CHAPTER 79

WORKERS' COMPENSATION INSURANCE

MISCELLANEOUS PROVISIONS

79.01 DEFINITIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different meaning is intended, the following terms, for the purposes of sections 79.01 to 79.211, shall have the meanings ascribed to them.

Subd. 1a. **Assigned risk plan.** "Assigned risk plan" means:

(1) the method to provide workers' compensation coverage to employers unable to obtain coverage through licensed workers' compensation companies; and

(2) the procedures established by the commissioner to implement that method of providing coverage including administration of all assigned risk losses and reserves.

Subd. 1b. **Employer.** "Employer" has the meaning given in section 176.011, subdivision 10.

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

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

Subd. 4. [Repealed, 1969 c 9 s 10]

Subd. 5. **Commissioner.** The word "commissioner" means the commissioner of commerce.

Subd. 6. **Association or rating association.** "Association" or "rating association" means the Workers' Compensation Insurers Rating Association of Minnesota.

Subd. 7. **Interested party.** "Interested party" means any person or association acting on behalf of its members who is directly affected by a change in the schedule of rates and includes the staff of the Department of Commerce.

Subd. 8. **Schedule of rates.** "Schedule of rates" means the rate level applicable to the various industry groupings or classes, including the risk classifications thereunder upon which the determination of workers' compensation premiums are based, including but not limited to all systems for merit or experience rating, retrospective rating, and premium discounts.

History: *(3612) 1921 c 85 s 1; 1931 c 353 s 1; 1957 c 508 s 1; 1969 c 9 s 8; 1973 c 577 s 1,2; 1975 c 359 s 23; Ex1979 c 3 s 1; 1980 c 529 s 3,4; 1981 c 346 s 9,10; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 384 art 2 s 1; 2006 c 255 s 62,63*

79.02 [Repealed, 1969 c 9 s 10]

79.021 [Repealed, 1969 c 9 s 10]

79.03 [Repealed, 1969 c 9 s 10]

79.04 [Repealed, 1969 c 9 s 10]

79.05 [Repealed, Ex1979 c 3 s 70]

79.06 [Repealed, Ex1979 c 3 s 70]

79.07 [Repealed, Ex1979 c 3 s 70]

79.071 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.072 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.073 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.074 DISCRIMINATION.

Subdivision 1. [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

Subd. 2. **Dividends.** Dividend plans are not unfairly discriminatory where different premiums result for different policyholders with similar loss exposures but different expense factors, or where different premiums result for different policyholders with similar expense factors but different loss exposures, so long as the respective premiums reflect the differences with reasonable accuracy. Every insurer who issues participating policies shall file with the commissioner a true copy or summary as the commissioner shall direct of its participating dividend rates as to policyholders. The commissioner may study the participating dividend rates and make recommendations to the legislature concerning possible bases for unfair discrimination.

History: *Ex1979 c 3 s 5; 1995 c 231 art 2 s 3*

79.075 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.076 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.08 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.081 MANDATORY DEDUCTIBLES.

Subdivision 1. **Premium reduction.** Each insurer, including the assigned risk plan, issuing a policy of insurance, must make available to an employer, upon request, the option to agree to pay an amount per claim selected by the employer and specified in the policy toward the total of any claim payable under chapter 176. The amount of premium to be paid by an employer who selects a policy with a deductible shall be reduced based upon a rating schedule or rating plan filed with and approved by the commissioner of commerce. Administration of claims shall remain with the insurer as provided in the terms and conditions of the policy.

Each insurer shall notify its agents authorized to write workers' compensation insurance about the availability and terms and conditions of deductibles required by this section, using a brochure in a format approved by the commissioner.

Subd. 2. **Procedure for paying deductible.** If an insured employer chooses a deductible, the insured employer is liable for the amount of the deductible. The insurer shall administer the claim as provided in the terms and conditions of the insurance policy and seek reimbursement from the insured employer for the deductible. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers' compensation in the same manner as payment or nonpayment of premiums.

Subd. 3. **Credit risk; exception.** An insurer is not required to offer a deductible to an employer if, as a result of a credit investigation, the insurer determines that the employer is not sufficiently financially stable to be responsible for the payment of deductible amounts.

Subd. 4. **Reporting requirement.** The existence of an insurance contract with a deductible or the fact of payment as a result of a deductible does not affect the requirement of an employer to report an injury or death to an insurer or the commissioner of labor and industry.

Subd. 5. **No employee liability.** Nothing in this section alters the obligation of the employer to provide the benefits required by this chapter. An employee is not responsible to pay all or a part of the deductible chosen by an employer.

History: *1992 c 510 art 3 s 1*

79.085 SAFETY PROGRAMS.

All insurers writing workers' compensation insurance in this state shall provide safety and occupational health loss control consultation services to each of their policyholders requesting the services in writing. Insurers must annually notify their policyholders of their right under this section to safety and occupational health loss consultation services. The services must include the conduct of workplace surveys to identify health and safety problems, review of employer injury records with appropriate personnel, and development of plans to improve employer occupational health and safety loss records. Insurers shall notify each policyholder of the availability of those services and the telephone number and address where such services can be requested. The notification may be delivered with the policy of workers' compensation insurance.

History: *1992 c 510 art 3 s 2; 1995 c 231 art 2 s 4*

79.09 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.095 APPOINTMENT OF ACTUARY.

The commissioner shall employ the services of a casualty actuary experienced in worker's compensation whose duties shall include but not be limited to investigation of complaints by insured parties relative to rates, rate classifications, or discriminatory practices of an insurer. The salary of the actuary employed pursuant to this section is not subject to the provisions of section 43A.17, subdivision 1.

History: *1977 c 342 s 24; Ex1979 c 3 s 8; 1981 c 210 s 54*

79.096 ACCESS TO RATE MAKING DATA.

The rating association must make available for inspection on request of any person any data it possesses related to the calculation of indicated pure premium rates.

History: *1992 c 510 art 3 s 3*

79.10 REVIEW OF ACTS OF INSURERS.

The Department of Commerce staff may investigate on the request of any person or on its own initiative the acts of the rating association, an insurer, or an agent that are subject to provisions of chapter 79 and may make findings and recommendations that the commission-

er issue an order requiring compliance with the provisions thereof. The proposed findings and recommended order shall be served on all affected parties at the same time that the staff transmits its findings and recommendations to the commissioner. Any party adversely affected by the proposed findings and recommended order may request that a hearing be held concerning the issues raised therein within 15 days after service of the findings and recommended order. This hearing shall be conducted as a contested case pursuant to sections 14.001 to 14.69. If a hearing is not requested within the time specified in this section, the proposed findings and recommended order may be adopted by the commissioner as a final order.

History: *(3621) 1921 c 85 s 10; 1953 c 615 s 3; 1969 c 9 s 9; 1973 c 577 s 2; Ex1979 c 3 s 9; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1984 c 592 s 77; 1984 c 655 art 1 s 92; 1987 c 384 art 2 s 1; 1990 c 422 s 10*

79.11 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.12 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.13 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.14 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.15 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.16 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.17 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.171 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.18 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.19 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.20 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.21 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.211 CERTAIN PREMIUM DETERMINATION PRACTICES.

Subdivision 1. **Certain wages included for ratemaking.** The rating association or an insurer shall include wages paid for a vacation, holiday, or sick leave in the determination of a workers' compensation insurance premium.

An insurer, including the assigned risk plan, shall not include wages paid for work performed in an adjacent state in the determination of a workers' compensation premium if the employer paid a workers' compensation insurance premium to the exclusive state fund of the adjacent state on the wages earned in the adjacent state.

Within 30 days of October 1, 1995, a licensed data service organization on behalf of its members shall file an amendment to its charged class premium rates to reflect the inclusion of vacation, holiday, and sick leave wages in the determination of premium. Within 30 days of the filing of those pure premium rates each insurer shall amend its filed schedule of rates to reflect the inclusion of vacation, holiday, and sick leave wages in the determination of premium.

Subd. 2. **Division of payroll.** An insurer shall permit an employer to divide a payroll among the rating classifications most closely fitting the work actually performed by each employee in a four–hour block or more for purposes of premium calculation when the employer's records provide adequate support for a division.

Subd. 3. **Payroll computations for certain public employees.** The commissioner of commerce in setting the assigned risk plan rates or an insurer shall compute a premium for an elected or appointed official of a town based on the actual annual wage received from the town.

Subd. 4. **Experience modification factor revision for certain closed claims.** An insurer or an employer insured under a workers' compensation policy subject to an experience rating plan may request in writing of the data service organization computing the policy's experience modification factor that the most recent factor be revised if each of the following criteria is met:

(1) a workers' compensation claim under that policy is closed between the normal valuation date for that claim and the next time that valuation is used in computing the experience modification factor on the policy;

(2) the data service organization receives a revised unit statistical report containing data on the closed claim in a form consistent with its filed unit statistical plan; and

(3) inclusion of the closed claim in the experience modification factor calculation would impact that factor by five percentage points or more.

History: *Ex1979 c 3 s 12; 1980 c 556 s 6; 1981 c 346 s 139; 1983 c 290 s 4; 1986 c 444; 1987 c 301 s 1; 1993 c 194 s 1; 1995 c 231 art 2 s 5; 2005 c 132 s 24*

79.22 Subdivision 1. [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]
Subd. 2. [Repealed, 1984 c 432 art 2 s 55]

79.221 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.23 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.24 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.25 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

ASSIGNED RISK PLAN

79.251 ADMINISTRATION OF ASSIGNED RISK PLAN.

Subdivision 1. **General duties of commissioner.** (a)(1) The commissioner shall have all the usual powers and authorities necessary for the discharge of the commissioner's duties under this section and may contract with individuals in discharge of those duties. The commissioner shall audit the reserves established (a) for individual cases arising under policies and contracts of coverage issued under subdivision 4 and (b) for the total book of business issued under subdivision 4. If the commissioner determines on the basis of an audit that there is an excess surplus in the assigned risk plan, the commissioner must notify the commissioner of finance who shall transfer assets of the plan equal to the excess surplus to the budget reserve account in the general fund.

(2) The commissioner shall monitor the operations of section 79.252 and this section and shall periodically make recommendations to the governor and legislature when appropriate, for improvement in the operation of those sections.

(3) All insurers and self–insurance administrators issuing policies or contracts under subdivision 4 shall pay to the commissioner a .25 percent assessment on premiums for policies and contracts of coverage issued under subdivision 4 for the purpose of defraying the costs of performing the duties under clauses (1) and (2). Proceeds of the assessment shall be deposited in the state treasury and credited to the general fund.

(4) The assigned risk plan shall not be deemed a state agency.

(5) The commissioner shall monitor and have jurisdiction over all reserves maintained for assigned risk plan losses.

(b) As used in this subdivision, "excess surplus" means the amount of assigned risk plan assets in excess of the amount needed to pay all current liabilities of the plan, including, but not limited to:

(1) administrative expenses;

(2) benefit claims; and

(3) if the assigned risk plan is dissolved under subdivision 8, the amounts that would be due insurers who have paid assessments to the plan.

Subd. 2. **Merit rating plan.** To assist small businesses with good safety records, the commissioner shall develop a merit rating plan applicable to all employers holding policies issued pursuant to subdivision 4. The plan shall provide that nonexperience rated employers, with no lost time claims for the last three policy years, shall receive 33 percent credit. The credit must be applied directly to the premium charged for the policy. Nonexperience rated employers with two or more lost time claims for the last three policy years may receive a debit. Experience rated employers shall receive a maximum credit or debit of ten percent of premium. The merit rating plan shall be subject to adjustment by the commissioner as necessary to fulfill the commissioner's assigned risk plan responsibilities.

Subd. 2a. **Assigned risk rating plan.** (a) Employers insured through the assigned risk plan are subject to paragraphs (b) and (c).

(b) Classifications must be assigned according to a uniform classification system approved by the commissioner.

(c) Rates must be modified according to an experience rating plan approved by the commissioner. Any experience rating plan is subject to Minnesota Rules, parts 2700.2800 and 2700.2900.

Subd. 3. **Rates.** Insureds served by the assigned risk plan shall be charged premiums based upon a rating plan, including a merit rating plan adopted by the commissioner by rule. The commissioner shall annually, not later than January 1 of each year, establish the schedule of rates applicable to assigned risk plan business. Assigned risk premiums shall not be lower than rates generally charged by insurers for the business. The commissioner shall fix the compensation received by the agent of record. The establishment of the assigned risk plan rates and agent fees are not subject to chapter 14.

Subd. 4. **Administration.** The commissioner shall enter into service contracts as necessary or beneficial for accomplishing the purposes of the assigned risk plan. Services related to the administration of policies or contracts of coverage shall be performed by one or more qualified insurance companies licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b), or self–insurance administrators licensed pursuant to section 176.181, subdivision 2, clause (2), paragraph (a). A qualified insurer or self–insurance administrator shall possess sufficient financial, professional, administrative, and personnel resources to provide the services contemplated in the contract. Services related to assignments, data management, assessment collection, and other services shall be performed by a licensed data service organization. The cost of those services is an obligation of the assigned risk plan.

Subd. 4a. **Medical cost containment.** The assigned risk plan must consider utilizing managed care plans certified under section 176.1351 with respect to its covered employees. In addition, the assigned risk plan must implement a medical cost containment program. The program must, at a minimum, include:

(1) billings review to determine if claims are compensable under chapter 176;

(2) utilization of cost management specialists familiar with billing practice guidelines;

(3) review of treatment to determine if it is reasonable and necessary and has a reasonable chance to cure and relieve the employee's injury;

(4) a system to reduce billed charges to the maximum permitted by law or rule;

(5) review of medical care utilization; and

(6) reporting of health care providers suspected of providing unnecessary, inappropriate, or excessive services to the commissioner of labor and industry.

Subd. 4b. **Groups.** The assigned risk plan must create a program that attempts to group employers in the same or similar risk classification for purposes of group premium underwriting and claims management. The assigned risk plan must engage in extensive safety consultation with group members to reduce the extent and severity of injuries of group members. The consultation should include on–site inspections and specific recommendations as to safety improvements.

Subd. 5. **Assessments.** The commissioner shall assess all insurers licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b) an amount sufficient to fully fund the

obligations of the assigned risk plan, if the commissioner determines that the assets of the assigned risk plan are insufficient to meet its obligations. The assessment of each insurer shall be in a proportion equal to the proportion which the amount of compensation insurance written in this state during the preceding calendar year by that insurer bears to the total compensation insurance written in this state during the preceding calendar year by all licensed insurers.

Amounts assessed under this subdivision are considered a liability of the assigned risk plan, to be repaid upon dissolution of the plan.

Subd. 6. **Agents.** A person licensed under chapter 60K may submit an application for coverage to the assigned risk plan and receive a fee from the assigned risk plan for submitting the application. However, the licensee is not an agent of the assigned risk plan for purposes of state law. All checks or similar instruments submitted in payment of assigned risk plan premiums must be made payable to the assigned risk plan and not the agent.

Subd. 7. **Investment of assets.** The commissioner shall certify and transfer to the state Board of Investment all assigned risk plan assets which in the commissioner's judgment are not required for immediate use. The state Board of Investment shall invest the certified assets, and may invest the assets consistent with the provisions of section 11A.14. All investment income and losses attributable to the investment of assigned risk plan assets must be credited to the assigned risk plan. When the commissioner certifies to the state board that invested assets are required for immediate use, the state board shall sell assets to provide the amount of assets the commissioner certifies. The board shall transfer the sale proceeds to the commissioner.

Subd. 8. **Dissolution.** Upon the dissolution of the assigned risk plan, the commissioner shall proceed to wind up the affairs of the plan, settle its accounts, and dispose of its assets. The assets and property of the assigned risk plan must be applied and distributed in the following order of priority:

(1) to the establishment of reserves for claims under policies and contracts of coverage issued by the assigned risk plan before termination;

(2) to the payment of all debts and liabilities of the assigned risk plan, including the repayment of loans and assessments;

(3) to the establishment of reserves considered necessary by the commissioner for contingent liabilities or obligations of the assigned risk plan other than claims arising under policies and contracts of coverage; and

(4) to the state of Minnesota.

If the commissioner determines that the assets of the assigned risk plan are insufficient to meet its obligations under clauses (1), (2), and (3), excluding the repayment of assessments, the commissioner shall assess all insurers licensed pursuant to section 60A.06, subdivision 1, clause (5), paragraph (b), an amount sufficient to fully fund these obligations.

History: *1981 c 346 s 14; 1983 c 289 s 114 subd 1; 1983 c 290 s 5; 1983 c 293 s 63; 1984 c 655 art 1 s 92; 1989 c 260 s 24; 1990 c 450 s 1; 1992 c 510 art 3 s 4,5; 1993 c 13 art 2 s 4; 1995 c 231 art 2 s 6,7; 1995 c 258 s 55,56; 2002 c 374 art 8 s 2; 2002 c 387 s 5; 2003 c 2 art 1 s 11,45 subd 9; 2006 c 255 s 64,65*

79.252 ASSIGNED RISK PLAN.

Subdivision 1. **Purpose.** The purpose of the assigned risk plan is to provide workers' compensation coverage to employers rejected by a licensed insurance company pursuant to subdivision 2.

Subd. 2. **Rejected risks.** An insurer that refuses to write insurance for an employer shall furnish the employer a written notice of refusal. The employer shall file a copy of the notice of refusal with the data service organization under contract with the commissioner pursuant to section 79.251, subdivision 4.

Subd. 2a. **Minimum qualifications.** Any employer that (1) is required to carry workers' compensation insurance pursuant to chapter 176 and (2) has a current written notice of

refusal to insure pursuant to subdivision 2, is entitled to coverage upon making written application to the assigned risk plan, and paying the applicable premium.

Subd. 3. **Coverage.** (a) Policies and contracts of coverage issued pursuant to section 79.251, subdivision 4, shall contain the usual and customary provisions of workers' compensation insurance policies, and shall be deemed to meet the mandatory workers' compensation insurance requirements of section 176.181, subdivision 2.

(b) Policies issued by the assigned risk plan pursuant to this chapter may also provide workers' compensation coverage required under the laws of states other than Minnesota, including coverages commonly known as "all states coverage." The commissioner may apply for and obtain any licensure required in any other state to issue that coverage.

Subd. 3a. **Disqualifying factors.** An employer may be denied or terminated from coverage through the assigned risk plan if the employer:

(1) applies for coverage for only a portion of the employer's statutory liability under chapter 176, excluding wrap–up policies;

(2) has an outstanding debt due and owing to the assigned risk plan at the time of renewal arising from a prior policy;

(3) persistently refuses to permit completion of an adequate payroll audit;

(4) repeatedly submits misleading or erroneous payroll information; or

(5) flagrantly disregards safety or loss control recommendations. Cancellation for nonpayment of premium may be initiated by the service contractor upon 60 days' written notice to the employer pursuant to section 176.185, subdivision 1.

Subd. 3b. **Occupational disease exposure.** An employer having a significant occupational disease exposure, as determined by the commissioner, to be entitled to coverage shall have physical examinations made:

(1) of employees who have not been examined within one year of the date of application for assignment;

(2) of new employees before hiring; and

(3) of terminated employees. Upon request, the findings and reports of doctors making examinations, together with x–rays and other original exhibits, must be furnished to the assigned risk plan or the Department of Labor and Industry.

Subd. 4. **Responsibilities.** Assigned risk policies and contracts of coverage are subject to taxation under chapter 297I, and special compensation fund assessments under Minnesota Statutes 1990, section 176.131, subdivision 10. The assigned risk plan shall be a member of the reinsurance association for the purposes of sections 79.34 to 79.40 and may select either retention limit provided in section 79.34, subdivision 2.

Subd. 5. **Rules.** The commissioner may adopt rules as may be necessary to implement section 79.251 and this section.

History: *1983 c 290 s 6; 1984 c 640 s 32; 1Sp1985 c 10 s 72; 1992 c 510 art 3 s 6,7; 1993 c 13 art 2 s 1; 1993 c 299 s 31; 1995 c 233 art 2 s 56; 2000 c 394 art 2 s 20; 2002 c 387 s 6; 2006 c 255 s 66–68*

79.253 ASSIGNED RISK SAFETY ACCOUNT.

Subdivision 1. **Creation of account.** There is created the assigned risk safety account as a separate account in the special compensation fund in the state treasury. Income earned by funds in the account must be credited to the account. Principal and income of the account are annually appropriated to the commissioner of labor and industry to establish and promote workplace safety and health programs.

Subd. 2. **Use of funds; safety assessments.** The assigned risk plan shall, through persons under contract with the plan, perform on–site surveys of employers insured by the assigned risk plan and recommend practices and equipment to employers designed to reduce the risk of injury to employees. The recommendations may include that the employer form a

joint labor–management safety committee. The plan shall generally survey employers in the following priority:

(1) employers with poor safety records for their industry based on their premium modification factor or other factors;

(2) employers whose workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a premium rate in the top 25 percent of premium rates for all classes; and

(3) all other employers.

Subd. 2a. **Eligible applicants.** An employer is eligible to apply for a grant or loan under this section if the employer meets the following requirements:

(1) the employer's workers' compensation insurance is provided by the assigned risk plan, is provided by an insurer subject to penalties under chapter 176, or the employer is self–insured;

(2) the employer has had an on–site safety survey conducted by a Minnesota occupational safety and health investigator, a Minnesota Department of Labor and Industry workplace safety and health consultant, an in–house employee safety and health committee, a workers' compensation underwriter, a private safety consultant, or a person under contract with the assigned risk plan; and

(3) the on–site safety survey recommends specific safety practices or equipment designed to reduce the risk of illness or injury to employees.

Subd. 3. **Incentives and penalties.** The assigned risk plan shall develop a premium rating system subject to approval by the commissioner of commerce that provides a reduction in premium rates for employers that follow safety recommendations made under this section and an increase in rates for employers that do not. The system must be sensitive to the economic ability of an employer to implement particular recommendations.

Subd. 4. **Grants and loans.** The commissioner of labor and industry may make grants or loans to employers for the cost of implementing safety recommendations made under this section.

Subd. 5. **Rules.** The commissioner of labor and industry may adopt rules necessary to implement this section.

History: *1992 c 510 art 3 s 8; 1995 c 231 art 2 s 8; 1997 c 200 art 1 s 46*

EMPLOYEE LEASING

79.255 WORKERS' COMPENSATION INSURANCE; LESSORS OF EMPLOYEES.

Subdivision 1. **Registration required.** A corporation, partnership, sole proprietorship, or other business entity which provides staff, personnel, or employees to be employed in this state to other businesses pursuant to a lease arrangement or agreement shall, before becoming eligible to be issued a policy of workers' compensation insurance or becoming eligible to secure coverage on a multiple coordinated policies basis, register with the commissioner of commerce. The registration shall:

(1) identify the name of the lessor;

(2) identify the address of the principal place of business of the lessor and the address of each office it maintains within this state;

(3) include the lessor's taxpayer or employer identification number;

(4) include a list by jurisdiction of each and every name that the lessor has operated under in the preceding five years including any alternative names and names of predecessors and, if known, successor business entities;

(5) include a list of each person or entity who owns a five percent or greater interest in the employee leasing business at the time of application and a list of each person who formerly owned a five percent or greater interest in the employee leasing company or its predecessors, successors, or alter egos in the preceding five years; and

(6) include a list of each and every cancellation or nonrenewal of workers' compensation insurance which has been issued to the lessor or any predecessor in the preceding five years. The list shall include the policy or certificate number, name of insurer or other provider of coverage, date of cancellation, and reason for cancellation. If coverage has not been canceled or nonrenewed, the registration shall include a sworn affidavit signed by the chief executive officer of the lessor attesting to that fact.

Subd. 2. **Ineligibility to register.** Any lessor of employees whose workers' compensation insurance has been terminated within the past five years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premium otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

Subd. 3. **Notice of change.** Persons filing registration statements pursuant to this section shall notify the commissioner as to any changes in any information required to be provided under this section.

Subd. 4. **List maintained.** The commissioner shall maintain a list of those lessors of employees who are registered with the commissioner.

Subd. 5. **Forms of registration.** The commissioner may prescribe forms necessary to promote the efficient administration of this section.

Subd. 6. **Advertising prohibition.** No organization registered under this section shall directly or indirectly reference that registration in any advertisements, marketing material, or publications.

Subd. 7. **Criminal penalties.** Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, director, general partner, agent, representative, or employee of theirs who knowingly utilizes or participates in any employee leasing agreement, arrangement, or mechanism for the purpose of depriving one or more insurers of premium otherwise properly payable is guilty of a misdemeanor.

Subd. 8. **Application of section.** Any lessor of employees that was doing business in this state prior to April 28, 1992, shall register with the commissioner within 30 days of July 1, 1992.

Subd. 9. **Exemption.** A corporation, partnership, sole proprietorship, or other business entity that provides personnel supply arrangements or agreements for the purpose of temporarily supporting or supplementing a client's work force in work situations, such as employee absences, temporary skill shortages, seasonal workloads, and specific functions and projects, may be exempt from the registration requirements of this section, provided that the arrangements or agreements do not involve the lease–back of the client's employees.

To qualify for an exemption, an applicant must obtain a certificate of exemption from registration from the commissioner. A certificate of exemption shall be issued upon the applicant's filing of a letter with the commissioner stating that the applicant meets all of the requirements for obtaining an exemption. If a corporation, partnership, sole proprietorship, or other business entity operating under the exemption subsequently fails to meet the requirements for the exemption, the corporation, partnership, sole proprietorship, or other business entity must immediately surrender the exemption certificate and register with the commissioner.

Subd. 10. **Fee.** A registration or exemption certificate fee of $100 shall be paid.

History: *1992 c 510 art 3 s 9; 1993 c 194 s 2; 1997 c 200 art 1 s 47; 1999 c 223 art 2 s 11*

79.26 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.27 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.28 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.29 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.30 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.31 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.32 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

79.33 [Repealed, 1981 c 346 s 145; 1983 c 290 s 15]

REINSURANCE ASSOCIATION

79.34 CREATION OF REINSURANCE ASSOCIATION.

Subdivision 1. **Conditions requiring membership.** The nonprofit association known as the Workers' Compensation Reinsurance Association may be incorporated under chapter 317A with all the powers of a corporation formed under that chapter, except that if the provisions of that chapter are inconsistent with sections 79.34 to 79.40, sections 79.34 to 79.40 govern. Each insurer as defined by section 79.01, subdivision 2, shall, as a condition of its authority to transact workers' compensation insurance in this state, be a member of the reinsurance association and is bound by the plan of operation of the reinsurance association; provided, that all affiliated insurers within a holding company system as defined in chapter 60D are considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association. Each self–insurer approved under section 176.181 and each political subdivision that self–insures shall, as a condition of its authority to self–insure workers' compensation liability in this state, be a member of the reinsurance association and is bound by its plan of operation; provided that:

(1) all affiliated companies within a holding company system, as determined by the commissioner of labor and industry in a manner consistent with the standards and definitions in chapter 60D, are considered a single entity for purposes of the exercise of all rights and duties of membership in the reinsurance association; and

(2) all group self–insurers granted authority to self–insure pursuant to section 176.181 are considered single entities for purposes of the exercise of all the rights and duties of membership in the reinsurance association. As a condition of its authority to self–insure workers' compensation liability, and for losses incurred after December 31, 1983, the state is a member of the reinsurance association and is bound by its plan of operation. The commissioner of employee relations represents the state in the exercise of all the rights and duties of membership in the reinsurance association. The amounts necessary to pay the state's premiums required for coverage by the Workers' Compensation Reinsurance Association are appropriated from the general fund to the commissioner of employee relations. The University of Minnesota shall pay its portion of workers' compensation reinsurance premiums directly to the Workers' Compensation Reinsurance Association. For the purposes of this section, "state" means the administrative branch of state government, the legislative branch, the judicial branch, the University of Minnesota, and any other entity whose workers' compensation liability is paid from the state revolving fund. The commissioner of finance may calculate, prorate, and charge a department or agency the portion of premiums paid to the reinsurance association for employees who are paid wholly or in part by federal funds, dedicated funds, or special revenue funds. The reinsurance association is not a state agency. Actions of the reinsurance association and its board of directors and actions of the commissioner of labor and industry with respect to the reinsurance association are not subject to chapters 13 and 15. All property owned by the association is exempt from taxation. The reinsurance association is not obligated to make any payments or pay any assessments to any funds or pools established pursuant to this chapter or chapter 176 or any other law.

Subd. 1a. **Gross premiums tax.** The direct funded premiums received by the reinsurance association from self–insurers approved under section 176.181 and political subdivisions that self–insure are subject to taxation under chapter 297I.

Subd. 2. **Losses; retention limits.** The reinsurance association shall provide and each member shall accept indemnification for 100 percent of the amount of ultimate loss sustained in each loss occurrence relating to one or more claims arising out of a single compensable event, including aggregate losses related to a single event or occurrence which constitutes a single loss occurrence, under chapter 176 on and after October 1, 1979, in excess of a low, a

high, or a super retention limit, at the option of the member. In case of occupational disease causing disablement on and after October 1, 1979, each person suffering disablement due to occupational disease is considered to be involved in a separate loss occurrence. On January 1, 1995, the lower retention limit is $250,000, which shall also be known as the 1995 base retention limit. On each January 1 thereafter, the cumulative annual percentage changes in the statewide average weekly wage after October 1, 1994, as determined in accordance with section 176.011, subdivision 20, shall first be multiplied by the 1995 base retention limit, the result of which shall then be added to the 1995 base retention limit. The resulting figure shall be rounded to the nearest $10,000, yielding the low retention limit for that year, provided that the low retention limit shall not be reduced in any year. The high retention limit shall be two times the low retention limit and shall be adjusted when the low retention limit is adjusted. The super retention limit shall be four times the low retention limit and shall be adjusted when the low retention limit is adjusted. Ultimate loss as used in this section means the actual loss amount which a member is obligated to pay and which is paid by the member for workers' compensation benefits payable under chapter 176 and shall not include claim expenses, assessments, damages or penalties. For losses incurred on or after January 1, 1979, any amounts paid by a member pursuant to sections 176.183, 176.221, 176.225, and 176.82 shall not be included in ultimate loss and shall not be indemnified by the reinsurance association. A loss is incurred by the reinsurance association on the date on which the accident or other compensable event giving rise to the loss occurs, and a member is liable for a loss up to its retention limit in effect at the time that the loss was incurred, except that members which are determined by the reinsurance association to be controlled by or under common control with another member, and which are liable for claims from one or more employees entitled to compensation for a single compensable event, including aggregate losses relating to a single loss occurrence, may aggregate their losses and obtain indemnification from the reinsurance association for the aggregate losses in excess of the highest retention limit selected by any of the members in effect at the time the loss was incurred. Each member is liable for payment of its ultimate loss and shall be entitled to indemnification from the reinsurance association for the ultimate loss in excess of the member's retention limit in effect at the time of the loss occurrence.

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

the claims of the self–insurer member are not inconsistent with the bases for exception provided under clauses (a), (b) and (c).

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

Subd. 2a. **Deficiency.** If the board determines that a distribution of excess surplus resulted in inadequate funds being available to pay claims that arose during the period upon which that distribution was calculated, the board shall determine the amount of the deficiency. The deficiency shall be made up by imposing an assessment rate against self–insured members and policyholders of insurer members. The board shall notify the commissioner of commerce of the amount of the deficiency and recommend an assessment rate. The commissioner shall order an assessment at a rate and for the time period necessary to eliminate the deficiency. The assessment rate shall be applied to the exposure base of self–insured employers and insured employers. The assessment may not be retroactive and applies only prospectively. The assessment may be spread over a period of time that will cause the least financial hardship to employers. All assessments under this subdivision are payable to the association. The commissioner may issue orders necessary to administer this section.

Subd. 3. **Withdrawal from association.** An insurer may withdraw from the reinsurance association only upon ceasing to be authorized by license issued by the commissioner of commerce to transact workers' compensation insurance in this state and when all workers' compensation insurance policies issued by such insurer have expired; a self–insurer may withdraw from the reinsurance association only upon ceasing to be approved to self–insure workers' compensation liability in this state pursuant to section 176.181.

An insurer or self–insurer which withdraws or whose membership in the reinsurance association is terminated shall continue to be bound by the plan of operation. Upon withdrawal or termination, all unpaid premiums which have been charged to the withdrawing or terminated member shall be payable as of the effective date of the withdrawal or termination.

Subd. 4. **Liabilities of insolvent members.** An unsatisfied net liability to the reinsurance association of an insolvent member shall be assumed by and apportioned among the remaining members of the reinsurance association as provided in the plan of operation. The reinsurance association shall have all rights allowed by law on behalf of the remaining members against the estate or funds of the insolvent member for sums due the reinsurance association.

Subd. 5. **Merger or consolidation.** When a member has been merged or consolidated into another insurer or self–insurer, or another insurer, which provides insurance required by chapter 176, has reinsured a member's entire business, the member and successors in interest of the member shall remain liable for the member's obligations.

Subd. 6. **Identifying losses in report.** The commissioner of labor and industry shall require each member to identify the portion of all losses which exceed its retention limit selected under this section in any report filed with the Workers' Compensation Insurers Rating Association of Minnesota or filed with the Department of Labor and Industry for use in reviewing the workers' compensation schedule of rates.

Subd. 7. **Losses 1984 and after.** For losses incurred on or after January 1, 1984, the reinsurance association shall indemnify the member for the ultimate loss, in excess of the retention limit in effect at the time of the loss occurrence, sustained in each loss occurrence relat-

ing to one or more claims arising out of a single compensable event in another state provided that:

(a) the injured worker is eligible for benefits under section 176.041, subdivision 2 or 3, but elects to receive benefits under the workers' compensation statute of another state in lieu of benefits under chapter 176; and

(b) the ultimate loss indemnified by the reinsurance association shall be determined as provided in this chapter, except that the benefits shall be equal to those required to be paid under the workers' compensation statute of the state elected.

History: *Ex1979 c 3 s 17; 1980 c 556 s 7; 1981 c 346 s 17,18,139; 1Sp1981 c 4 art 1 s 62; 1982 c 424 s 130; 1983 c 289 s 114 subd 1; 1983 c 290 s 7–9; 1984 c 432 art 1 s 2; 1984 c 655 art 1 s 92; 1985 c 234 s 21; 1987 c 268 art 2 s 26,27; 1988 c 667 s 22; 1989 c 304 s 137; 1991 c 325 art 14 s 17; 1991 c 345 art 1 s 70; 1993 c 361 s 5; 1995 c 231 art 2 s 9; 1995 c 258 s 57; 1997 c 187 art 3 s 19,20; 2000 c 394 art 2 s 21; 1Sp2001 c 10 art 2 s 52*

79.35 DUTIES; RESPONSIBILITIES; POWERS.

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

(a) Assume 100 percent of the liability as provided in section 79.34;

(b) Establish procedures by which members shall promptly report to the reinsurance association each claim which, on the basis of the injury sustained, may reasonably be anticipated to involve liability to the reinsurance association if the member is held liable under chapter 176. Solely for the purpose of reporting claims, the member shall in all instances consider itself legally liable for the injury. The member shall advise the reinsurance association of subsequent developments likely to materially affect the interest of the reinsurance association in the claim;

(c) Maintain relevant loss and expense data relative to all liabilities of the reinsurance association and require each member to furnish statistics in connection with liabilities of the reinsurance association at the times and in the form and detail as may be required by the plan of operation;

(d) Calculate and charge to members a total premium sufficient to cover the expected liability which the reinsurance association will incur, together with incurred or estimated to be incurred operating and administrative expenses for the period to which this premium applies and actual claim payments to be made by members, during the period to which this premium applies, for claims in excess of the prefunded limit in effect at the time the loss was incurred. Each member shall be charged a premium established by the board as sufficient to cover the reinsurance association's incurred liabilities and expenses between the member's selected retention limit and the prefunded limit. The prefunded limit shall be 20 times the lower retention limit established in section 79.34, subdivision 2. Each member shall be charged a proportion of the total premium calculated for its selected retention limit in an amount equal to its proportion of the exposure base of all members during the period to which the reinsurance association premium will apply. The exposure base shall be determined by the board and is subject to the approval of the commissioner of labor and industry. In determining the exposure base, the board shall consider, among other things, equity, administrative convenience, records maintained by members, amenability to audit, and degree of risk refinement. Each member shall also be charged a premium determined by the board to equitably distribute excess or deficient premiums from previous periods including any excess or deficient premiums resulting from a retroactive change in the prefunded limit. The premiums charged to members shall not be unfairly discriminatory as defined in section 79.074. All premiums shall be approved by the commissioner of labor and industry;

(e) Require and accept the payment of premiums from members of the reinsurance association;

(f) Receive and distribute all sums required by the operation of the reinsurance association;

(g) Establish procedures for reviewing claims procedures and practices of members of the reinsurance association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the reinsurance association, the reinsurance association may undertake, or may contract with another person, including another member, to adjust or assist in the adjustment of claims which create a potential liability to the association. The reinsurance association may charge the cost of the adjustment under this paragraph to the member, except that any penalties or interest incurred under sections 176.183, 176.221, 176.225, and 176.82 as a result of actions by the reinsurance association after it has undertaken adjustment of the claim shall not be charged to the member but shall be included in the ultimate loss and listed as a separate item; and

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

History: *Ex1979 c 3 s 18; 1980 c 556 s 8; 1981 c 346 s 19,139; 1983 c 290 s 10; 1985 c 234 s 21; 1995 c 231 art 2 s 10; 1995 c 258 s 58*

79.36 ADDITIONAL POWERS.

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

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

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

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

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

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

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

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

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

(i) Perform other acts not specifically enumerated in this section which are necessary or proper to accomplish the purposes of the reinsurance association and which are not inconsistent with sections 79.34 to 79.40 or the plan of operation.

History: *Ex1979 c 3 s 19; 1980 c 556 s 9; 1981 c 346 s 20,139; 1985 c 234 s 21; 1987 c 384 art 2 s 1*

79.361 POST-1992 DISTRIBUTION OF WORKERS' COMPENSATION REINSURANCE ASSOCIATION SURPLUS.

Subdivision 1. **Scope.** This section governs the distribution of excess surplus of the Workers' Compensation Reinsurance Association declared after January 1, 1993. A distribution of excess surplus is declared on the date the board votes to make a distribution. No distribution of excess surplus other than that provided by this section may be made.

Subd. 2. **Self-insured.** A self-insurer shall receive a distribution of excess surplus in an amount equal to the self-insurer's share of the premiums paid to the Workers' Compensation Reinsurance Association for the period and for each retention layer for which the distribution is made.

Subd. 3. **Insured employers.** A policyholder, other than a policyholder insured by the assigned risk plan or the State Fund Mutual Insurance Company, shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner of commerce in the most recent annual statements of insurers, including the assigned risk plan and the State Fund Mutual Insurance Company.

Subd. 4. **Assigned risk plan.** A policyholder of the assigned risk plan shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner of commerce in the most recent annual statements of insurers, including the assigned risk plan and the State Fund Mutual Insurance Company.

Subd. 5. **State Fund Mutual Insurance Company.** A policyholder of the State Fund Mutual Insurance Company shall receive a refund of a share of the distribution equal to the policyholder's share of the annual total earned Minnesota workers' compensation insurance premium, as reported to the commissioner of commerce in the most recent annual statements of insurers, including the assigned risk plan and the state fund mutual insurance company.

Subd. 6. **Distribution defined.** For the purpose of subdivisions 3 to 5, "distribution" means a distribution described in subdivision 1 minus a distribution to self-insurers under subdivision 2.

Subd. 7. **Policyholder.** For the purpose of this section "policyholder" means a workers' compensation insurance policyholder in the calendar year preceding a declaration of excess surplus by the board of the reinsurance association.

Subd. 8. **Information required.** Insurers and the Workers' Compensation Insurers Rating Association of Minnesota must provide the Workers' Compensation Reinsurance Association with information necessary to administer and calculate the refunds to policyholders governed by this section within 60 days of a request by the association. For the purpose of this subdivision, "insurer" includes the assigned risk plan.

Subd. 9. **Refund due date.** Policyholders must receive the refund within 60 days of the day the reinsurance association receives the information required to be provided by subdivision 8.

Subd. 10. **Unclaimed refund.** Any part of the refund not distributed within one year after the due date of a refund under this section due to the inability to identify or locate policyholders remains with the Workers' Compensation Reinsurance Association.

Subd. 11. **Costs of distribution.** The reinsurance association may pay the actual and reasonable costs of the refunds made under this section from earnings on a declared excess surplus prior to its distribution.

History: *1993 c 361 s 4*

79.362 WORKERS' COMPENSATION REINSURANCE ASSOCIATION EXCESS SURPLUS DISTRIBUTION.

An order of the commissioner of the Department of Labor and Industry relating to the distribution of excess surplus of the Workers' Compensation Reinsurance Association shall be reviewed by the commissioner of commerce. The commissioner of commerce may

amend, approve, or reject an order or issue further orders to accomplish the purposes of section 79.361 and Laws 1993, chapter 361, section 2. The commissioner may not change the amount of the distribution ordered by the commissioner of labor and industry without agreement of the commissioner of labor and industry.

History: *1993 c 361 s 6; 1997 c 187 art 3 s 21*

79.363 DISTRIBUTION OF EXCESS SURPLUS.

The distribution of excess surplus of the Workers' Compensation Reinsurance Association is not a distribution of excess premiums to members. Any excess surplus not refunded according to Laws 1993, chapter 361, section 2, must be returned to the association and must not be distributed to its members. Any excess surplus not distributed or refunded according to section 79.361 must be retained by the association and must not be distributed to members.

History: *1993 c 361 s 8*

79.37 BOARD OF DIRECTORS.

A board of directors of the reinsurance association is created and is responsible for the operation of the reinsurance association consistent with the plan of operation and sections 79.34 to 79.40. The board consists of 13 directors. Four directors shall represent insurers, two directors shall represent employers, two shall represent self–insurers; two directors shall represent employees; the commissioner of finance and the executive director of the state Board of Investment or their designees shall serve as directors; and one director shall represent the public. Insurer members of the reinsurance association shall elect the directors who represent insurers; self–insurer members of the reinsurance association shall elect the directors who represent self–insurers; and the commissioner of labor and industry shall appoint the remaining directors for the terms authorized in the plan of operation. Each director is entitled to one vote. Terms of the directors shall be staggered so that the terms of all the directors do not expire at the same time and so that a director does not serve a term of more than four years. The board shall select a chair and other officers it deems appropriate.

A majority of the directors currently holding office constitutes a quorum. Action may be taken by a majority vote of the directors present.

The board shall take reasonable and prudent action regarding the management of the reinsurance association including but not limited to determining the entity who shall manage the daily affairs of the reinsurance association. The board shall report to the governor of its actions regarding the entity selected to manage the reinsurance association and the reasons for the selection.

History: *Ex1979 c 3 s 20; 1980 c 556 s 10; 1981 c 346 s 139; 1983 c 290 s 11; 1984 c 592 s 78; 1985 c 234 s 2; 1986 c 444; 1987 c 384 art 2 s 1*

79.371 [Repealed, 1993 c 228 s 4; 2001 c 63 s 2]

79.38 PLAN OF OPERATION.

Subdivision 1. **Provisions.** The plan of operation shall provide for all of the following:

(a) the establishment of necessary facilities;

(b) the management and operation of the reinsurance association;

(c) a preliminary premium, payable by each member in proportion to its total premium in the year preceding the inauguration of the reinsurance association, for initial expenses necessary to commence operation of the reinsurance association;

(d) procedures to be utilized in charging premiums, including adjustments from excess or deficient premiums from prior periods;

(e) procedures governing the actual payment of premiums to the reinsurance association;

(f) reimbursement of each member of the board by the reinsurance association for actual and necessary expenses incurred on reinsurance association business;

(g) the composition, terms, compensation and other necessary rules consistent with section 79.37 for boards of directors of the reinsurance association;

(h) the investment policy of the reinsurance association; and

(i) any other matters required by or necessary to effectively implement sections 79.34 to 79.40.

Subd. 2. **Validity.** If the reinsurance association is incorporated pursuant to chapter 317A, the plan of operation shall be filed with and accepted by the secretary of state as the corporation's articles of incorporation and bylaws. The plan of operation shall be valid as articles of incorporation and bylaws under chapter 317A, notwithstanding that one or more of the required provisions for articles and bylaws under chapter 317A is not included or requirements of form are not followed.

Subd. 3. **Amendments.** (a) **Procedure with members' ratification.** The plan of operation may be amended, in whole or in part, as follows: proposal of an amendment by a member of the board and adoption by a majority vote of the board at a meeting duly called for that purpose, ratification by a majority vote of the members at any annual meeting or special meeting duly called for that purpose, and approval of the commissioner of labor and industry, provided that an amendment shall be deemed approved 30 days after the day following the date of ratification by the members if not sooner disapproved by written order of the commissioner.

(b) **Emergency board power to amend with delayed members' ratification.** The board shall have emergency powers to amend the plan at a meeting duly called for that purpose, without ratification by the members; provided that a meeting of members shall be scheduled to consider ratification of the amendment within 90 days.

(c) **Commissioner's power to amend.** If the board proposes an amendment which the members decline to ratify, the commissioner of labor and industry is authorized, upon request of the board, to amend the plan as proposed by the board when the commissioner determines that failure to adopt the proposed amendment may seriously impair the ability of the reinsurance association to meet its financial obligations.

(d) **Delegation of authority to ratify.** By a majority vote, the members, voting in person, or by proxy if authorized by the board, at a meeting duly called for that purpose, may authorize the board to exercise the power of amendment of the plan without ratification by the members. When the members have authorized the board to amend the plan without ratification by the members, the board may, by a majority vote of the directors, amend the plan, provided that notice of the meeting and of the proposed amendment shall be given to each director and officer, including the commissioner of labor and industry. By a majority vote, the members, voting in person, or by proxy if authorized by the board, at a meeting duly called for that purpose, may prospectively revoke the authority of the board to amend the plan without ratification by the members.

History: *Ex1979 c 3 s 21; 1980 c 556 s 11; 1981 c 346 s 139; 1985 c 234 s 21; 1986 c 444; 1987 c 384 art 2 s 1,16; 1989 c 304 s 137*

79.39 APPLICABILITY OF CHAPTER 79.

Subdivision 1. **Examination by commissioner.** The reinsurance association is subject to all the provisions of this chapter. The commissioner of labor and industry or an authorized representative of the commissioner may visit the reinsurance association at any time and examine, audit, or evaluate the reinsurance association's operations, records and practices. For purposes of this section, "authorized representative of the commissioner" includes employees of the Department of Labor and Industry or other parties retained by the commissioner.

Subd. 2. **Costs and expenses.** The commissioner of labor and industry may order and the reinsurance association shall pay the costs and expenses of any examination, audit, or evaluation conducted pursuant to subdivision 1.

History: *Ex1979 c 3 s 22; 1984 c 592 s 79; 1985 c 234 s 21*

79.40 PREMIUM INCLUSION IN RATEMAKING.

Premiums charged members by the reinsurance association shall be recognized in the ratemaking procedures for insurance rates.

History: *Ex1979 c 3 s 23; 2005 c 132 s 25*

79.41 [Repealed, 1980 c 556 s 13; 1981 c 346 s 139]

79.42 [Repealed, 1980 c 556 s 13; 1981 c 346 s 139]

PREMIUMS; DATA SERVICE ORGANIZATIONS

79.50 PURPOSES.

The purposes of this chapter are to:

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

(b) promote quality and integrity in the databases used in workers' compensation insurance ratemaking;

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

(d) define the function and scope of activities of data service organizations; and

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

History: *1981 c 346 s 21; 1995 c 231 art 1 s 1*

79.51 RULES.

Subdivision 1. **Adoption; when.** The commissioner shall adopt rules to implement provisions of this chapter.

Subd. 2. [Repealed, 1983 c 290 s 173]

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

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

(2) experience rating plans;

(3) retrospective rating plans;

(4) general expenses and related expense provisions;

(5) minimum premiums;

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

(7) loss development and trend factors;

(8) the Workers' Compensation Reinsurance Association;

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

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

(11) the rules contained in the workers' compensation rating manual adopted by the workers' compensation insurers rating association or other licensed data service organizations;

(12) the supporting data and information required in filings under section 79.56, including but not limited to, the experience of the filing insurer and the extent to which the filing insurer relies upon data service organization loss information, descriptions of the actuarial and statistical methods employed in setting rates, and the filing insurers interpretation of any statistical data relied upon; and

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

(b) The rules shall provide for the following:

(1) adequate safeguards against excessive or discriminatory rates in workers' compensation;

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

(3) assurances that employers are not unfairly relegated to the assigned risk pool;

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

(5) preserving a framework for risk classification, data collection, and other appropriate joint insurer services.

Subd. 4. [Repealed, 1999 c 86 art 2 s 6]

History: *1981 c 346 s 22; 1983 c 290 s 12; 1988 c 629 s 14; 1993 c 132 s 1; 1995 c 231 art 1 s 2,3*

79.52 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 16. **Attorney fees.** No loss adjustment expense used to pay attorney fees or other costs in defense of a workers' compensation claim shall be charged to an insured in a merit rating plan or to a plan under section 79.251, subdivision 2.

Subd. 17. **Association or rating association.** "Association" or "rating association" means the Minnesota Workers' Compensation Insurers Association, Inc.

Subd. 18. **Rate Oversight Commission.** "Rate Oversight Commission" means the Workers' Compensation Advisory Council established in chapter 175.

History: *1981 c 346 s 23; 1983 c 289 s 114 subd 1; 1983 c 290 s 13; 1984 c 655 art 1 s 92; 1995 c 231 art 2 s 11,12*

79.53 PREMIUM CALCULATION.

Subdivision 1. **Method of calculation.** Each insurer shall establish premiums to be paid by an employer according to its filed rates and rating plan as follows:

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

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

History: *1981 c 346 s 24; 1983 c 289 s 114 subd 1; 1983 c 290 s 14; 1984 c 655 art 1 s 92; 1995 c 231 art 1 s 4; 1996 c 374 s 1*

79.531 NEGLIGENTLY PAID CLAIMS.

An insurer who has negligently paid benefits under chapter 176 may not charge the payment to the employer's experience rating.

History: *1986 c 461 s 1*

79.54 [Repealed, 1995 c 231 art 1 s 36; art 2 s 110]

79.55 STANDARDS FOR RATES.

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

Subd. 2. **Excessiveness.** Rates and rating plans are excessive if the expected underwriting profit, together with expected income from invested reserves, that would accrue to an insurer under the rates and rating plans would be unreasonably high in relation to the risk undertaken by the insurer in transacting the business. The burden is on the insurer to establish that profit is not unreasonably high.

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

Subd. 4. **Unfair discrimination.** Premiums are unfairly discriminatory if differentials for insureds fail to reasonably reflect the differences in expected losses and expenses to the insurer attributable to the insureds. Rates are not unfairly discriminatory solely because dif-

ferent premiums result for insureds with like loss exposures but different expense factors, or like expense factors but different loss exposures, provided that rates reflect the differences with reasonable accuracy.

Subd. 5. **Discounts permitted.** An insurer may offer a discount from a manual premium if the premium otherwise complies with this section. The commissioner shall not by rule, or otherwise, prohibit a credit or discount from a manual premium solely because it is greater than a certain fixed percentage of the premium.

Subd. 6. **Rating factors.** In determining whether a rate filing complies with this section, separate consideration shall be given to: (i) past and prospective loss experience within this state and outside this state to the extent necessary to develop credible rates; (ii) dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; and (iii) a reasonable allowance for expense and profit. An allowance for expense shall be presumed reasonable if it reflects expenses that are 22.5 percent greater or less than the average expense for all insurers writing workers' compensation insurance in this state. An allowance for after–tax profit shall consider anticipated investment income from premium receipts net of disbursements and from allocated surplus, based on the current five–year United States Treasury note yield and an assumed premium to surplus ratio of 2.25 to one. The allowance for after–tax profit shall be presumed reasonable if the corresponding return on equity target is equal to or less than the sum of: (i) the current yield on five–year United States Treasury securities; and (ii) an appropriate equity risk premium that reflects the risks of writing workers' compensation insurance. The risk premium shall not be less than the average, since 1926, of the differences in return between: (i) the annual return, including dividend income, for the Standards and Poors 500 common stock index or predecessor index for each year; and (ii) the five–year United States Treasury note yield as of the start of the corresponding year. Profit and expense allowances not presumed reasonable under this subdivision, are reasonable if the circumstances of an insurer, the market, or other factors justify them.

Subd. 7. **External factors.** That portion of a rate or rating plan related to assessments from the assigned risk plan, reinsurance association, guarantee fund, special compensation fund, agent commission, premium tax and any other state–mandated surcharges shall not cause the rate or rating plan to be considered excessive, inadequate, or unfairly discriminatory.

Subd. 8. **Annual filings.** Not later than October 1 of each year, the rating association shall file with the commissioner and the Rate Oversight Commission the following information used and related to the calculation and cost of workers' compensation insurance premiums:

(1) all statistical plans, including classification definitions used to assign each compensation risk written by its members to its approved classification for reporting purposes;

(2) all development factors and alternative derivations;

(3) a description and summary of each data reporting and monitoring method used to collect and monitor the database for workers' compensation insurance;

(4) trend factors and alternative derivations and applications;

(5) pure premium relativities for the approved classification system for which data are reported;

(6) an evaluation of the effects of changes in law on loss data;

(7) an explicit discussion and explanation of all methodology, alternatives examined, assumptions adopted, and areas of judgment and reasoning supporting judgments entered into, and the effect of various combinations of these elements on indications for modification of an overall pure premium rate level change; and

(8) all merit rating plans and the calculation of any variable factors necessary for utilization of the plan.

Subd. 9. **Analysis by Rate Oversight Commission.** Not later than December 1 of each year, the Rate Oversight Commission may submit to the commissioner a report concerning

the completeness of the filing and compliance of the filing with the standards for excessiveness, inadequacy, and unfair discrimination set forth in this chapter.

Subd. 10. **Duties of commissioner.** The commissioner shall issue a report by March 1 of each year, comparing the average rates charged by workers' compensation insurers in the state to the pure premium base rates filed by the association, as reviewed by the Rate Oversight Commission. The Rate Oversight Commission shall review the commissioner's report and if the experience indicates that rates have not reasonably reflected changes in pure premiums, the rate oversight commission shall recommend to the legislature appropriate legislative changes to this chapter.

History: *1981 c 346 s 26; 1985 c 219 s 1; 1995 c 231 art 1 s 5–8; art 2 s 13–15; 1996 c 374 s 2; 1997 c 128 s 1,2*

79.56 FILING RATES AND RATING INFORMATION.

Subdivision 1. **Prefiling of rates.** (a) Each insurer shall file with the commissioner a complete copy of its rates and rating plan, and all changes and amendments thereto, and such supporting data and information that the commissioner may by rule require, at least 60 days prior to its effective date. The commissioner shall advise an insurer within 30 days of the filing if its submission is not accompanied with such supporting data and information that the commissioner by rule may require. The commissioner may extend the filing review period and effective date for an additional 30 days if an insurer, after having been advised of what supporting data and information is necessary to complete its filing, does not provide such information within 15 days of having been so notified. If any rate or rating plan filing or amendment thereto is not disapproved by the commissioner within the filing review period, the insurer may implement it. For the period August 1, 1995, to December 31, 1995, the filing shall be made at least 90 days prior to the effective date and the department shall advise an insurer within 60 days of such filing if the filing is insufficient under this section.

(b) A rating plan or rates are not subject to the requirements of paragraph (a), where the insurer files a certification verifying that it will use the mutually agreed upon rating plan or rates only to write a specific employer that generates $250,000 in annual written workers' compensation premiums before the application of any large deductible rating plan. The certification must be refiled upon each renewal of the employer's policy. The $250,000 threshold includes premiums generated in any state. The designation and certification must be submitted in substantially the following form:

Name and address of insurer:.....

Name and address of insured employer:.....

Policy period:.....

I certify that the employer named above generates $250,000 or more in annual countrywide written workers' compensation premiums, and that the calculation of this threshold is based on the rates and rating plans that have been approved by the appropriate state regulatory authority. The filing of this certification authorizes the use of this rate or rating plan only for the named employer.

Name of responsible officer:.....

Title:.....

Signature:.....

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

Subd. 3. **Penalties.** Any insurer using a rate or a rating plan which has not been filed or certified under subdivision 1 shall be subject to a fine of up to $100 for each day the failure to file continues. The commissioner may, after a hearing on the record, find that the failure is willful. A willful failure to meet filing requirements shall be punishable by a fine of up to $500 for each day during which a willful failure continues. These penalties shall be in addition to any other penalties provided by law.

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

History: *1981 c 346 s 27; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1995 c 231 art 1 s 9,10; 2001 c 131 s 16; 2002 c 336 s 4; 2005 c 132 s 26,27*

79.561 DISAPPROVAL OF RATES OR RATING PLANS.

Subdivision 1. **Disapproval; time period.** The commissioner may disapprove a rate and rating plan or amendment thereto prior to its effective date, as provided under section 79.56, subdivision 1, if the commissioner determines that it is excessive, inadequate, or unfairly discriminatory. If the commissioner disapproves any rate or rating plan filing or amendment thereto, the commissioner shall advise the filing insurer what rate and rating plan the commissioner has reason to believe would be in compliance with section 79.55, and the reasons for that determination. An insurer may not implement a rate and rating plan or amendment thereto which has been disapproved under this subdivision. If the commissioner disapproves any rate and rating plan filing or amendment thereto, an insurer may use its current rate and rating plan for writing any workers' compensation insurance in this state. Following any disapproval, the commissioner and insurer may reach agreement on a rate or rating plan filing or amendment thereto. Notwithstanding any law to the contrary, in such cases, the rate or rating plan filing or amendment thereto may be implemented by the insurer immediately.

Subd. 2. **Hearing.** If an insurer's rate or rating plan filing or amendment thereto is disapproved under subdivision 1, the insurer may request a contested case hearing under chapter 14. The insurer shall have the burden of proof to justify that its rate and rating plan or amendment thereto is in compliance with section 79.55. The hearing must be scheduled promptly and in no case later than three months from the date of disapproval or else the rate and rating plan or amendment thereto shall be considered effective and may be implemented by the insurer. A determination pursuant to chapter 14 must be made within 90 days following the closing of the hearing record.

Subd. 3. **Consultants and costs.** The commissioner may retain consultants, including a consulting actuary or other experts, that the commissioner determines necessary for purposes of this chapter. The salary limit set by section 43A.17 does not apply to a consulting actuary retained under this subdivision. A consulting actuary shall be a fellow in the casualty actuarial society and shall have demonstrated experience in workers' compensation insurance ratemaking. Any individual not so qualified shall not render an opinion or testify on actuarial aspects of a filing, including but not limited to, data quality, loss development, and trending. The commissioner may determine the costs necessary for implementing and conducting a contested case hearing under subdivision 2, including, but not limited to, retaining any consulting actuaries and experts, and those costs shall be reimbursed by the special compensation fund.

History: *1995 c 231 art 1 s 11; 1996 c 452 s 28*

79.57 [Repealed, 1995 c 231 art 1 s 36; art 2 s 110]

79.58 [Repealed, 1995 c 231 art 1 s 36; art 2 s 110]

79.59 INSURERS AND DATA SERVICE ORGANIZATIONS; PROHIBITED ACTIVITIES.

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

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

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

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

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

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

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

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

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

(d) refuse membership to any licensed insurer.

History: *1981 c 346 s 30*

79.60 INSURERS; REQUIRED AND PERMITTED ACTIVITY.

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

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

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

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

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

(e) provide to the association, upon request, information about its insurance premiums, losses, and operations which the association shall request in order to prepare and file with the commissioner and the Rate Oversight Commission the filings required by this chapter; and

(f) pay to the association its equitable share of the costs of preparing the filing with the commissioner and the Rate Oversight Commission required by this chapter.

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

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

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

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

History: *1981 c 346 s 31; 1995 c 231 art 2 s 16*

79.61 DATA SERVICE ORGANIZATIONS; REQUIRED AND PERMITTED ACTIVITY.

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

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

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

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

(i) development factors and alternative derivations;

(ii) trend factors and alternative derivations and applications;

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

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

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

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

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

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

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

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

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

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

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

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

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

History: *1981 c 346 s 32*

79.62 DATA SERVICE ORGANIZATIONS; LICENSING, EXAMINATION.

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

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

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

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

(c) a statement showing its technical qualifications; and

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

Subd. 2a. **Employer representation.** The commissioner may appoint two representatives of employers to serve on the board of directors of each licensed data service organization. These directors serve for a term of two years and are entitled to vote on all matters under consideration.

Subd. 3. **Issuance.** The commissioner, upon finding that the applicant organization is qualified to provide the services required and proposed, or has contracted with a licensed data service organization to purchase these services which are required by this chapter but are not provided directly by the applicant, and that all requirements of law are met, shall issue a license. Each license is subject to annual renewal effective June 30. Each new or renewal license application must be accompanied by a fee of $1,000.

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

Subd. 5. **Licensee examination.** The commissioner may examine any licensed data service organization or applicant for this license to determine whether its activities and practices comply with law. The cost of the examination shall be paid by the examined organization pursuant to section 60A.03.

History: *1981 c 346 s 33; 1Sp1985 c 10 s 73; 1986 c 444; 2005 c 132 s 28*

79.63 [Repealed, 1983 c 290 s 173]