 s 83]

176.251 DUTIES OF THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

The commissioner of the department of labor and industry shall actually supervise and require prompt and full compliance with all provisions of this chapter relating to the payment of compensation.

History: *1953 c 755 s 36; 1973 c 388 s 81*

176.253 INSURER, EMPLOYER; PERFORMANCE OF ACTS.

Where this chapter requires an employer to perform an act, the insurer of the employer may perform that act. Where the insurer acts in behalf of the employer, the employer is responsible for the authorized acts of the insurer and for any delay, failure, or refusal of the insurer to perform the act.

This section does not relieve the employer from any penalty or forfeiture which this chapter imposes on the employer.

History: *1953 c 755 s 37; 1986 c 444*

176.255 [Repealed, 1953 c 755 s 83]

176.26 [Repealed, 1953 c 755 s 83]

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

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

Prior to advising an employee or employer to seek assistance outside of the department, the department must refer employers and employees seeking advice or requesting assistance in resolving a dispute to an attorney or other technical, paraprofessional, or professional workers' compensation division employee, whichever is appropriate.

The department must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers, and health care providers, on behalf of employers and employees and using the department's persuasion to settle

issues quickly and cooperatively. The obligation to make efforts to settle problems exists whether or not a formal claim has been filed with the department.

History: *1953 c 755 s 38; Ex1967 c 1 s 6; 1973 c 388 s 82; 1986 c 444; 1992 c 510 art 3 s 29; 1995 c 231 art 2 s 92; 1996 c 374 s 7*

176.2615 SMALL CLAIMS COURT.

Subdivision 1. **Purpose.** There is established in the department of labor and industry a small claims court, to be presided over by compensation judges for the purpose of settling small claims.

Subd. 2. **Eligibility.** The claim is eligible for determination in the small claims court if all parties agree to submit to its jurisdiction; and

(1) the claim is for rehabilitation benefits only under section 176.102 or medical benefits only under section 176.135; or

(2) the claim in its total amount does not equal more than $5,000; or

(3) where the claim is for apportionment or for contribution or reimbursement, no counterclaim in excess of $5,000 is asserted.

Subd. 3. **Testimony; exhibits.** At the hearing a compensation judge shall hear the testimony of the parties and consider any exhibits offered by them and may also hear any witnesses introduced by either party.

Subd. 4. **Appearance of parties.** A party may appear on the party's own behalf without an attorney, or may retain and be represented by a duly admitted attorney who may participate in the hearing to the extent and in the manner that the compensation judge considers helpful. Attorney fees awarded under this subdivision are included in the overall limit allowed under section 176.081, subdivision 1.

Subd. 5. **Evidence admissible.** At the hearing the compensation judge shall receive evidence admissible under the rules of evidence. In addition, in the interest of justice and summary determination of issues before the court, the compensation judge may receive, in the judge's discretion, evidence not otherwise admissible. The compensation judge, on the judge's own motion, may receive into evidence any documents which have been filed with the department.

Subd. 6. **Settlement.** A compensation judge may attempt to conciliate the parties. If the parties agree on a settlement, the judge shall issue an order in accordance with that settlement.

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

Subd. 8. **Costs.** The prevailing party is entitled to costs and disbursements as in any other workers' compensation case.

History: *1992 c 510 art 2 s 7; 1995 c 231 art 2 s 93; 1998 c 366 s 89*

176.262 [Repealed, 1983 c 290 s 173]

176.265 [Repealed, 1986 c 461 s 37]

176.27 [Repealed, 1953 c 755 s 83]

176.271 INITIATION OF PROCEEDINGS.

Subdivision 1. Unless otherwise provided by this chapter or by the commissioner, all proceedings under this chapter are initiated by the filing of a written petition on a prescribed form with the commissioner at the commissioner's principal office. All claim petitions shall include the information required by section 176.291.

Subd. 2. [Repealed, 1987 c 332 s 117]

History: *1953 c 755 s 40; Ex1967 c 1 s 6; 1973 c 388 s 84; Ex1979 c 3 s 58; 1984 c 432 art 2 s 43; 1986 c 444; 1987 c 332 s 67*

176.275 FILING OF PAPERS; PROOF OF SERVICE.

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

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

Subd. 2. **Proof of service.** Whenever a provision of this chapter or rules adopted pursuant to authority granted by this chapter require either a proof of service or affidavit of service, the requirement is satisfied by the inclusion of a proof of service on the document which has been served, in a form acceptable by the state district courts or approved by the commissioner.

History: *1953 c 755 s 41; Ex1967 c 1 s 6; 1973 c 388 s 85; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1986 c 444; 1987 c 332 s 68; 1995 c 231 art 2 s 94*

176.28 [Repealed, 1953 c 755 s 83]

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

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

On all orders, decisions, awards, and other documents, the commissioner or compensation judge or office of administrative hearings or the workers' compensation court of appeals may digitize the signatures of all officials, including judges, for the use of electronic data interchange and clerical automation. These signatures shall have the same legal authority of an original signature, provided that proper security is used to safeguard the use of the digitized signatures and each digitized signature has been certified by the division, department, office, or court of appeals before its use, in accordance with rules adopted by that agency or court.

History: *1953 c 755 s 42; 1969 c 276 s 2; 1973 c 388 s 86; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1982 c 405 s 1; 1983 c 290 s 142; 1995 c 231 art 2 s 95*

176.285 SERVICE OF PAPERS AND NOTICES.

Service of papers and notices shall be by mail or otherwise as the commissioner or the chief administrative law judge may by rule direct. Where service is by mail, service is effected at the time mailed if properly addressed and stamped. If it is so mailed, it is

presumed the paper or notice reached the party to be served. However, a party may show by competent evidence that that party did not receive it or that it had been delayed in transit for an unusual or unreasonable period of time. In case of nonreceipt or delay, an allowance shall be made for the party's failure to assert a right within the prescribed time.

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

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

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

History: *1953 c 755 s 43; 1973 c 388 s 87; 1983 c 290 s 143; 1984 c 640 s 32; 1995 c 231 art 2 s 96*

176.29 [Repealed, 1953 c 755 s 83]

176.291 DISPUTES; PETITIONS; PROCEDURE.

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

The petition shall also state and include, where applicable:

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

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

(3) extent and character of injury;

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

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

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

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

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

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

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

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

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

calendar upon motion of a party for failure to timely provide the required list of health care providers or authorizations.

History: *1953 c 755 s 44; 1973 c 388 s 88; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 104; 1987 c 332 s 69; 1994 c 483 s 1; 1995 c 231 art 2 s 97*

176.295 NONRESIDENT EMPLOYERS; FOREIGN CORPORATION.

Subdivision 1. **Affidavit of inability to obtain service.** Where an employee or an employee's dependent has filed a petition for compensation with the commissioner of the department of labor and industry, and is unable to make service of the petition and other notices on the employer because the latter is a nonresident or a foreign corporation, the petitioner may file an affidavit with the commissioner of the department of labor and industry stating that the petitioner is so unable to make service.

Subd. 2. **Action in district court.** When the petitioner has filed the affidavit with the commissioner of the department of labor and industry, the petitioner may bring an action against the employer in the district court located in the county in which the employee resided at the time of the injury or death. The action shall be brought and conducted in the same manner as are other civil actions in district court. The complaint shall state that a petition for compensation has been filed with the commissioner of the department of labor and industry, and shall be accompanied by a verified copy of the affidavit. The complaint shall also state the facts upon which the right to compensation or other relief is based.

Subd. 3. **Attachment, garnishment; service by publication.** The remedies of attachment and garnishment are available to the petitioner in the district court action. Service of summons may be made by publication.

Subd. 4. **General appearances; security, bond.** Where the employer makes a general appearance in the district court action and files a bond or security approved by the commissioner of the department of labor and industry, or where an insurer appears generally in the action and assumes liability for any award which may be rendered against the employer, the district court shall dismiss the action.

History: *1953 c 755 s 45; Ex1967 c 1 s 6; 1973 c 388 s 89-91; 1986 c 444*

176.30 [Repealed, 1953 c 755 s 83]

176.301 DETERMINATION OF ISSUES.

Subdivision 1. **Trial by court; reference to chief administrative law judge.** When a workers' compensation issue is present in the district court action, the court may try the action itself without a jury, or refer the matter to the chief administrative law judge for assignment to a compensation judge. The compensation judge shall report findings and decisions to the district court. The court may approve or disapprove such decision in the same manner as it approves or disapproves the report of a referee. The court shall enter judgment upon such decision.

Subd. 2. **Appeal from judgment of district court.** An appeal lies from the judgment of the district court as in other cases.

History: *1953 c 755 s 46; 1969 c 276 s 2; 1973 c 388 s 92; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 105; 1984 c 640 s 32; 1986 c 444; 1987 c 332 s 70*

176.305 PETITIONS FILED WITH WORKERS' COMPENSATION DIVISION.

Subdivision 1. **Hearings on petitions.** The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. A clear copy suitable for imaging shall be filed with the commissioner together with an appropriate affidavit of service. When any petition has been filed with the workers' compensation division, the commissioner shall, within ten days, refer the matter presented by the petition for a settlement conference under this section, for an administrative conference under section 176.106, or for hearing to the office.

Subd. 1a. **Settlement and pretrial conferences; summary decision.** The commissioner shall schedule a settlement conference, if appropriate, within 60 days after

receiving the petition. All parties must appear at the conference, either personally or by representative, must be prepared to discuss settlement of all issues, and must be prepared to discuss or present the information required by the joint rules of the division and the office. If a representative appears on behalf of a party, the representative must have authority to fully settle the matter.

If settlement is not reached, the presiding officer may require the parties to present copies of all documentary evidence not previously filed and a summary of the evidence they will present at a formal hearing. If appropriate, a written summary decision shall be issued within ten days after the conference stating the issues and a determination of each issue. If a party fails to appear at the conference, all issues may be determined contrary to the absent party's interest, provided the party in attendance presents a prima facie case.

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

Subd. 2. **Copy of petition.** The commissioner shall deliver the petition and answer, after certification for a hearing, to the office of administrative hearings for assignment to a compensation judge.

Subd. 3. **Testimony.** Where the chief administrative law judge has substituted a compensation judge originally assigned to hear a matter, the testimony taken before the substitute compensation judge shall be considered as though taken before the judge before whom it was originally assigned.

Subd. 4. **Striking from calendar.** A compensation judge or the commissioner, after receiving a properly served motion, may strike a case from the active trial calendar after the employee has been given 30 days to correct the deficiency if it is shown that the information on the petition or included with the petition is incomplete. Once a case is stricken, it may not be reinstated until the missing information is provided to the adverse parties and filed with the commissioner or compensation judge. If a case has been stricken from the calendar for one year or more and no corrective action has been taken, the commissioner or a compensation judge may, upon the commissioner's or judge's own motion or a motion of a party which is properly served on all parties, dismiss the case. The petitioner must be given at least 30 days' advance notice of the proposed dismissal before the dismissal is effective.

History: *1953 c 755 s 47; 1969 c 9 s 45; 1969 c 276 s 2; 1973 c 388 s 93-95; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 106; 1984 c 640 s 32; 1987 c 332 s 71-74; 1995 c 231 art 2 s 98; 1998 c 294 s 4,5*

176.306 SCHEDULED HEARINGS.

Subdivision 1. **Chief administrative law judge.** The chief administrative law judge shall schedule workers' compensation hearings on as regular a schedule as may be practicable in no fewer than six widely separated locations throughout the state, including at least four locations outside of the seven county metropolitan area and Duluth, for the purpose of providing a convenient forum for parties to a compensation hearing and shall maintain a permanent office in Duluth staffed by at least one compensation judge. Continuances of the scheduled hearing date may be granted only under section 176.341, subdivision 4.

Subd. 2. **District administrators; clerks of court.** The judicial district administrators or the court administrators of the county or district courts nearest to the locations selected by the chief administrative law judge pursuant to subdivision 1 shall provide suitable hearing rooms at the times and places agreed upon for the purpose of conducting workers' compensation hearings.

Subd. 3. **Scheduling matters.** A compensation judge may schedule a pretrial or settlement conference, whether or not a party requests such a conference.

History: *1981 c 346 s 107; 1982 c 424 s 45; 1984 c 640 s 32; 1Sp1986 c 3 art 1 s 82; 1987 c 332 s 75,76*

176.307 COMPENSATION JUDGES; BLOCK SYSTEM.

The chief administrative law judge must assign workers' compensation cases to compensation judges using a block system type of assignment that, among other things, ensures that a case will remain with the same judge from commencement to conclusion unless the judge is removed from the case by exercise of a legal right of a party or by incapacity. The block system must be the principal means of assigning cases, but it may be supplemented by other systems of case assignment to ensure that cases are timely decided.

History: *1992 c 510 art 2 s 8*

176.31 [Repealed, 1953 c 755 s 83]

176.311 REASSIGNMENT OF PETITION FOR HEARING.

Where a petition is heard before a compensation judge, at any time before an award or order has been made in such proceeding, the chief administrative law judge may reassign the petition for hearing before another compensation judge.

History: *1953 c 755 s 48; 1969 c 276 s 2; 1973 c 388 s 96; 1981 c 346 s 108; 1984 c 640 s 32*

176.312 AFFIDAVITS OF PREJUDICE AND PETITIONS FOR REASSIGNMENT.

In accordance with rules adopted by the chief administrative law judge, an affidavit of prejudice for cause may be filed by each party to the claim against a compensation judge assigned to hear a case.

A petition for reassignment of a case to a different compensation judge for hearing may be filed once, in any case, by each party to the claim within ten days after the filing party has received notice of the assigned judge. Upon receipt of a timely petition for reassignment, the chief administrative law judge shall assign the case to another judge.

An affidavit of prejudice or a petition for reassignment shall be filed with the chief administrative law judge and shall not result in the continuance or delay of a hearing scheduled under section 176.341.

This section does not apply to prehearing or settlement conferences.

History: *1983 c 290 s 144; 1987 c 332 s 77*

176.32 [Repealed, 1953 c 755 s 83]

176.321 ANSWER TO PETITION.

Subdivision 1. **Filing, service.** Within 20 days after service of the petition, an adverse party shall serve and file an answer to the petition. The party shall serve a copy of the answer on the petitioner or the petitioner's attorney.

Subd. 2. **Contents.** The answer shall admit, deny, or affirmatively defend against the substantial averments of the petition, and shall state the contention of the adverse party with reference to the matter in dispute.

Each fact alleged by the petition or answer and not specifically denied by the answer or reply is deemed admitted, but the failure to deny such a fact does not preclude the compensation judge from requiring proof of the fact.

The answer shall include the names and addresses of all known witnesses; whether or not the employer intends to schedule an adverse examination and, if known, the date, time, and place of all adverse examinations; the desired location for a hearing; any request for a prehearing or settlement conference; the estimated time needed to

present evidence at a hearing; and, if an affidavit of significant financial hardship and request for an expedited hearing are included with the petition, any objection the employer may have to that request. If the date, time, and place of all adverse examinations is unknown at the time the answer is filed, the employer must notify the commissioner in writing of the date, time, and place of all adverse examinations within 50 days of the filing of the claim petition.

Subd. 3. **Extension of time in which to file answer.** Upon showing of cause, the commissioner may extend the time in which to file an answer or reply for not more than 30 additional days. The time to file an answer or reply may also be extended upon agreement of the petitioner, and provided that the commissioner must be notified in writing by the employer no later than five days beyond the time required for the filing of the answer of the fact that an agreement has been reached, including the length of the extension. Any case received by the office that does not include an answer, written extension order, or written notification of the extension agreement shall be immediately set for a hearing at the first available date under section 176.331.

History: *1953 c 755 s 49; 1969 c 276 s 2; 1973 c 388 s 97; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 109,110; 1983 c 290 s 145; 1987 c 332 s 78,79*

176.322 DECISIONS BASED ON STIPULATED FACTS.

If the parties agree to a stipulated set of facts and only legal issues remain, the commissioner or compensation judge may determine the matter without a hearing based upon the stipulated facts and the determination is appealable to the court of appeals pursuant to sections 176.421 and 176.442. In any case where a stipulated set of facts has been submitted pursuant to this section, upon receipt of the file or the stipulated set of facts the chief administrative law judge shall immediately assign the case to a compensation judge for a determination. The judge shall issue a determination within 60 days after receipt of the stipulated facts.

History: *1987 c 332 s 80*

176.325 CERTIFIED QUESTION.

Subdivision 1. **When certified.** The chief administrative law judge or commissioner may certify a question of workers' compensation law to the supreme court as important and doubtful under the following circumstances:

(1) all parties to the case have stipulated in writing to the facts; and

(2) the issue to be resolved is a question of workers' compensation law that has not been resolved by the Minnesota supreme court.

Subd. 2. **Expedited decision.** It is the legislature's intent that the Minnesota supreme court resolve the certified question as expeditiously as possible, after compliance by the parties with any requirements of the Minnesota supreme court regarding submission of legal memoranda, oral argument, or other matters, and after the participation of amicus curiae, should the workers' compensation court of appeals or Minnesota supreme court consider such participation advisable.

Subd. 3. **Notice.** The commissioner or chief administrative law judge shall notify all persons who request to be notified of a certification under this section.

History: *1992 c 510 art 2 s 9*

176.33 [Repealed, 1953 c 755 s 83]

176.331 PROCEEDINGS WHEN ANSWER NOT FILED.

Except in cases involving multiple employers or multiple insurers, if an adverse party fails to file and serve an answer or obtain an extension from the commissioner or the petitioner as required by section 176.321, subdivision 3, the commissioner shall refer the matter to the chief administrative law judge for an immediate hearing and prompt award or other order. The adverse party that failed to file an answer may appear at the hearing, present evidence and question witnesses, but shall not be granted a continuance for any reason.

If an adverse party who fails to serve and file an answer is neither insured for workers' compensation liability nor a licensed self-insured as required by section 176.181 and the special compensation fund is a party to the proceeding, the commissioner or compensation judge may enter an order awarding benefits to the petitioning party without a hearing if so requested by the special compensation fund.

History: *1953 c 755 s 50; 1973 c 388 s 98; 1981 c 346 s 111; 1983 c 290 s 146; 1984 c 640 s 32; 1987 c 332 s 81*

176.34 [Repealed, 1953 c 755 s 83]

176.341 HEARING ON PETITION.

Subdivision 1. **Time.** Upon receipt of a matter from the commissioner, the chief administrative law judge shall fix a time and place for hearing the petition. The hearing shall be held as soon as practicable and at a time and place determined by the chief administrative law judge to be the most convenient for the parties, keeping in mind the intent of chapter 176 and the requirements of section 176.306.

Subd. 2. **Place.** Unless otherwise ordered by the chief administrative law judge, the hearing shall be held in the county where the injury or death occurred.

Subd. 3. **Notice mailed to each party.** Unless subdivision 6 applies, at least 30 days prior to the date of hearing, the chief administrative law judge shall mail a notice of the time and place of hearing to each interested party. This subdivision does not apply to hearings which have been continued from an earlier date. In those cases, the notice shall be given in a manner deemed appropriate by the chief administrative law judge after considering the particular circumstances in each case.

Subd. 4. **Continuances.** Only the chief administrative law judge or designee, on a showing of good cause, may grant a continuance of a hearing at the office. Except in cases of emergency or other good cause shown, any request for a continuance must be signed by both the party and the attorney seeking the continuance.

A continuance of a hearing will be granted only upon a showing of good cause. Good cause is established when the underlying eventuality is unforeseen, is not due to lack of preparation, is relevant, is brought to the chief administrative law judge's attention in a timely manner and does not prejudice the adversary.

Continuances will not be granted for the reason that an attorney for one of the parties has scheduled a vacation for the date set for the hearing unless the attorney has, prior to the setting of the hearing date, notified the office of the unavailable dates.

Continuances which are requested during the course of a hearing are subject to the same standards but may be granted or denied by the compensation judge assigned to the hearing. Continuances of prehearing or settlement conferences at the department or at the office are subject to the same standards but may be granted or denied by a compensation judge, the calendar judge, or other presiding officer assigned to the prehearing or settlement conference.

Subd. 5. **Evidence.** Absent a clear showing of surprise at the hearing or the unexpected unavailability of a crucial witness, all evidence must be submitted at the time of the hearing. Upon a showing of good cause, the compensation judge may grant an extension not to exceed 30 days following the hearing date.

Subd. 6. **Significant financial hardship; expedited hearings.** An employee may file a request for an expedited hearing which must be granted upon a showing of significant financial hardship. In determining whether a significant financial hardship exists, consideration shall be given to whether the employee is presently employed, the employee's income from all sources, the nature and extent of the employee's expenses and debts, whether the employee is the sole support of any dependents, whether either foreclosure of homestead property or repossession of necessary personal property is imminent, and any other matters which have a direct bearing on the employee's ability to provide food, clothing, and shelter for the employee and any dependents.

A request for an expedited hearing must be accompanied by a sworn affidavit of the employee providing facts necessary to satisfy the criteria for a significant financial

hardship. The request may be made at the time a claim petition is filed or any time thereafter. Unless the employer objects to the request in the answer to the claim petition or within 20 calendar days of the filing of a request made subsequent to the filing of the claim petition, the affidavit is a sufficient showing of significant financial hardship.

If a request for an expedited hearing has been served and filed, the commissioner or compensation judge shall issue an order granting or denying the request, provided that where the parties agree that significant financial hardship exists or no objection to the request is timely filed, the request is automatically granted and the compensation judge or commissioner need not issue an order. If it is denied, the matter will be returned to the regular calendar of cases and the request for an expedited hearing may be renewed at a settlement conference. If no objection has been timely filed or if the request is granted, the commissioner shall immediately refer the matter to the office to commence prehearing procedures.

The calendar judge shall issue a prehearing order and notice of the date, time, and place for a prehearing conference which shall be set for no later than 45 days following the filing of the affidavit of significant financial hardship. The prehearing order shall require the parties to serve and file prehearing statements no later than five working days prior to the date set for the prehearing conference. The prehearing statements shall include those items listed in the joint rules of the division and the office which the calendar judge deems appropriate.

Following any prehearing conference and absent an agreement or stipulation from the parties, the commissioner or compensation judge shall issue an order establishing deadlines for the parties to complete their preparation for hearing and, after consultation with the calendar judge, establishing the date, time, and place for a hearing.

History: *1953 c 755 s 51; 1969 c 276 s 2; 1973 c 388 s 99-101; 1975 c 359 s 23; 1981 c 346 s 112; 1983 c 290 s 147; 1984 c 640 s 32; 1987 c 332 s 82-85; 1998 c 366 s 89*

176.35 [Repealed, 1953 c 755 s 83]

176.351 TESTIMONIAL POWERS.

Subdivision 1. **Oaths.** The compensation judge to whom a petition has been assigned for hearing shall administer an oath to each witness. The commissioner may also administer an oath when required in the performance of duties.

Subd. 2. **Subpoenas.** Acting with or without the written request of an interested party, the commissioner or compensation judge before whom a hearing is held may issue a subpoena for the attendance of a witness or the production of such books, papers, records and documents as are material in the cause and are designated in the subpoena. The commissioner may also issue a subpoena for the attendance of a witness or the production of such books, papers, records, and documents as are material in the cause pending and are designated in the subpoena.

Subd. 2a. **Subpoenas not permitted.** A member of the rehabilitation review panel or medical services board or an employee of the department who has conducted an administrative or settlement conference or hearing under section 176.106 or 176.239, shall not be subpoenaed to testify regarding the conference, hearing, or concerning a mediation session. A member of the rehabilitation review panel, medical services board, or an employee of the department may be required to answer written interrogatories limited to the following questions:

(a) Were all statutory and administrative procedural rules adhered to in reaching the decision?

(b) If the answer to question (a) is no, what deviations took place?

(c) Did the person making the decision consider all the information presented prior to rendering a decision?

(d) Did the person making the decision rely on information outside of the information presented at the conference or hearing in making the decision?

(e) If the answer to question (d) is yes, what other information was relied upon in making the decision?

In addition, for a hearing with a compensation judge and with the consent of the compensation judge, an employee of the department who conducted an administrative conference, hearing, or mediation session, may be requested to answer written interrogatories relating to statements made by a party at the prior proceeding. These interrogatories shall be limited to affirming or denying that specific statements were made by a party.

Subd. 3. **Advancement of fees and costs.** The person who applies for issuance of a subpoena shall advance the required service and witness fees. The commissioner shall pay for the attendance of witnesses who are subpoenaed by the commissioner. The chief administrative law judge shall pay for the attendance of witnesses who are subpoenaed by a compensation judge. The fees are the same as the service and witness fees in civil actions in district court.

Subd. 4. **Proceedings as for contempt of court.** Where a person does not comply with an order or subpoena, the commissioner or compensation judge concerned, may apply to the district court in the county in which the petition is pending for issuance of an order compelling obedience. Upon such an application, the district court shall compel obedience to the order or subpoena by attachment proceedings as for contempt in the case of disobedience of a similar order or subpoena issued by the district court.

History: *1953 c 755 s 52; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 102-105; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 113; 1984 c 432 art 2 s 44; 1984 c 640 s 32; 1986 c 444; 1987 c 332 s 86*

176.36 [Repealed, 1953 c 755 s 83]

176.361 INTERVENTION.

Subdivision 1. **Right to intervene.** A person who has an interest in any matter before the workers' compensation court of appeals, or commissioner, or compensation judge such that the person may either gain or lose by an order or decision may intervene in the proceeding by filing an application or motion in writing stating the facts which show the interest. The commissioner is considered to have an interest and shall be permitted to intervene at the appellate level when a party relies in its claim or defense upon any statute or rule administered by the commissioner, or upon any rule, order, requirement, or agreement issued or made under the statute or rule.

The commissioner may adopt rules, not inconsistent with this section to govern intervention. The workers' compensation court of appeals shall adopt rules to govern the procedure for intervention in matters before it.

If the department of human services or the department of economic security seeks to intervene in any matter before the division, a compensation judge or the workers' compensation court of appeals, a nonattorney employee of the department, acting at the direction of the staff of the attorney general, may prepare, sign, serve and file motions for intervention and related documents, appear at prehearing conferences, and participate in matters before a compensation judge or the workers' compensation court of appeals. Any other interested party may intervene using a nonattorney and may participate in any proceeding to the same extent an attorney could. This activity shall not be considered to be the unauthorized practice of law. An intervenor represented by a nonattorney shall be deemed to be represented by an attorney for the purposes of the conclusive presumption of section 176.521, subdivision 2.

Subdivisions 3 to 6 do not apply to matters pending in the mediation or rehabilitation and medical services sections.

Subd. 2. **Written application or motion.** A person desiring to intervene in a workers' compensation case as a party, including but not limited to a health care provider who has rendered services to an employee or an insurer who has paid benefits under section 176.191, shall submit a timely written application or motion to intervene to the commissioner, the office, or to the court of appeals, whichever is applicable.

(a) The application or motion must be served on all parties either personally, by first class mail, or registered mail, return receipt requested. An application or motion to intervene must be served and filed within 60 days after a potential intervenor has been served with notice of a right to intervene or within 30 days of notice of an administrative conference. Upon the filing of a timely application or motion to intervene, the potential intervenor shall be granted intervenor status without the need for an order. Objections to the intervention may be subsequently addressed by a compensation judge. Where a motion to intervene is not timely filed under this section, the potential intervenor interest shall be extinguished and the potential intervenor may not collect, or attempt to collect, the extinguished interest from the employee, employer, insurer, or any government program.

(b) The application or motion must show how the applicant's legal rights, duties, or privileges may be determined or affected by the case; state the grounds and purposes for which intervention is sought; and indicate the statutory right to intervene. The application or motion must be accompanied by the following:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by the vocational rehabilitation unit, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

(4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;

(5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

(6) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;

(7) proof of service or copy of the registered mail receipt;

(8) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and

(9) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Subd. 3. **Stipulation.** If the person submitting the application or motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor who must file it with the division or judge or serve upon the intervenor and all other parties and file with the division specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the application or motion, the intervenor's right to reimbursement for the amount sought is deemed established provided that the petitioner's claim is determined to be compensable.

Subd. 4. **Attendance by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences, administrative conferences, and the hearing. Failure to appear shall result in the denial of the claim for reimbursement.

Subd. 5. **Order.** If an objection to intervention remains following settlement or pretrial conferences, the issue shall be addressed at the hearing.

Subd. 6. **Presentation of evidence by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been

established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

Subd. 7. **Effects of noncompliance.** Except as provided in subdivisions 2 and 4, failure to comply with this section shall not result in a denial of the claim for reimbursement unless the compensation judge, or commissioner, determines that the noncompliance has materially prejudiced the interests of the other parties.

History: *1953 c 755 s 53; 1969 c 276 s 2; 1973 c 388 s 106; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 290 s 148; 1984 c 432 art 2 s 45; 1984 c 654 art 5 s 58; 1Sp1985 c 14 art 9 s 75; 1986 c 461 s 30,31; 1987 c 332 s 87-89; 1992 c 464 art 1 s 5; 1994 c 483 s 1; 2002 c 262 s 21*

176.37 [Repealed, 1953 c 755 s 83]

176.371 AWARD OR DISALLOWANCE OF COMPENSATION.

The compensation judge to whom a petition has been assigned for hearing, shall hear all competent, relevant evidence produced at the hearing. All questions of fact and law submitted to a compensation judge at the hearing shall be disposed of and the judge's decision shall be filed with the commissioner, except where expedited procedures require a shorter time, within 60 days after the submission, unless sickness or casualty prevents a timely filing, or the chief administrative law judge extends the time for good cause. The compensation judge's decision shall include a determination of all contested issues of fact and law and an award or disallowance of compensation or other order as the pleadings, evidence, this chapter and rule require. A compensation judge's decision shall include a memorandum only if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses. A memorandum shall not contain a recitation of the evidence presented at the hearing but shall be limited to the compensation judge's basis for the decision.

No part of the salary of a compensation judge shall be paid unless the chief administrative law judge determines that all decisions of that judge have been issued within the time limits prescribed by this chapter.

History: *1953 c 755 s 54; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 114; 1983 c 290 s 149; 1984 c 640 s 32; 1987 c 332 s 90*

176.38 [Repealed, 1953 c 755 s 83]

176.381 REFERENCE OF QUESTIONS OF FACT.

Subdivision 1. **Hearing before workers' compensation court of appeals.** In the hearing of any matter before the workers' compensation court of appeals, the chief judge of the workers' compensation court of appeals may refer any question of fact to the chief administrative law judge for assignment to a compensation judge either to hear evidence and report it to the workers' compensation court of appeals or to hear evidence and make findings of fact and report them to the workers' compensation court of appeals. The workers' compensation court of appeals shall notify the commissioner of any matter referred to a compensation judge under this subdivision.

Subd. 2. **Hearing before compensation judge.** In the hearing of any petition before a compensation judge, the chief administrative law judge may refer any question of fact to another compensation judge to hear evidence and report it to the original compensation judge.

History: *1953 c 755 s 55; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 107,108; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 115; 1984 c 640 s 32*

176.39 [Repealed, 1953 c 755 s 83]

176.391 INVESTIGATIONS.

Subdivision 1. **Power to make.** Before, during, or after any hearing, the commissioner or a compensation judge may make an independent investigation of the facts alleged in the petition or answer.

Subd. 2. **Appointment of physicians, surgeons, and other experts.** The compensation judge assigned to a matter, or the commissioner, may appoint one or more neutral physicians or surgeons from the list established by the commissioner to examine the injury of the employee and report thereon except as provided otherwise pursuant to section 176.1361. Where necessary to determine the facts, the services of other experts may also be employed.

Subd. 3. **Reports.** The report of a physician, surgeon, or other expert shall be filed with the commissioner and the compensation judge assigned to the matter if any. The report shall be made a part of the record of the case and be open to inspection as such.

Subd. 4. **Compensation.** The commissioner or compensation judge shall fix the compensation of a physician, surgeon, or other expert whose services are employed under this chapter. This compensation shall be paid initially out of the funds appropriated for the maintenance of the workers' compensation division, but shall be taxed as costs to either party, or both, or otherwise, as the commissioner or compensation judge directs.

Where a sum which has been taxed to a party has not been paid, it may be collected in the same manner as are costs generally.

History: *1953 c 755 s 56; 1969 c 9 s 46; 1969 c 276 s 2; 1973 c 388 s 109-112; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; Ex1979 c 3 s 59; 1981 c 346 s 116*

176.40 [Repealed, 1953 c 755 s 83]

176.401 HEARINGS PUBLIC.

All hearings before a compensation judge are public.

History: *1953 c 755 s 57; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 117*

176.41 [Repealed, 1953 c 755 s 83]

176.411 RULES OF EVIDENCE, PLEADING, AND PROCEDURE.

Subdivision 1. **Conduct of hearings and investigations.** Except as otherwise provided by this chapter, when a compensation judge makes an investigation or conducts a hearing, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure. Hearsay evidence which is reliable is admissible. The investigation or hearing shall be conducted in a manner to ascertain the substantial rights of the parties.

Findings of fact shall be based upon relevant and material evidence only, as presented by competent witnesses, and shall comport with section 176.021.

Subd. 2. **Depositions.** Except where a compensation judge orders otherwise, depositions may be taken in the manner which the law provides for depositions in civil actions in district court.

Subd. 3. **Hospital records as evidence.** A hospital record relating to medical or surgical treatment given an employee is admissible as evidence of the medical and surgical matters stated in the record, but it is not conclusive proof of such matters.

History: *1953 c 755 s 58; 1969 c 276 s 2; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 118,119; 1987 c 332 s 91*

176.42 [Repealed, 1953 c 755 s 83]

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

Subdivision 1. **Time for taking; grounds.** When a petition has been heard before a compensation judge, within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case, the party may appeal to the workers' compensation court of appeals on any of the following grounds:

(1) the order does not conform with this chapter; or

(2) the compensation judge committed an error of law; or

(3) the findings of fact and order were clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted; or

(4) the findings of fact and order were procured by fraud, or coercion, or other improper conduct of a party in interest.

Subd. 2. **Extension of time.** Where a party shows cause within the 30-day period referred to in subdivision 1, the workers' compensation court of appeals may extend the time for taking the appeal for not more than 30 additional days.

Subd. 3. **Notice of appeal.** The appellant or the appellant's attorney shall prepare and sign a written notice of appeal specifying:

(1) the order appealed from;

(2) that appellant appeals from the order to the workers' compensation court of appeals;

(3) the particular finding of fact or conclusion of law which the appellant claims was unsupported by substantial evidence in view of the entire record as submitted or procured by fraud, coercion, or other improper conduct; and

(4) any other ground upon which the appeal is taken.

An appeal initiates the preparation of a typewritten transcript of the entire record unless the appeal is solely from an award of attorney's fees or an award of costs and disbursements or unless otherwise ordered by the court of appeals. On appeals from an award of attorney's fees or an award of costs and disbursements, the appellant must specifically delineate in the notice of appeal the portions of the record to be transcribed in order for the court of appeals to consider the appeal.

Subd. 3a. **Cross-appeal.** The respondent may cross-appeal within the 30-day period for taking an appeal, or within 15 days after service of the notice of appeal on that respondent, whichever is later.

Subd. 4. **Service and filing of notice; cost of transcript.** Within the 30-day period for taking an appeal, the appellant shall:

(1) serve a copy of the notice of appeal on each adverse party;

(2) file the original notice, with proof of service by admission or affidavit, with the chief administrative law judge and file a copy with the commissioner;

(3) in order to defray the cost of the preparation of the record of the proceedings appealed from, pay to the state treasurer, office of administrative hearings account the sum of $25.

The first party to file an appeal is liable for the original cost of preparation of the transcript. Cross-appellants or any other persons requesting a copy of the transcript are liable for the cost of the copy. The chief administrative law judge may require payment for transcription costs to be made in advance of the transcript preparation. The cost of a transcript prepared by a nongovernmental source shall be paid directly to that source and shall not exceed the cost that the source would be able to charge the state for the same service.

Upon a showing of cause, the chief administrative law judge may direct that a transcript be prepared without expense to the party requesting its preparation, in which case the cost of the transcript shall be paid by the office of administrative hearings.

All fees received by the office of administrative hearings for the preparation of the record for submission to the workers' compensation court of appeals or for the cost of transcripts prepared by the office shall be deposited in the office of administrative hearings account in the state treasury and shall be used solely for the purpose of keeping the record of hearings conducted under this chapter and the preparation of transcripts of those hearings.

Subd. 5. **Transcript; certification of the record.** When the notice of appeal has been filed with the chief administrative law judge and the fee for the preparation of the record has been paid, the chief administrative law judge shall immediately order the preparation of a typewritten transcript of that part of the hearing delineated in the

notice. The official reporter or other person designated by the chief administrative law judge who transcribes the proceedings shall certify to their correctness.

If the transcript is prepared by a person who is not an employee of the office of administrative hearings, upon completion of the transcript, the original shall be filed with the chief administrative law judge.

When the transcript has been completed and is on file with the chief administrative law judge, the chief judge shall certify the record to the workers' compensation court of appeals and notify the commissioner of the certification.

Subd. 6. **Powers of workers' compensation court of appeals on appeal.** On an appeal taken under this section, the workers' compensation court of appeals' review is limited to the issues raised by the parties in the notice of appeal or by a cross-appeal. In these cases, on those issues raised by the appeal, the workers' compensation court of appeals may:

(1) grant an oral argument based on the record before the compensation judge;

(2) examine the record;

(3) substitute for the findings of fact made by the compensation judge findings based on the total evidence;

(4) sustain, reverse, make or modify an award or disallowance of compensation or other order based on the facts, findings, and law; and,

(5) remand or make other appropriate order.

Subd. 6a. **Time limit for decision.** The court shall issue a decision in each case within 90 days after certification of the record to the court by the chief administrative law judge, the filing of a cross-appeal, oral argument, or a final submission of briefs or memoranda by the parties, whichever is latest. For cases submitted without oral argument, a decision shall be issued within 90 days after assignment of the case to the judges. The chief judge may waive the 90-day limitation for any proceeding before the court for good cause shown. No part of the salary of a workers' compensation court of appeals judge may be paid unless the judge, upon accepting the payment, certifies that decisions in cases in which the judge has participated have been issued within the time limits prescribed by this subdivision.

Subd. 7. **Record of proceedings.** At the division's own expense, the commissioner shall make a complete record of all proceedings before the commissioner and shall provide a stenographer or an audio magnetic recording device to make the record of the proceedings.

The commissioner shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge which shall be set by the commissioner. Upon a showing of cause, the commissioner may direct that a transcript be prepared without expense to the person requesting the transcript, in which case the cost of the transcript shall be paid by the division. Transcript fees received under this subdivision shall be paid to the workers' compensation division account in the state treasury and shall be annually appropriated to the division for the sole purpose of providing a record and transcripts as provided in this subdivision. This subdivision does not apply to any administrative conference or other proceeding before the commissioner which may be heard de novo in another proceeding including but not limited to proceedings under section 176.106 or 176.239.

History: *1953 c 755 s 59; Ex1967 c 1 s 6; 1969 c 276 s 2; 1973 c 388 s 113-115; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 120-124; 3Sp1981 c 2 art 1 s 21-23; 1983 c 290 s 150-153; 1983 c 301 s 148-150; 1984 c 432 art 2 s 46; 1984 c 640 s 32; 1986 c 444; 1986 c 461 s 32; 1987 c 332 s 92,93; 1989 c 209 art 2 s 25; 1990 c 426 art 1 s 23; 1990 c 571 s 38; 1991 c 345 art 1 s 79; 1992 c 510 art 2 s 10*

176.43 [Repealed, 1953 c 755 s 83]

176.431 [Repealed, 1986 c 461 s 37]

176.44 [Repealed, 1953 c 755 s 83]

176.441 Subdivision 1. [Repealed, 1986 c 461 s 37]

Subd. 2. [Repealed, 1981 c 346 s 145; 1986 c 461 s 37]

176.442 APPEALS FROM DECISIONS OF COMMISSIONER.

Except for a commissioner's decision which may be heard de novo in another proceeding including but not limited to a decision from an administrative conference under section 176.102, 176.103, 176.106, 176.239, or a summary decision under section 176.305, any decision or determination of the commissioner affecting a right, privilege, benefit, or duty which is imposed or conferred under this chapter is subject to review by the workers' compensation court of appeals. A person aggrieved by the determination may appeal to the workers' compensation court of appeals by filing a notice of appeal with the commissioner in the same manner and within the same time as if the appeal were from an order or decision of a compensation judge to the workers' compensation court of appeals.

History: *1973 c 388 s 119; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 290 s 154; 1984 c 432 art 2 s 47; 1987 c 332 s 94; 1987 c 384 art 3 s 3*

176.445 [Repealed, 2001 c 123 s 23]

176.45 [Repealed, 1953 c 755 s 83]

176.451 DEFAULTS.

Subdivision 1. **Application to district court for judgment.** Where there has been a default of more than 30 days in the payment of compensation due under an award, the employee, or the employee's dependent, or other person entitled to the payment of money under the award, may apply to the judge of any district court for the entry of judgment upon the award.

Subd. 2. **Certified copy of award; filing, notice.** The application shall be made by filing a certified copy of the award with the court administrator and by serving a ten days' notice upon adverse parties. Service of the notice shall be made in the manner provided by court rule for service of summons in district court.

Subd. 3. **Court administrator's fees.** The court administrator shall charge $5 for the entire service the court administrator performs under this section.

Subd. 4. **Matters for determination; judgment.** When a judge hears the application for judgment upon the award, the judge has authority to determine only the facts of the award and the regularity of the proceedings upon which the award is based. The judge shall enter judgment accordingly.

Judgment shall not be entered upon an award while an appeal is pending.

Subd. 5. **Effect of district court judgment.** The judgment of the district court entered upon an award has the same force and effect, and may be vacated, set aside, or satisfied as may other judgments of the district court.

History: *1953 c 755 s 62; 1986 c 442 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

176.46 [Repealed, 1953 c 755 s 83]

176.461 SETTING ASIDE AWARD.

Except when a writ of certiorari has been issued by the supreme court and the matter is still pending in that court or if as a matter of law the determination of the supreme court cannot be subsequently modified, the workers' compensation court of appeals, for cause, at any time after an award, upon application of either party and not less than five working days after written notice to all interested parties, may set the award aside and grant a new hearing and refer the matter for a determination on its merits to the chief administrative law judge for assignment to a compensation judge, who shall make findings of fact, conclusions of law, and an order of award or disallowance of compensation or other order based on the pleadings and the evidence produced and as required by the provisions of this chapter or rules adopted under it.

As used in this section, the phrase "for cause" is limited to the following:

(1) a mutual mistake of fact;

(2) newly discovered evidence;

(3) fraud; or

(4) a substantial change in medical condition since the time of the award that was clearly not anticipated and could not reasonably have been anticipated at the time of the award.

History: *1953 c 755 s 63; Ex1967 c 40 s 15; 1973 c 388 s 120; 1975 c 271 s 6; 1975 c 359 s 18,23; 1976 c 134 s 78; 1981 c 346 s 127; 1983 c 290 s 155; 1984 c 640 s 32; 1992 c 510 art 2 s 11*

176.47 [Repealed, 1953 c 755 s 83]

176.471 REVIEW BY SUPREME COURT ON CERTIORARI.

Subdivision 1. **Time for seeking review; grounds.** Where the workers' compensation court of appeals has made an award or disallowance of compensation or other order, a party in interest who acts within 30 days from the date the party was served with notice of the order may have the order reviewed by the supreme court on certiorari upon one of the following grounds:

(1) the order does not conform with this chapter; or,

(2) the workers' compensation court of appeals committed any other error of law; or,

(3) the findings of fact and order were unsupported by substantial evidence in view of the entire record as submitted.

Subd. 2. **Extension of time for seeking review or for filing other papers.** Where cause is shown within the 30 day period referred to in subdivision 1, the supreme court may extend the time for seeking review on certiorari. The supreme court may also extend the time for filing any other paper which this chapter requires to be filed with that court.

Subd. 3. **Service of writ and bond; filing fee.** To effect a review upon certiorari, the party shall serve a writ of certiorari and a bond upon the administrator of the workers' compensation court of appeals within the 30 day period referred to in subdivision 1. The party shall also at this time pay to the administrator the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule.

Subd. 4. **Contents of writ.** The writ of certiorari required by subdivision 3 shall show that a review is to be had in the supreme court of the proceedings of the workers' compensation court of appeals upon which the order is based.

Subd. 5. **Bond.** The bond required by subdivision 3 shall be executed in such amount and with such sureties as the workers' compensation court of appeals directs and approves. The bond shall be conditioned to pay the cost of the review.

Subd. 6. **Transmittal of fee and return.** When the writ of certiorari has been served upon the administrator of the workers' compensation court of appeals, the bond has been filed, and the filing fee has been paid, the administrator shall immediately transmit to the clerk of the appellate courts that filing fee and the return to the writ of certiorari and bond.

Subd. 7. **Jurisdiction vested.** Filing such return and payment of the filing fee referred to in subdivision 6 vests the supreme court with jurisdiction of the case.

Subd. 8. **Return of proceedings transmitted to court.** Within 30 days after the writ of certiorari, bond, and filing fee have been filed with the administrator of the workers' compensation court of appeals, the administrator shall transmit to the clerk of the appellate courts a true and complete return of the proceedings of the workers' compensation court of appeals under review, or the part of those proceedings necessary to allow the supreme court to review properly the questions presented.

The workers' compensation court of appeals shall certify the return of the proceedings under its seal. The petitioner or relator shall pay to the administrator of the workers' compensation court of appeals the reasonable expense of preparing the return.

Subd. 9. **Application of rules governing appeals in civil actions.** When the return of the proceedings before the workers' compensation court of appeals has been filed with the clerk of the appellate courts, the supreme court shall hear and dispose of the matter as in other civil cases.

Subd. 10. **Rules.** The supreme court may adopt rules which are consistent with this chapter and necessary or convenient to the impartial and speedy disposition of these cases.

History: *1953 c 755 s 64; 1971 c 686 s 1; 1973 c 388 s 121-124; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1976 c 239 s 37; 1981 c 346 s 128-131; 1983 c 247 s 72-74; 1983 c 301 s 152; 1986 c 444*

176.48 [Repealed, 1953 c 755 s 83]

176.481 ORIGINAL JURISDICTION OF SUPREME COURT.

On review upon certiorari under this chapter, the supreme court has original jurisdiction. It may reverse, affirm, or modify the order allowing or disallowing compensation and enter such judgment as it deems just and proper. Where necessary the supreme court may remand the cause to the workers' compensation court of appeals for a new hearing or for further proceedings with such directions as the court deems proper.

History: *1953 c 755 s 65; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78*

176.49 [Repealed, 1953 c 755 s 83]

176.491 STAY OF PROCEEDINGS PENDING DISPOSITION OF CASE.

Where a writ of certiorari has been perfected under this chapter, it stays all proceedings for the enforcement of the order being reviewed until the case has been finally disposed of either in the supreme court or, where the cause has been remanded for a new hearing before a compensation judge or further proceedings before the workers' compensation court of appeals.

History: *1953 c 755 s 66; 1973 c 388 s 125; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1981 c 346 s 132*

176.50 [Repealed, 1953 c 755 s 83]

176.501 [Repealed, 1987 c 332 s 117]

176.51 [Repealed, 1953 c 755 s 83]

176.511 COSTS.

Subdivision 1. **Parties not awarded costs.** Except as provided otherwise by this chapter and specifically by this section, in appeals before the court of appeals or proceedings before the division or a compensation judge, costs shall not be awarded to any party.

Subd. 2. **Disbursements, taxation.** The commissioner or compensation judge, or on appeal the workers' compensation court of appeals, may award the prevailing party reimbursement for actual and necessary disbursements. These disbursements shall be taxed upon five days' written notice to adverse parties.

Subd. 3. **Attorney's fee, allowance.** Where upon an appeal to the workers' compensation court of appeals, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the workers' compensation court of appeals may include in its award as an incident to its review on appeal an

amount to cover a reasonable attorney's fee, or it may allow the fee in a proceeding to tax disbursements.

If the employer or insurer files a notice of discontinuance of an employee's benefits and an administrative conference is held to resolve the dispute, but the employer or insurer fails to attend the administrative conference, the commissioner or compensation judge may order the employer or insurer to pay the employee's attorney fees as a cost under this section if the employee's benefits are continued.

Subd. 4. **Costs and disbursements on certiorari.** On review by the supreme court upon certiorari, costs and disbursements shall be taxed as they are upon appeals in civil actions.

Subd. 5. **Attorney's fee on certiorari.** Where upon a review by the supreme court upon certiorari, an award of compensation is affirmed, or modified and affirmed, or an order disallowing compensation is reversed, the court may allow a reasonable attorney's fee incident to the review. This allowance of an attorney's fee shall be made a part of the judgment order of the supreme court.

History: *1953 c 755 s 68; 1969 c 276 s 2; 1973 c 388 s 126; 1975 c 271 s 6; 1975 c 359 s 19,23; 1976 c 134 s 78; 1977 c 342 s 22; 1981 c 346 s 133; 1985 c 234 s 16,17; 1987 c 332 s 95-97*

176.52 [Repealed, 1953 c 755 s 83]

176.521 SETTLEMENT OF CLAIMS.

Subdivision 1. **Validity.** An agreement between an employee or an employee's dependent and the employer or insurer to settle any claim, which is not upon appeal before the court of appeals, for compensation under this chapter is valid where it has been executed in writing and signed by the parties and intervenors in the matter, and, where one or more of the parties is not represented by an attorney, the commissioner or a compensation judge has approved the settlement and made an award thereon. If the matter is upon appeal before the court of appeals or district court, the court of appeals or district court is the approving body. An agreement to settle any claim is not valid if a guardian or conservator is required under section 176.092 and an employee or dependent has no guardian or conservator.

Subd. 2. **Approval.** Settlements shall be approved only if the terms conform with this chapter.

The commissioner, a compensation judge, the court of appeals, and the district court shall exercise discretion in approving or disapproving a proposed settlement.

The parties to the agreement of settlement have the burden of proving that the settlement is reasonable, fair, and in conformity with this chapter. A settlement agreement where both the employee or the employee's dependent and the employer or insurer are represented by an attorney shall be conclusively presumed to be reasonable, fair, and in conformity with this chapter except when the settlement purports to be a full, final, and complete settlement of an employee's right to medical compensation under this chapter or rehabilitation under section 176.102. A settlement which purports to do so must be approved by the commissioner, a compensation judge, or court of appeals.

The conclusive presumption in this subdivision is not available in cases involving an employee or dependent with a guardian or conservator.

The conclusive presumption in this subdivision applies to a settlement agreement entered into on or after January 15, 1982, whether the injury to which the settlement applies occurred prior to or on or after January 15, 1982.

Subd. 2a. **Settlements not subject to approval.** When a settled case is not subject to approval, upon receipt of the stipulation for settlement, the commissioner, a compensation judge, or the court of appeals shall immediately sign the award and file it with the commissioner. Payment pursuant to the award shall be made within 14 days after it is filed with the commissioner. The commissioner may correct mathematical or clerical errors at any time.

Subd. 3. **Setting aside award upon settlement.** Notwithstanding the provisions of subdivision 1, 2, or 2a, or any provision in the agreement of settlement to the contrary, upon the filing of a petition by any party to the settlement, the court of appeals may set aside an award made upon a settlement, pursuant to this chapter. In appropriate cases, the court of appeals may refer the matter to the chief administrative law judge for assignment to a compensation judge for hearing.

History: *1953 c 755 s 69; 1973 c 388 s 127,128; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1979 c 271 s 1; Ex1979 c 3 s 60; 1981 c 346 s 134,135; 3Sp1981 c 2 art 1 s 24-26; 1983 c 290 s 156-158; 1984 c 640 s 32; 1986 c 444; 1986 c 461 s 33; 1987 c 332 s 98; 1993 c 194 s 7,8*

176.522 NOTICE TO EMPLOYER.

An employer shall be notified by the insurer 30 days after any final valid settlement is approved or otherwise made final under any provision of this chapter. The notice shall include all terms of the settlement including the total amount of money required to be reserved in order to pay the claim.

History: *1983 c 290 s 159*

176.53 [Repealed, 1953 c 755 s 83]

176.531 AWARD OF COMPENSATION AGAINST A POLITICAL SUBDIVISION OR SCHOOL DISTRICT.

Subdivision 1. **Preferred claim.** Where there has been an award of compensation under this chapter to be paid by a political subdivision or a school district, the entitlement of a person to payment under the award is a preferred claim against the subdivision or district. The award shall be paid when and as ordered from the general fund of the subdivision or district, and from the current tax apportionment received by the subdivision or district for the credit of the general fund.

Subd. 2. **Payment from general fund.** When the political subdivision or school district has issued an order or warrant for payment of compensation, and the order or warrant has not been paid, it is a preferred claim which shall be paid from the general fund and from current tax apportionments received for the credit of the general fund before any subsequent claim for compensation is paid.

Subd. 3. **Prompt payment.** It is the intent of this section that there be prompt payment of compensation.

History: *1953 c 755 s 70; 1973 c 388 s 129; 1981 c 346 s 136*

176.54 [Repealed, 1953 c 755 s 83]

176.540 [Renumbered 176.5401]

176.5401 TRANSFER OF STATE CLAIMS UNIT TO DEPARTMENT OF EMPLOYEE RELATIONS.

The responsibilities of the commissioner of labor and industry relating to the administration and payment of workers' compensation benefits to state employees under this chapter and the administration of the peace officers benefits fund under chapter 176B, and the staff assigned to administer these responsibilities, are hereby transferred to the department of employee relations under section 15.039. The complement positions to be transferred shall be determined by the commissioner of administration in consultation with the commissioners of employee relations and labor and industry.

History: *1987 c 332 s 99; 1987 c 332 s 99*

176.541 STATE DEPARTMENTS.

Subdivision 1. **Application of chapter to state employees.** This chapter applies to the employees of any department of this state.

Subd. 2. **Defense of claim against state.** When the commissioner of employee relations believes that a claim against the state for compensation should be contested, the commissioner shall defend the state claim.

Subd. 3. **Duties of attorney general.** At any stage in such a compensation proceeding, the attorney general may assume the duty of defending the state. When the commissioner of employee relations or a department of this state requests the attorney general to assume the defense, the attorney general shall do so.

Subd. 4. **Medical examination of employee; witnesses; conduct of defense.** In conducting a defense against a claim for compensation, the commissioner of the department of employee relations or the attorney general, as the case may be, may require that an employee submit to a medical examination, procure the attendance of expert and other witnesses at a hearing, and do any other act necessary to conduct a proper defense.

Subd. 5. **Expenses of conducting defense.** The expenses of conducting a defense shall be charged to the department which employs the employee involved. These expenses shall be paid from the state compensation revolving fund.

Subd. 6. **Legal and clerical help.** The commissioner of employee relations may employ such legal and clerical help as authorized by the department of administration. The salaries of these persons shall be paid from the state compensation revolving fund, but shall be apportioned among the several departments of the state in relation to the amount of compensation paid to employees of any department as against the total amount of compensation paid to employees of all departments.

Subd. 7. **Historical society as state department.** For the purposes of workers' compensation as provided by this chapter, the Minnesota historical society is a state department and such chapter applies to its employees the same as it applies to employees of any department of the state government.

Subd. 8. **State may insure.** The state of Minnesota may elect to insure its liability under the workers' compensation law for persons employed under the federal Emergency Employment Act of 1971, as amended, and the Comprehensive Employment and Training Act of 1973, as amended, with an insurer properly licensed in Minnesota.

History: *1953 c 755 s 71; 1967 c 8 s 1; 1971 c 422 s 10; 1973 c 388 s 130-133; 1975 c 2 s 2; 1975 c 359 s 23; 1986 c 444; 1987 c 332 s 100-103*

176.55 [Repealed, 1953 c 755 s 83]

176.551 REPORTS.

Subdivision 1. **Heads of state departments to report accidents to employees.** Except as provided in subdivision 2, the head of a department of the state shall report each accident which occurs to an employee as and in the manner required by this chapter.

Subd. 2. **Contents.** The report need not contain a statement relating to liability to pay compensation as required by this chapter.

History: *1953 c 755 s 72*

176.56 [Repealed, 1953 c 755 s 83]

176.561 WORKERS' COMPENSATION COURT OF APPEALS POWERS AND DUTIES AS TO STATE EMPLOYEES; PROCEDURE FOR DETERMINING LIABILITY.

The division, a compensation judge and the workers' compensation court of appeals have the same powers and duties in matters relating to state employees as they have in relation to other employees.

Except as specifically provided otherwise in this chapter, the procedure for determining the liability of the state for compensation is the same as that applicable in other cases.

History: *1953 c 755 s 73; 1973 c 388 s 134; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1983 c 290 s 160*

176.57 [Repealed, 1953 c 755 s 83]

176.571 INVESTIGATIONS OF INJURIES TO STATE EMPLOYEES.

Subdivision 1. **Preliminary investigation.** When the head of a department has filed a report or the commissioner of employee relations has otherwise received information of the occurrence of an injury to a state employee for which liability to pay compensation may exist, the commissioner of employee relations shall make a preliminary investigation to determine the question of probable liability.

In making this investigation, the commissioner of employee relations may require the assistance of the head of any department or any employee of the state. The commissioner of employee relations may require that all facts be furnished which appear in the records of any state department bearing on the issue.

Subd. 2. **Determination by department.** When the commissioner of the department of employee relations has completed an investigation, the commissioner shall inform the claimant, the head of the employing department, and the commissioner of finance in writing of the action taken.

Subd. 3. [Repealed, 1987 c 332 s 117]

Subd. 4. [Repealed, 1987 c 332 s 117]

Subd. 5. [Repealed, 1987 c 332 s 117]

Subd. 6. [Repealed, 1987 c 332 s 117]

Subd. 7. [Repealed, 1987 c 332 s 117]

History: *1953 c 755 s 74; 1973 c 388 s 135-141; 1983 c 290 s 161; 1984 c 640 s 32; 1986 c 444; 1987 c 332 s 104,105*

176.572 CONTRACT WITH INSURANCE CARRIERS.

The commissioner of employee relations may contract with group health insurance carriers or health maintenance organizations to provide health care services and reimburse health care payments for injured state employees entitled to benefits under this chapter.

History: *1983 c 290 s 162; 1987 c 332 s 106*

176.58 [Repealed, 1953 c 755 s 83]

176.581 PAYMENT TO STATE EMPLOYEES.

Upon a warrant prepared by the commissioner of the department of employee relations and approved by the commissioner of finance, and in accordance with the terms of the order awarding compensation, the state treasurer shall pay compensation to the employee or the employee's dependent. These payments shall be made from money appropriated for this purpose.

History: *1953 c 755 s 75; 1973 c 388 s 142-144; 1973 c 492 s 14; 1986 c 444; 1987 c 332 s 107*

176.59 [Repealed, 1953 c 755 s 83]

176.591 STATE COMPENSATION REVOLVING FUND.

Subdivision 1. **Establishment.** To facilitate the discharge by the state of its obligations under this chapter, there is established a revolving fund to be known as the state compensation revolving fund.

This fund is comprised of the unexpended balance in the fund on July 1, 1935, and the sums which the several departments of the state pay to the fund.

Subd. 2. **State treasurer as custodian.** The state treasurer is custodian of this fund.

Subd. 3. **Compensation payments upon warrants.** The state treasurer shall make compensation payments from the fund only as authorized by this chapter upon warrants of the commissioner of the department of employee relations.

History: *1953 c 755 s 76; 1973 c 388 s 145; 1987 c 332 s 108*

176.60 [Repealed, 1953 c 755 s 83]

176.601 [Repealed, 1974 c 355 s 30]

176.602 [Repealed, 1987 c 332 s 117]

176.603 COST OF ADMINISTERING CHAPTER, PAYMENT.

The annual cost to the commissioner of the department of employee relations of administering this chapter in relation to state employees and the necessary expenses which the department of employee relations or the attorney general incurs in investigating, administering, and defending a claim against the state for compensation shall be paid from the state compensation revolving fund.

History: *1974 c 355 s 32; 1986 c 461 s 34; 1987 c 332 s 109*

176.61 [Repealed, 1953 c 755 s 83]

176.611 MAINTENANCE OF STATE COMPENSATION REVOLVING FUND.

Subdivision 1. **Generally.** The state compensation revolving fund shall be maintained as provided in the following subdivisions:

Subd. 2. **State departments.** Every department of the state, including the University of Minnesota, shall reimburse the fund for money paid for its claims and the costs of administering the revolving fund at such times and in such amounts as the commissioner of employee relations shall certify has been paid out of the fund on its behalf. The heads of the departments shall anticipate these payments by including them in their budgets. In addition, the commissioner of employee relations, with the approval of the commissioner of finance, may require an agency to make advance payments to the fund sufficient to cover the agency's estimated obligation for a period of at least 60 days. Reimbursements and other money received by the commissioner of employee relations under this subdivision must be credited to the state compensation revolving fund.

Subd. 2a. **Alternative cost allocation account.** To reduce long-term costs, minimize impairment to agency operations and budgets, and distribute risk of 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 legal, medical, indemnity, or other claim costs that might 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.

Subd. 3. [Repealed, 1986 c 461 s 37]

Subd. 3a. **Loans.** To maintain an ongoing balance sufficient to pay sums currently due for benefits and administrative costs, the commissioner of finance, upon request of the commissioner of employee relations, may transfer money from the general fund to the state compensation revolving fund. Before requesting the transfer, the commissioner of employee relations must decide there is not enough money in the fund for an immediate, necessary expenditure. The amount necessary to make the transfer is

appropriated from the general fund to the commissioner of finance. The commissioner of employee relations shall make schedules to repay the transferred money to the general fund. The repayment may not extend beyond five years.

Subd. 4. [Repealed, 1986 c 461 s 37]

Subd. 5. [Repealed, 1974 c 355 s 14]

Subd. 6. [Repealed, 1974 c 355 s 14]

Subd. 6a. **Appropriations constituting fund.** The revolving fund consists of $3,437,690 appropriated from the general fund and other funds, along with credited investment gains or losses attributable to balances in the account. The state board of investment shall invest the fund's assets according to section 11A.24.

History: *1953 c 755 s 78; 1955 c 744 s 1; 1957 c 656 s 1; 1963 c 551 s 1; 1965 c 57 s 1; 1969 c 399 s 49; 1971 c 907 s 1; 1973 c 388 s 147-149; 1974 c 355 s 15; 1975 c 204 s 77; 1976 c 166 s 7; 1979 c 50 s 19; 1986 c 461 s 35; 1987 c 404 s 151-153; 1988 c 667 s 24,25; 1994 c 632 art 3 s 52; 1997 c 202 art 2 s 41; 2000 c 447 s 22*

176.62 [Repealed, 1953 c 755 s 83]

176.621 [Repealed, 1975 c 61 s 26]

176.63 [Repealed, 1953 c 755 s 83]

176.631 [Repealed, 1975 c 61 s 26]

176.64 [Repealed, 1953 c 755 s 83]

176.641 ACCIDENTS OR INJURIES ARISING PRIOR TO EFFECTIVE DATE.

All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this chapter shall be governed by the then existing law.

History: *1953 c 755 s 81*

176.645 ADJUSTMENT OF BENEFITS.

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

Subd. 2. **Time of first adjustment.** For injuries occurring on or after October 1, 1981, the initial adjustment made pursuant to subdivision 1 is deferred until the first

anniversary of the date of the injury. For injuries occurring on or after October 1, 1992, the initial adjustment under subdivision 1 is deferred until the second anniversary of the date of the injury. The adjustment made at that time shall be that of the last year only. For injuries occurring on or after October 1, 1995, the initial adjustment under subdivision 1 is deferred until the fourth anniversary of the date of injury. The adjustment at that time shall be that of the last year only.

History: *1975 c 359 s 20; 1977 c 342 s 23; 1981 c 346 s 137; 1992 c 510 art 1 s 12,13; 1995 c 231 art 1 s 28*

176.65 [Repealed, 1953 c 755 s 83]

176.651 SEVERABILITY.

In case for any reason any paragraph or any provision of this chapter shall be questioned in any court of last resort, and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision thereof.

History: *1953 c 755 s 82*

176.66 OCCUPATIONAL DISEASES; HOW REGARDED.

Subdivision 1. **Disability, disablement.** The disablement of an employee resulting from an occupational disease shall be regarded as a personal injury within the meaning of the workers' compensation law.

Subd. 2. [Repealed, 1973 c 643 s 12]

Subd. 3. [Repealed, 1973 c 643 s 12]

Subd. 4. [Repealed, 1973 c 643 s 12]

Subd. 5. [Repealed, 1973 c 643 s 12]

Subd. 6. [Repealed, 1973 c 643 s 12]

Subd. 7. [Repealed, 1973 c 643 s 12]

Subd. 8. [Repealed, 1973 c 643 s 12]

Subd. 9. [Repealed, 1973 c 643 s 12]

Subd. 10. **Multiple employers or insurers; liability.** The employer liable for the compensation for a personal injury under this chapter is the employer in whose employment the employee was last exposed in a significant way to the hazard of the occupational disease. In the event that the employer who is liable for the compensation had multiple insurers during the employee's term of employment, the insurer who was on the risk during the employee's last significant exposure to the hazard of the occupational disease is the liable party. Where there is a dispute as to which employer is liable under this section, the employer in whose employment the employee is last exposed to the hazard of the occupational disease shall pay benefits pursuant to section 176.191, subdivision 1. If this last employer had coverage for workers' compensation liability from more than one insurer during the employment the insurer on the risk during the last period during which the employee was last exposed to the hazard of the occupational disease shall pay benefits as provided under section 176.191, subdivision 1, whether or not this insurer was on risk during the last significant exposure. The party making payments under this section shall be reimbursed by the party who is subsequently determined to be liable for the occupational disease, including interest at a rate of 12 percent a year. For purposes of this section, a self-insured employer shall be considered to be an insurer and an employer.

Subd. 11. **Amount of compensation.** The compensation for an occupational disease is 66-2/3 percent of the employee's weekly wage on the date of injury subject to a maximum compensation equal to the maximum compensation in effect on the date of last exposure.

History: *(4327) 1921 c 82 s 67; 1939 c 306; 1943 c 633 s 4; 1947 c 612 s 1; 1949 c 500 s 1-3; 1955 c 206 s 2; 1957 c 834 s 2; 1959 c 20 s 2; 1963 c 497 s 2; 1967 c 905 s 9; Ex1967 c 1 s 6; 1973 c 643 s 11; 1975 c 359 s 23; 1983 c 290 s 163,164; 1984 c 432 art 2 s 48,49; 1985 c 234 s 18; 1995 c 231 art 1 s 29*

176.661 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.662 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.663 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.664 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.665 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.666 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.667 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.668 [Repealed, 1973 c 643 s 12; 1976 c 2 s 164]

176.669 EXPENSES; RULES.

Subdivision 1. **Payment of expenses.** Any expense incurred by the department of labor and industry in carrying out the purposes of Laws 1943, chapter 633, shall be paid out of the general fund for the department of labor and industry.

Subd. 2. **Making of rules.** The department shall make such rules and orders with reference to procedure as it deems necessary not inconsistent with Laws 1943, chapter 633.

History: *1943 c 633 s 15,16; 1969 c 9 s 49; 1973 c 388 s 164,165; 1985 c 248 s 70*

176.67-176.79 [Repealed, 1953 c 755 s 83]

176.80 [Obsolete]

176.81 [Repealed, 1953 c 755 s 83]

176.82 ACTION FOR CIVIL DAMAGES FOR OBSTRUCTING EMPLOYEE SEEKING BENEFITS.

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

Subd. 2. **Refusal to offer continued employment.** An employer who, without reasonable cause, refuses to offer continued employment to its employee when employment is available within the employee's physical limitations shall be liable in a civil action for one year's wages. The wages are payable from the date of the refusal to offer continued employment, and at the same time and at the same rate as the employee's preinjury wage, to continue during the period of the refusal up to a maximum of $15,000. These payments shall be in addition to any other payments provided by this chapter. In determining the availability of employment, the continuance in business of the employer shall be considered and written rules promulgated by the employer with respect to seniority or the provisions or any collective bargaining agreement shall govern. These payments shall not be covered by a contract of insurance. The employer shall be served directly and be a party to the claim. This subdivision shall not apply to employers who employ 15 or fewer full-time equivalent employees.

History: *1975 c 359 s 21,23; 1995 c 231 art 1 s 30*

176.83 RULES.

Subdivision 1. **Generally.** In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend, or repeal rules to implement the provisions of this chapter. The rules include but are not limited to the rules listed in this section.

Subd. 2. **Rehabilitation.** Rules necessary to implement and administer section 176.102, including the establishment of qualifications necessary to be a qualified rehabilitation consultant and the requirements to be an approved registered vendor of rehabilitation services.

The rules may also provide for penalties to be imposed by the commissioner against insurers or self-insured employers who fail to provide rehabilitation consultation to employees pursuant to section 176.102.

These rules may also establish criteria for determining "reasonable moving expenses" under section 176.102.

The rules shall also establish criteria, guidelines, methods, or procedures to be met by an employer or insurer in providing the initial rehabilitation consultation required under this chapter which would permit the initial consultation to be provided by an individual other than a qualified rehabilitation consultant. In the absence of rules regarding an initial consultation this consultation shall be conducted pursuant to section 176.102.

Subd. 3. **Clinical consequences.** Rules establishing standards for reviewing and evaluating the clinical consequences of services provided by qualified rehabilitation consultants, approved registered vendors of rehabilitation services, and services provided to an employee by health care providers.

Subd. 4. **Excessive charges for medical services.** Rules establishing standards and procedures for determining whether or not charges for health services or rehabilitation services rendered under this chapter are excessive. In this regard, the standards and procedures shall be structured to determine what is necessary to encourage providers of health services and rehabilitation services to develop and deliver services for the rehabilitation of injured employees.

The procedures shall include standards for evaluating hospital care, other health care and rehabilitation services to insure that quality hospital, other health care, and rehabilitation is available and is provided to injured employees.

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

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

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

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

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

(4) criteria for diagnostic imaging procedures;

(5) criteria for inpatient hospitalization; and

(6) criteria for treatment of chronic pain.

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

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

Subd. 5a. **Reporting.** Rules requiring insurers, self-insurers, and group self-insurers to report medical and other data necessary to implement the procedures required by this chapter.

Subd. 6. **Certification of medical providers.** Rules establishing procedures and standards for the certification of physicians, chiropractors, podiatrists, and other health care providers in order to assure the coordination of treatment, rehabilitation, and other services and requirements of chapter 176 for carrying out the purposes and intent of this chapter.

Subd. 7. **Miscellaneous rules.** Rules necessary for implementing and administering the provisions of Minnesota Statutes 1990, section 176.131, Minnesota Statutes 1994, section 176.132, sections 176.238 and 176.239; sections 176.251, 176.66 to 176.669, and rules regarding proper allocation of compensation under section 176.111. Under the rules adopted under section 176.111 a party may petition for a hearing before a compensation judge to determine the proper allocation. In this case the compensation judge may order a different allocation than prescribed by rule.

Subd. 8. **Change of provider.** Rules establishing standards or criteria under which a physician, podiatrist, or chiropractor is selected or under which a change of physician, podiatrist, or chiropractor is allowed under section 176.135, subdivision 2.

Subd. 9. **Intervention.** Rules to govern the procedure for intervention pursuant to section 176.361.

Subd. 10. **Joint rules.** Joint rules with either or both the workers' compensation court of appeals and the chief administrative law judge which may be necessary in order to provide for the orderly processing of claims or petitions made or filed pursuant to this chapter.

Subd. 11. **Independent contractors.** Rules establishing criteria to be used by the division, compensation judge, and court of appeals to determine "independent contractor."

Subd. 12. **Compensation judge procedures.** The chief administrative law judge shall adopt rules relating to procedures in matters pending before a compensation judge in the office of administrative hearings.

Subd. 13. **Claims adjuster.** The commissioner may adopt rules regarding requirements which must be met by individuals who are employed by insurers or self-insurers or claims servicing or adjusting agencies and who work as claims adjusters in the field of workers' compensation insurance.

Subd. 14. [Deleted, 1995 c 233 art 2 s 56]

Subd. 15. **Forms.** The commissioner may prescribe forms and other reporting procedures to be used by an employer, insurer, medical provider, qualified rehabilitation consultant, approved vendor of rehabilitation services, attorney, employee, or other person subject to the provisions of this chapter.

History: *1983 c 290 s 165; 1984 c 432 art 2 s 50; 1984 c 640 s 32; 1986 c 461 s 36; 1987 c 332 s 110-112; 1987 c 384 art 2 s 44; art 3 s 4; 1992 c 510 art 4 s 21,22; 1995 c 231 art 2 s 99; 1996 c 305 art 1 s 48; 1997 c 7 art 5 s 17*

176.84 SPECIFICITY OF NOTICE OR STATEMENT.

Subdivision 1. **Specificity required.** Notices of discontinuance and denials of liability shall be sufficiently specific to convey clearly, without further inquiry, the basis upon which the party issuing the notice or statement is acting. If the commissioner or compensation judge determines that a notice or statement is not sufficiently specific to meet the standard under this section, the notice or statement may be rejected as unacceptable and the party issuing it shall be informed of this. The rejected notice or statement may be amended to meet the requirement of this section or a new one may be filed.

Subd. 2. **Penalty.** The commissioner or compensation judge may impose a penalty of $500 for each violation of subdivision 1. This penalty is payable to the commissioner for deposit in the assigned risk safety account.

Subd. 3. **Effective date.** This section shall not be effective until the commissioner adopts rules which specify what is required to be contained in the notice of discontinuance and the denial of liability.

History: *1983 c 290 s 166; 1987 c 332 s 113; 1995 c 231 art 2 s 100; 2002 c 262 s 22*

176.85 PENALTIES; APPEALS.

Subdivision 1. **Appeal procedure.** If the commissioner has assessed a penalty against a party subject to this chapter and the party believes the penalty is not warranted, the party may request that a formal hearing be held on the matter. The request must be filed within 30 days of the date that the penalty assessment is served on the party. Upon receipt of a timely request for a hearing the commissioner shall refer the matter to the chief administrative law judge for assignment to a compensation judge or administrative law judge.

The chief administrative law judge shall keep a record of the proceeding and provide a record pursuant to section 176.421.

The decision of the compensation judge or administrative law judge shall be final and shall be binding and enforceable. The decision may be appealed to the workers' compensation court of appeals.

Subd. 2. **Exception.** This section does not apply to penalties for which another appeal procedure is provided, including but not limited to penalties imposed pursuant to section 176.102 or 176.103.

Subd. 3. **Hearing costs.** For purposes of this section, a hearing before an administrative law judge shall be treated in the same manner as a hearing before a compensation judge and no costs may be charged to the commissioner for the hearing, regardless of who hears it.

History: *1983 c 290 s 167; 1984 c 432 art 2 s 51; 1984 c 640 s 32*

176.86 [Repealed, 1995 c 231 art 1 s 36]

176.861 DISCLOSURE OF INFORMATION.

Subdivision 1. **Insurance information.** The commissioner may, in writing, require an insurance company to release to the commissioner any or all relevant information or evidence the commissioner deems important which the company may have in its possession relating to a workers' compensation claim including material relating to the investigation of the claim, statements of any person, and any other evidence relevant to

the investigation. The writing from the commissioner requiring release of the information shall contain a statement that the commissioner has reason to believe a crime or civil fraud has been committed with respect to an insurance claim, payment, or application.

Subd. 2. **Information released to authorized persons.** If an insurance company has evidence that a claim may be fraudulent, the company shall, in writing, notify the commissioner and provide the commissioner with all relevant material related to the company's inquiry into the claim.

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

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

History: *1995 c 231 art 1 s 31*

176.862 DISCLOSURE TO LAW ENFORCEMENT.

The commissioner must disclose the current address of an employee collected or maintained under this chapter to law enforcement officers who provide the name of the employee and notify the commissioner that the employee is a person required to register under section 243.166 and is not residing at the address at which the employee is registered under section 243.166.

History: *2000 c 311 art 6 s 3*